

**CALIFORNIA COASTAL COMMISSION**

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# Th22a

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Staff: T. Gedik-E  
Staff Report: 8/30/12  
Hearing Date: 9/13/12

## STAFF REPORT: APPEAL *DE NOVO*

**Appeal No.:** **A-1-MEN-09-034**

**Applicants:** **Michael Marr and Judith Malin**

**Appellants:** Albion Residents Association and the Sierra Club

**Local Government:** County of Mendocino

**Local Decision:** Approval with Conditions

**Location:** Approximately ¼ mile south of Albion and immediately north of Salmon Creek, on the east side of Highway One at 2800 North Highway One, Mendocino County (APN 123-350-06)

**Project Description:**  
(as approved by the County): (1) Develop a residence with a total building coverage of approximately 5,625 square feet including: a single-story house with an attached garage and covered porches; (2) a detached accessory structure containing a garage/workshop and a guest cottage with a covered porch to be occupied as a temporary residence before and during construction of the proposed residence; (3) a 900-foot-long driveway with an upgraded encroachment onto Highway One; (4) placement of a temporary construction trailer; (5) a septic disposal system; (6) a water well and a 2,000-gallon water storage tank; and (7) a liquefied petroleum gas (LPG) tank behind a five-foot tall fence near the northwest side of the workshop.

**PROJECT DESCRIPTION**

(as amended *de novo*):

(1) Develop a residence with a total building coverage of approximately 4,759 square feet including: a 2,719-square-foot structure containing a single-story house with an attached garage and covered porches with decks; (2) a detached 2,040-square-foot accessory structure containing a garage/workshop, a guest cottage to be occupied as a temporary residence before and during construction of the proposed residence, and a covered porch; (3) an 870-foot-long driveway with an upgraded encroachment onto Highway One; (4) placement of a temporary construction trailer; (5) a septic disposal system; (6) a water well and a 2,000-gallon water storage tank; (7) a 6-foot-tall cedar fence enclosing a courtyard and propane tank near the house; (8) two liquefied petroleum gas (LPG) tanks, one behind a proposed five-foot tall fence near the northwest side of the workshop, and one north of the residence; and (9) a wetlands creation and enhancement proposal to mitigate for direct wetland impacts.

**Staff Recommendation:**

Approval with Conditions

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**SUMMARY OF STAFF RECOMMENDATION**

The project site is located approximately ¼-mile south of the small rural town of Albion and directly north of the Highway One bridge over Salmon Creek, east of and adjacent to Highway One. The project site is located on a 4.17-acre Range Lands-zoned parcel within a designated highly scenic area. The applicant proposes to construct a single-family residence with an attached garage, and a separate workshop/garage/guest cottage on the subject parcel. In addition, the proposed project includes development of a driveway that will serve the subject parcel and that will be constructed within a 40-foot-wide easement on the adjacent parcel.

Major issues associated with the consistency of this project and the policies of the Mendocino County certified local coastal program (LCP) include potential adverse impacts to wetland ESHA, agricultural resources, and visual resources.

Regarding wetland ESHA, the proposed driveway construction to serve the residential development will occur within 50 feet of wetland ESHA and result in the direct filling of 500 square feet of Coastal Act wetlands. Staff believes that direct adverse impacts to wetland ESHA from the proposed development are not avoidable. Because a driveway for residential use is not an allowable form of development in wetlands and the proposed project would significantly degrade the wetland ESHA, the proposed development is inconsistent with the provisions of the LCP. However, consistent with the mandate of Coastal section 30010, since any economic use of the subject property would necessitate a driveway through and adjacent to the wetland, staff recommends approval of the driveway in order to provide for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use. In order to comply with the otherwise applicable requirements of the LCP, **Special Condition No. 10** includes

requirements for wetland creation and enhancement measures to mitigate all significant adverse environmental effects in and adjacent to wetland areas to the greatest extent feasible.

Regarding agricultural resources, approximately 1.67 acres of the 4.17-acre site is neither ESHA nor comprised of steep slopes and is thus useable for agriculture. While the Mendocino County LCP ([Appendix G](#)) allows a single family residence on agricultural lands as a principally permitted use, neither the single family residence nor the accessory structures serve an agricultural purpose. Therefore, the proposed conversion of agricultural lands to residential uses is only allowed by the LCP if continued *or* renewed agricultural use is not feasible (as defined in CZC Sections 20.532.100(B)(3) and 20.524.014(C)(3)). The applicants have submitted an agricultural analysis which demonstrates that it is not *economically* feasible to renew agricultural use of the site, because the 1.67 useable acres of agricultural land would provide a gross annual yield of only \$812 total- or \$486 per acre, even assuming the applicants use unpaid family labor living on site. Therefore, staff recommends the Commission approve the proposed residential development as a permissible conversion of agricultural land. To help reduce potential conflicts between the residential use and the adjacent agricultural lands, Commission staff recommends **Special Condition Nos. 1** and **2** that impose a right-to-farm provision and a deed restriction, respectively. In addition, **Special Condition No. 14** requires a coastal development permit amendment for any future improvements or changes to the approved development to ensure all development remains compatible with continued agricultural use on surrounding land.

Regarding visual resources, LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.020(D) require in part that new development in highly scenic areas be visually compatible with and subordinate to the character of its setting (see [Appendix I](#)). The immediate setting east of the highway consists of mostly undeveloped rangeland and Grand Fir forest with virtually no other development visible east of the highway. The applicants have revised their project for the purposes of the Commission's *de novo* review to reduce both the size and height of the house and the workshop/garage/guest cottage structure. The resulting design addresses visual subordination requirements by not only reducing the overall height, profile, and footprint of the development, but also clusters the buildings more closely together and against a backdrop of existing trees. To facilitate further screening of the proposed development, the applicants have additionally proposed to plant native vegetation landward of the bluff edge, which is reflected in **Special Condition 9(A)(iii)**. Commission staff also recommends **Special Condition No. 15** to restrict the color and type of exterior materials allowed and limit the type and use of exterior lighting.

Finally, **Special Condition No. 14** expressly requires all future improvements to the approved development to obtain a coastal development permit amendment so the Commission will have the ability to review all future development on the site to ensure that future improvements will be sited and designed in a manner that would protect coastal views from public vantage points and remain subordinate to the character of its setting.

Commission staff recommends **approval** of CDP application A-1-MEN-09-034, as conditioned.

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- [Appendix A](#) – List of Substantive File Documents
- [Appendix B](#) – List of Additional Information Provided by the Applicant
- [Appendix C](#) – Planning and Locating New Development LCP Policies
- [Appendix D](#) – Environmentally Sensitive Habitat Areas LCP Policies
- [Appendix E](#) – Grand Fir Forest ESHA
- [Appendix F](#) – Wetland Delineation
- [Appendix G](#) – Agricultural Resources LCP Policies
- [Appendix H](#) – Geologic Hazards LCP Policies
- [Appendix I](#) – Visual Resources LCP Policies
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### EXHIBITS

- Exhibit 1 – Regional Location
- Exhibit 2 – Vicinity Map
- Exhibit 3 – Proposed Site Plans
- Exhibit 4 – Proposed Floor Plans
- Exhibit 5 – Proposed Elevations
- Exhibit 6 – Visual Simulations and Viewsheds of Proposed Development
- Exhibit 7 – Appeal
- Exhibit 8 – Notice of Final Local Action & County Staff Report

- Exhibit 9 – Area Subject to Open Space Restrictions Pursuant to Special Condition No. [3](#)
- Exhibit 10 – Correspondence from Applicant following Substantial Issue Hearing
- Exhibit 11 – Excerpts of February 2009 Revised Botanical Report
- Exhibit 12 – June 1, 2009 Biological Addendum
- Exhibit 13 – August 2010 Wetland Mitigation Plan and Site Map
- Exhibit 14 – Property Interest Summary
- Exhibit 15 – Agricultural Analysis Report
- Exhibit 16 – June 2008 SHN Geotechnical Report

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission approve Coastal Development Permit No. A-1-MEN-09-034, subject to conditions, pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves coastal development permit A-1-MEN-09-034 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Mendocino County LCP. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Right-to-Farm.** By acceptance of this permit, the Permittee acknowledges and agrees: (a) that the permitted residential development is located on and adjacent to land used for agricultural purposes; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittee and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural lands against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from or in any way related to the property that is the subject of this permit.
2. **Deed Restriction.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-034, the applicants shall submit for the review and approval of the Executive Director, documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
3. **Open Space Restrictions.**
  - A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area generally depicted on **Exhibit No. 9**, which includes all

designated areas of the subject parcel within the Grand Fir Forest ESHA and a 100-foot ESHA buffer adjacent to the Grand Fir Forest ESHA, except for:

- (i) The development of the southeast corner of the garage/workshop/guest cottage building and a portion of the septic system leachfield in areas no closer than 50 feet from the Grand Fir Forest ESHA in the configuration and locations approved by the Commission herein under Coastal Development Permit No. A-1-MEN-09-034.
- (ii) Removal of non-native vegetation; and
- (iii) The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: vegetation clearance if required by the California Department of Forestry and Fire Protection (CDF) to meet fire safety standards; planting of native vegetation to improve the habitat value of the open space area generally, and removal of debris and unauthorized structures.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-034, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal metes and bounds legal description and graphic depiction drawn to scale and prepared by a licensed surveyor of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit No. 9 attached to this staff report.

4. **Demonstration of Adequate Property Rights to Perform Wetland Mitigation.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, written evidence that the California Department of Transportation (Department) has granted all necessary rights to the applicant to implement the revised wetland mitigation plan within the easement area that the applicant has obtained from the Department for construction of the driveway that will serve the approved residential development. The written evidence shall clearly demonstrate that the Department grants permission to the applicant to undertake both the development of the property and the required mitigation as conditioned by the Commission.
5. **Second Structure Restrictions.** The following restrictions shall apply with respect to the detached guest suite and workshop:
  - A. The guest cottage space located within the workshop building shall not exceed 640 square feet.
  - B. The guest cottage space shall only be used by the occupants of the primary dwelling on the property or their guests. Any rental or lease of the detached guest suite and workshop separate from rental or lease of the main residential structure, whether compensation be direct or indirect, is prohibited;
  - C. The detached guest cottage and workshop may be used as a residence with cooking or kitchen facilities only during construction of the main residence and only until an occupancy permit is granted by Mendocino County for use of the

main residence. The detached guest suite and workshop shall not be subsequently converted into a residence or second unit;

- D. All cooking and/or kitchen facilities must be removed from the guest cottage and workshop within 60 days of completion of the main residence;
- E. The owner shall obtain a building inspection of the guest cottage and workshop to verify all such areas have been removed.

6. **Temporary Construction Trailer.**

- A. **Restriction.** The temporary construction trailer must be removed within 60 days of completion of the residence.

7. **Conformance of the Design and Construction Plans to the Geotechnical Investigation Report.**

- A. All final design and construction plans including foundations, grading, retaining walls, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical and Geologic Investigation dated June 2008 and prepared by SHN Consulting Engineers & Geologists, Inc. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-034 the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, foundation, grading and drainage plans and has certified that each of those plans is consistent with the bluff setback and all of the recommendations specified in the above-referenced geotechnical reports approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from landslide, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

9. **Revised Plans.**

- A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-034, the applicant shall submit final revised plans to the Executive



Director for review and approval. The revised plans shall include a site plan, floor plan, building elevation views (two sheets), Erosion and Drainage Runoff Control Plan, and Landscaping plan, and shall conform to the plans dated January 11, 2011 except that the plans shall be revised to provide for the following changes to the project:

**(i) Site Plan Revisions**

- a. The plans shall depict the main residence with a minimum setback of 40 feet from the bluff edge, and septic leach lines a minimum setback of 50 feet from the bluff edge, and outside of the open space area as required pursuant to **Special Condition No. 3**.
- b. The site plan shall depict runoff and drainage conveyance systems that are consistent with the provisions of the erosion and runoff control plan required below.
- c. The “barn floor plan” (i.e., guest cottage and workshop) shall depict that cooking facilities are temporary and shall be removed within 60 days of completion of the primary residence.
- d. The plans shall depict the siting of all structures 30 feet from property lines, unless the applicant submits written evidence to the Executive Director that CalFire authorizes a reduction in their minimum 30-foot defensible space setback for all structures from property lines.

**(ii) Erosion and Drainage Runoff Control Plan**

- a. The plans shall include an erosion and drainage Runoff Control Plan that incorporates design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction. The drainage plan shall include a site map showing drainage features relating to the structure footprint (including roof and sidewalk runoff from house and garage), driveway, decking, and any other physical structures associated with development. The final runoff control plans shall at a minimum include the following provisions:
  1. Soil grading activities shall be restricted to the dry-season between April 15 and October 14;
  2. A physical barrier consisting of silt fencing and/or bales of straw placed end-to-end shall be installed downslope of any construction areas. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period;
  3. Native vegetation at the site shall be maintained to the maximum extent possible. Any disturbed areas shall be replanted with low-growing herbaceous native vegetation that conforms with the planting limitations of **Special Condition Nos. 9(A)(iii)(3) and 9(A)(iii)(4)**, immediately following completion of ground-

- disturbing activities, and covered by jute netting, coir logs, and/or rice straw;
4. The washing-out of concrete delivery vehicles, disposal of solid waste, or release of any hazardous materials on the parcel shall be prohibited, and any accidental spill of such materials shall be promptly cleaned up and restored;
  5. Runoff from impervious surfaces including but not limited to rooftops shall be collected and conveyed to a drainage sump, rain garden, rain storage barrel, rock gabion, or other facility designed for collection and infiltration in a non-erosive manner. Where gutters and downspouts are used, splash block velocity reducers or other collection and infiltration facilities as described above shall be incorporated, to prevent scour and erosion at the outlet;
  6. Contractors shall be informed of the presence of environmentally sensitive habitat on the site and the importance of avoiding disturbance to these areas, especially with regard to erosion and runoff from the building site; and
  7. All on-site construction debris stockpiles shall be covered and contained at all times.

**(iii) Landscape Plan**

- a. The landscaping plan shall demonstrate that:
  1. Unless required to abate a nuisance consistent with Coastal Act Section 30005(b), no limbing or pruning of the Grand Fir ESHA trees, or of any visually screening trees planted pursuant to the approved landscaping plan shall occur unless a permit amendment is obtained prior to the commencement of limbing and pruning;
  2. All plantings installed for visual screening on the parcel shall be maintained in good condition throughout the life of the project to ensure continued compliance with the approved final landscape plan. If any of the plants to be planted according to the plan die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1<sup>st</sup> of the next spring season in-kind or with another native species common to the coastal Mendocino County area that will grow to a similar or greater height;
  3. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used; and
  4. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed

to naturalize or persist at the site of the proposed development. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property;

- b. The plan shall be prepared by a qualified professional with expertise in the field of landscaping, such as a landscape architect and shall include, at a minimum, the following components:
  1. Provisions for the planting of evergreen drought-tolerant screening vegetation in the form of shrubs and trees locally native to Mendocino County.
  2. A final landscape site plan showing the species, size, and location of all plant materials that will be retained and newly planted on the developed site, any proposed irrigation system, delineation of the approved development, and all other landscape features such as, but not limited to, topography of the developed site, horticultural plantings, decorative rock features, pathways, and berms and/or raised beds,
  3. The plan shall further include a screening vegetation maintenance program (e.g., pruning, fertilizing, watering, etc.) for newly planted screening vegetation and a replacement program on a one-to-one or greater ratio for the life of the project.
  4. All screening vegetation to be planted shall be a minimum of five feet high when planted and must reach a mature height of at least 10 feet for shrubs and 20 feet for trees. The plan shall specify the type and mature heights of the screening vegetation to be planted along the southern parcel boundary and shall demonstrate that vegetation will substantially screen the structures developed on the site.
  5. A schedule shall be provided for the installation of the landscaping demonstrating that all landscape planting shall be completed prior to occupancy and shall be planted within 60 days of the first fall/early winter period following Commission approval of this coastal development permit; and
  6. Landscaping plan notes that include, but are not limited to, the requirements of subsection (iii)(a) above, and declaring that:
    - (a) "Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used."
- B. The permittees shall undertake development in accordance with the approved revised plans. Any proposed changes to the approved revised plan shall be reported to the Executive Director. No changes to the approved revised plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**10. Revised Wetland Mitigation and Monitoring Plan**

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-034, the applicant shall submit to the Executive Director for review and approval, a final revised wetland mitigation and monitoring plan prepared by a qualified biologist with experience conducting wetland delineations and installing wetland mitigation projects. The revised plan shall substantially conform with the mitigation plan dated August 2010, except that the plan shall be revised to include all of the following:

- (i) A plan for wetlands creation to mitigate for wetland fill that shall at a minimum:
  - a. Identify additional existing upland areas adjacent to existing wetland areas where 2,000 square feet of new wetlands will be created to achieve a total mitigation ratio of wetlands created to wetlands filled of 4:1;
  - b. Demonstrate through seasonally-appropriate floristic surveys conducted by a qualified biologist, that newly created wetland features will avoid rare plant ESHA;
  - c. Provide a topographic plan that depicts site topography of existing wetland and adjacent upland areas;
  - d. Depict proposed final topographic elevations of proposed constructed wetland areas;
  - e. Evaluate the existing soil conditions and specify any soil preparation necessary to create soil conditions that will support the creation of wetlands;
  - f. Specify how the mitigation design will successfully create wetland features in upland areas;
  - g. Include a final plan showing the species, size, and location of all plant materials that will be planted in the wetland creation area. The selected species shall be locally native, obtained from local genetic stock, and shall be representative both in diversity and composition of those native species that currently occur in the most intact, highest-quality portion of the surrounding wetland system.
  - h. Include a schedule for the creation of the wetland area that demonstrates that (a) the required excavation and grading at the wetland creation site shall only commence after completion of the driveway approved under CDP No. A-1-MEN-09-034, (b) be performed during the non-rainy season between May 1 and October 15, and be completed within three months of completion of construction of the access driveway approved under CDP No. A-1-MEN-09-034, and (c) the wetland vegetation planting shall be performed between November 1 and April 15 during the first rainy season following completion of the mitigation site excavation and grading work;

- (ii) A revised wetland buffer enhancement plan that shall be revised to include the following:
  - a. Specifications for the species, size, and location of all plant materials that will be planted in areas where exotic weeds are removed. The selected species shall be locally native, obtained from local genetic stock, and shall be representative both in diversity and composition of those native species that currently occur in the more intact areas surrounding the wetland system.
- (iii) A revised mitigation monitoring plan that shall be revised to include the following:
  - a. A description of monitoring methods and a monitoring schedule;
  - b. Provisions for ensuring achievement of performance standards including (1) 100% native vegetative cover within the wetland creation area of which a minimum of 60% shall be native hydrophytic vegetation established within five years, (2) evidence of three consecutive years with no remediation or maintenance activities other than weeding; and (3) no presence of invasive exotic plants, including but not limited to bearded iris (*Watsonia bulbifera*), periwinkle (*Vinca major*), and Himalayan blackberry (*Rubus armeniacus*) in both the wetland creation and enhancement areas within five years;
  - c. Provisions for submittal of annual monitoring reports to the Executive Director by November 1 of each year following completion of the wetland mitigation for a minimum of five years of monitoring that shall continue until the annual monitoring demonstrates that there have been at least three consecutive years when no remediation and or maintenance activities other than weeding have been necessary. The monitoring reports shall be prepared by a qualified wetland biologist and shall evaluate whether the mitigation site conforms with the goals, objectives, and performance standards set forth in the approved final revised wetland mitigation plan. The reports shall include
    - 1. Description of work performed on the parcel over the previous year;
    - 2. An evaluation of the survival rate of new locally native plantings in exposed areas and percentage of native vegetation cover within the wetland creation area and within the wetland enhancement area;
    - 3. Documentation of any new invasions of exotic species and plans for their removal or control, as necessary;
    - 4. Photos from designated photo stations.
  - d. A final report shall be submitted to the Executive Director after a minimum five years of monitoring with at least three consecutive years of no remediation or maintenance activities other than weeding have occurred. The final report shall at minimum: (1) document whether all protective measures outlined in the Conditions of Approval have been

met; (2) discuss the success or failure of mitigation measures applied on the site; and (3) include recommendations for additional mitigation if Conditions have not been met;

- e. If the final monitoring report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the performance standard of achieving (1) 100% native ground cover with a minimum 60% native hydrophytic wetland plant species in the created wetland areas within five years, (2) three consecutive years with no remediation or maintenance activities other than weeding; and (3) no presence of invasive exotic plants, including but not limited to bearded iris (*Watsonia bulbifera*), periwinkle (*Vinca major*), and Himalayan blackberry (*Rubus armeniacus*) in both the wetland creation and enhancement areas within five years, the applicant shall submit a revised or supplemental mitigation program to compensate for those portions of the original program which did not meet the performance standard. The revised mitigation program shall be processed as an amendment to this coastal development permit.

- (iv) Within 30 days of completion of the wetland mitigation work at the site, a description of the number, types, location, and condition of vegetation planted at the mitigation site shall be submitted to the Executive Director.

- B. The permittees shall undertake development in accordance with the approved revised plans. Any proposed changes to the approved revised plan shall be reported to the Executive Director. No changes to the approved revised plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

## 11. Site Inspection

- A. By acceptance of this permit, the applicant irrevocably authorizes, on behalf of the applicant and all successors-in-interest with respect to the subject property, Coastal Commission staff and its designated agents to enter onto the property to undertake site inspections for the purpose of monitoring compliance with the permit, including the special conditions set forth herein, and to document their findings (including, but not limited to, by taking notes, photographs, or video), subject to Commission staff providing 24 hours advanced notice to the contact person indicated pursuant to paragraph B prior to entering the property, unless there is an imminent threat to coastal resources, in which case such notice is not required. If two attempts to reach the contact person by telephone are unsuccessful, the requirement to provide 24 hour notice can be satisfied by voicemail, email, or facsimile sent 24 hours in advance or by a letter mailed three business days prior to the inspection. Consistent with this authorization, the applicant and his successors: (1) shall not interfere with such inspection/monitoring activities and (2) shall provide any documents requested by the Commission staff or its designated agents that are relevant to the determination of compliance with the terms of this permit.

- B. **Prior to issuance of the Coastal Development Permit**, the applicant shall submit to Commission staff the email address and fax number, if available, and the address and phone number of a contact person authorized to receive the Commission's notice of the site inspections allowed by this special condition. The applicant is responsible for updating this contact information, and the Commission is entitled to rely on the last contact information provided to it by the applicant.
12. **Temporary-Protective Fencing. PRIOR TO COMMENCEMENT OF GRADING OR OTHER CONSTRUCTION ACTIVITIES**, a qualified biologist shall place a construction barrier in the following locations: (1) immediately outside the wetland area to be impacted; (2) along the entire length of the wetland boundary adjacent to the approved driveway footprint; and (3) along the entire length of the protective buffer established around identified environmentally sensitive habitat areas as depicted on **Exhibit No. 9** of the staff recommendation. The construction barrier shall consist of temporary construction fencing or netting and shall be maintained throughout the course of construction activities. No construction related activities, including but not limited to maneuvering or parking of equipment, grading, staging or stockpiling of materials, or other ground disturbance shall be allowed to encroach into the areas protected by the construction barrier. The temporary fencing shall remain in place for the duration of construction and may be removed upon the final building inspection for the residence.
13. **Best Management Practices and Construction Responsibilities.** The permittee shall comply with the following construction-related requirements:
- A. Comply with the temporary exclusion/construction fencing requirements of **Special Condition No. 12**;
  - B. Contractors shall be informed of the presence of wetland and Grand Fir ESHA on the site and the importance of avoiding disturbance to ESHA areas.
  - C. All grading activity shall be limited to the dry season between April 15<sup>th</sup> and October 14<sup>th</sup>.
  - D. All best management practices employed shall be effective during the rainy season (October 15 through April 14) if construction occurs during that time of year;
  - E. Any and all excess excavated material and/or debris resulting from construction activities shall be removed from the project site **WITHIN 10 DAYS OF PROJECT COMPLETION** and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit;
  - F. Weed-free straw bales, coir rolls ("wattles"), and/or silt fencing structures shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants near wetland areas and downslope toward Little-Big Salmon Rivers;

- G. All on-site stockpiles of construction debris shall be located outside ESHA and ESHA buffers, and shall be covered and contained and at all times to prevent polluted water runoff;
  - H. On-site native vegetation shall be maintained to the maximum extent possible during construction activities;
  - I. Any disturbed areas shall be replanted or seeded immediately with low-growing herbaceous native species following completion of construction of the residential structure and driveway, in a manner that conforms to the planting limitations of **Special Condition Nos. 9(A)(iii)(3) and 9(A)(iii)(4)**; and
  - J. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.
14. **Future Development Restrictions.** This permit is only for the development described in Coastal Development Permit No. A-1-MEN-09-034. Any future improvements or changes to the single-family residence or other approved structures shall require an amendment to Permit No. A-1-MEN-09-034 from the Commission. Such a permit amendment application shall be accompanied by written evidence and analysis demonstrating that the amended development will remain consistent with all applicable LCP provisions including the requirement that the amended development be compatible with continued agricultural use on surrounding lands and consistent with all of the visual protection provisions applicable to highly scenic areas.
15. **Design Restrictions.**
- A. All exterior siding and roofing of the proposed structure shall be composed only of the colors proposed in this coastal development permit or darker earth-tone colors. The current owner or any future owner shall not repaint or stain the house or other approved structures with products that will lighten the color of the house or other approved structures without an amendment to this permit. In addition, to minimize glare no reflective glass, exterior finishings, or roofing materials are authorized by this permit.
  - B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.
  - C. All utilities serving the proposed project shall be placed underground. Following utility installation, all disturbed areas shall be contoured to mimic the natural topography of the site and revegetated with native grasses and forbs of local genetic stock appropriate to coastal Mendocino County.
16. **Maintenance of Visual Screening Plantings.** All plantings installed for visual screening on the parcel shall be maintained in good condition throughout the life of the project. If any of the plants to be planted die, become decadent, rotten, or weakened by decay or disease and must be removed for any reason, they shall be replaced in approximately the same location at a 1:1 ratio, no later than May 1<sup>st</sup> of the next spring season, and replaced in-kind or with another native species common to the coastal Mendocino County area that will



grow to a similar or greater height. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used.

**17. Area of Archaeological Significance.**

- A. If an area of cultural deposits is discovered during the course of the project all construction shall cease and shall not recommence except as provided in subsection (B) hereof; and a qualified cultural resource specialist shall analyze the significance of the find.
- B. A permittee seeking to recommence construction following discovery of the cultural deposits shall submit a supplementary archaeological plan for the review and approval of the Executive Director.
  - (i) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
  - (ii) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

**18. Conditions Imposed By Local Government.** This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares the following:

**A. STANDARD OF REVIEW AND PROCEDURES**

The Coastal Commission effectively certified the County of Mendocino's LCP in 1992. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program and not between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP).

On September 9, 2009, the Coastal Commission found that the appeal of the County of Mendocino's approval of CDP No. 57-2008 for the subject development raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Testimony may be taken from all interested persons at the *de novo* hearing.

## **B. INCORPORATION OF SUBSTANTIAL ISSUE FINDINGS**

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated August 27, 2009.

## **C. SITE DESCRIPTION**

The project site is located approximately ¼-mile south of the small rural town of Albion and directly north of the Highway One bridge over Salmon Creek, east of and adjacent to Highway One.

The surrounding landscape consists of rolling hills east of Highway One and uplifted marine terrace bluff-tops west of Highway One. There is very little development located on either side of the highway in the immediate vicinity of the development site with the exception of a restaurant west of Highway One about 1/8-mile north, the Pacific Reef's residential subdivision south of Salomon Creek west of Highway One and which is not readily visible from the highway, and a few other scattered residences not readily visible from Highway One on either side of the highway. Approximately one-half mile south of the Albion River, the forks of Little and Big Salmon Creeks (also characterized in some documents as Little and Big Salmon Rivers) merge into Salmon Creek immediately southeast of the project site, then drain to the ocean at Whitesboro Cove. A through-cut created for the highway spans northward between the steep hillslopes for approximately 450 feet immediately north of the Salmon Creek Bridge; the subject parcel sits atop this uplifted terrace on the east side of Highway One.

The subject Range Land-zoned parcel consists of 4.17 acres on an uplifted marine terrace that is bound to the south by the left bank of Salmon Creek. The site is within a designated highly scenic area that is bounded to the north and east by rolling hills of grasslands dotted with trees. These surrounding grasslands are similarly-zoned Range Lands, many of which are currently leased to cattle ranchers and are actively grazed. Lands zoned for residential uses occur west of Highway One on parcels ranging in size from 1 to 15 acres.

As described in the June 2008 Geotechnical and Geologic report prepared by SHN Consulting Engineers and Geologists (SHN), the parcel occurs on a gently southwest sloping stream valley wall or bluff top. The parcel slopes gently to the southwest before dropping steeply along the southern and eastern parcel boundaries. The southerly boundary of the project site abuts the crown of a southwest facing cliff that parallels the north bank of Salmon Creek. Slope gradients on the southerly cliff face range from 50% to near vertical. Vegetation along the south-facing slope includes mostly shrubs such as coyote brush (*Baccharis pilularis*), wax myrtle (*Morella californica*), and some willows (*Salix sp.*). The relatively-flat portions of the parcel are primarily dominated by non-native grassland. A grand fir forest (*Abies grandis*) extends along the eastern side of the parcel and continues downslope and along adjoining parcels. As discussed further in [Appendix E](#), Grand Fir forest is recognized as an environmentally sensitive habitat area.

A 40-foot-wide easement for public utilities and access to the subject parcel occurs on the adjacent parcel to the north. The easement runs parallel and adjacent to the east side of Highway One. An existing ranch gate and unimproved road crosses the easement from the Highway One approach and serves the adjacent agricultural property to the east. A seasonally wet meadow and other Coastal Act wetlands occur within approximately 1.07 acres of the easement. In addition, several non-native species such as bearded iris (*Watsonia bulbifera*), periwinkle (*Vinca major*), and Himalaya berry (*Rubus armeniacus*) occur in portions of the easement area.

According to the County staff report and supplemental information submitted to the Commission for purposes of its *de novo* review, subject parcel (APN 123-350-06) was originally part of a larger ranch, the Anderson Ranch. The configuration of the lot that exists currently was created by deed in 1967, creating a presumption of legality under the Subdivision Map Act. No local Mendocino County ordinance requiring a minor land division approval existed at that time. As coastal development permit requirements first went into effect on February 3, 1972, no coastal development permit was required to create the lot in its current configuration in 1967.

#### **D. PROJECT DESCRIPTION**

As detailed below, the applicant proposes to construct a single-family residence with an attached garage, and a separate workshop/guest cottage on the subject parcel. In addition, the proposed project includes development of a driveway that will serve the subject parcel and that will be constructed within a 40-foot-wide easement on the adjacent parcel. For the purposes of the Commission's *de novo* review, the applicant submitted revised plans and other information (**Exhibit Nos. 3, 4, 5, and 6, and [Appendix B](#)**) that make changes to the development originally approved by the County. The proposed project as revised for the Commission's *de novo* review reconfigures the placement and size of structures by reducing building height and bulk, and clustering development more than the originally-approved design.

The project as revised for the Commission's *de novo* review proposes the following developments: (1) construct a 1,790-square-foot, 18'-6"-high single-story house with a 576-square-foot attached garage, and 353 square feet of attached covered porches with decks (total building footprint of 2,719 square feet); (2) construct a detached 2,040-square-foot, 19'-4"-high accessory structure containing a 1,295-square-foot garage/workshop, a 640-square-foot guest cottage to be occupied as a temporary residence before and during construction of the proposed residence, and a 105-square-foot covered porch; (3) construct an 870-foot-long gravel driveway (total area of 11,130 sq. ft.) with two turnouts (to satisfy CalFire requirements) and an upgraded asphalt apron encroachment onto Highway One; (4) placement of a temporary construction trailer; (5) construct a 6-foot-tall cedar fence enclosing a courtyard and the propane tank near the house; (6) install two liquefied petroleum gas (LPG) tanks, one behind a proposed five-foot tall fence near the northwest side of the workshop, and one north of the residence; (7) install a water well and a 2,000-gallon water storage tank; and (8) install a septic disposal system.

The applicant proposes to use the garage/workshop space to support his building contractor and woodworking skills for a home occupation of creating custom cabinetry. As indicated in a letter submitted by the applicant dated December 17, 2009, "the workshop will provide affordable space to work, store equipment and materials and earn an income. Our modest sized home will be a full time residence for Mike and Judy and their son..."

The revised project design reduces the house size by 768 square feet and reduces the height of the house by 2.5 feet. Similarly, the applicants reduced the footprint of the workshop/garage/guest cottage structure by 98 square feet, and reduced the building height by 4.7 feet from natural grade. The house and workshop/guest cottage would be sited more than 100 feet away from the Grand Fir ESHA that occurs on the subject parcel.

The proposed house and accessory structure are located well to the south and east of the wetland that is located within the access easement on the adjacent property to the north. However, the proposed project includes construction of a driveway that runs roughly parallel to Highway One for approximately 600 feet (**See Exhibit 3**). Portions of the proposed driveway would be

constructed immediately adjacent to the wetland (varying from 0 to a maximum of approximately 15 feet) and the proposed connection from the driveway to Highway One would be constructed partially within the seasonally wet meadow (See **page 2 of Exhibit 3**), resulting in a direct impact to approximately 500 square feet of wetlands.

To mitigate for impacts to wetland ESHA and ESHA buffer, the project as proposed and as revised for the Commission's *de novo* review includes a proposal to plant a 1,300-square-foot area adjacent to the existing wetland with hydrophytic plants to expand the wetland feature at a ratio of 2.6:1, and additionally proposes to enhance the existing wetland buffer by removing invasive plants covering a 5,200-square-foot area from within the wetland and adjacent buffer areas.

## **E. PLANNING AND LOCATING NEW DEVELOPMENT**

### **Land Use**

The subject property is located in a rural area planned and zoned for Range Lands (RL) uses. Principal uses permitted in the RL district include Single-Family Residential, Vacation Home Rental, General Agriculture, Light Agriculture, Row and Field Crops, Tree Crops, Passive Recreation, and Fish & Wildlife Habitat Management. LUP Policy 3.9-1 states that one housing unit shall be authorized on every legal parcel existing on the date of adoption of the LUP provided adequate services exist and the development is consistent with all applicable policies of the LUP.

According to Section 20.368 of the Coastal Zoning Code (CZC), the minimum lot area for the RL district is 160 acres (the subject property is a nonconforming parcel approximately 4.17 acres in size), and the maximum lot coverage for the district is 15 percent.

As defined by CZC Section 20.308.075(L)(12), "lot coverage" means the percentage of gross lot area covered by all buildings and structures on a lot, including decks, and porches, whether covered or uncovered, and all other projections except eaves." Maximum lot coverage for Range Lands-zoned parcels between two and five acres is similarly 15%. Using this standard, the maximum lot coverage of the subject parcel, at 4.17 acres, is 27,247 square feet. The total lot coverage for the subject proposed development, including the 2,719-square-foot building envelope for the residence and garage; the detached 2,040-square-foot workshop/guest cottage; an enclosed 287-square-foot courtyard; an enclosed 281-square-foot water storage tank; and an 11,130-square-foot driveway (a portion of its coverage extends through an easement on the adjacent parcel) is 16,457 square feet (9% lot coverage).

Section 20.368.025 of the Coastal Zoning Code limits the number of residential units to one per every 160 acres. Thus, a maximum of one residential unit may be developed on the parcel. The guest cottage is proposed to be occupied as a temporary residence before and during construction of the proposed residence. As conditioned by **Special Condition No. 5**, the use of the detached guest cottage and workshop as a residence with cooking or kitchen facilities is temporarily allowed only during construction of the main residence.

The proposed garage/workshop with guest cottage falls within the range of principally permitted uses as an accessory building and use pursuant to CZC Section 20.456.015 as cited above. Section 20.308.050 of the CZC limits the size of guest cottages to 640 square feet and prohibits the structure from containing a kitchen. While the proposed plans (**page 2 of Exhibit No. 4**) depict a cooking facility within the guest cottage, as conditioned, the detached studio and

workshop shall not be subsequently converted into a residence or second unit, and all cooking and/or kitchen facilities must be removed upon 60 days of completion of the main residence.

### **Setbacks**

The development meets the base zoning district standards requiring the establishment of a minimum 20-foot yard setback for parcels less than 5 acres within the RL zoning district. However, the 25-foot setback between the proposed garage/workshop/guest cottage does not satisfy the minimum 30-foot setback from all property lines required by California Department of Forestry and Fire Protection (CalFire). Therefore, to satisfy the Defensible Space minimum standards set forth by CalFire's Regulations (Title 14, Section 1276.01) and as recommended by CalFire's recommended Conditions for Approval dated September 22, 2008 (CDF # 315-08), the Commission requires as part of **Special Condition No. 2A(i)** that the applicant submit, prior to permit issuance, either revised plans that depict the siting of all structures 30 feet from the property lines, or evidence that CalFire authorizes a reduction in their minimum 30-foot defensible space setback for all structures from property lines.

### **Services**

A 195-foot-deep water well and 2,000-gallon water storage tank on site will provide water service to the subject parcel. The proposed development also includes installation of a septic system sized to support a four-bedroom residence which is sufficient to serve the development. The proposed development satisfies the mandatory 25-foot setback of the septic tank from the bluff edge. The Mendocino County Department of Environmental Health (DEH) approved the adequacy of the proposed septic system.

A 40-foot by 900-foot long roadway and public utility easement runs adjacent and parallel to Highway One on the adjacent property to the north, and serves as the access to the subject parcel. The applicants have obtained an encroachment permit approval from CalTrans for the proposed encroachment onto Highway One.

Development of the site as a single-family residence is envisioned under the certified LCP. The significant cumulative adverse impacts on traffic capacity of Highway One from development approved pursuant to the certified LCP were addressed at the time the LCP was certified. Therefore, as conditioned, the proposed single-family residence is located in an area able to accommodate traffic generated by the proposed development and would not result in adverse impacts to the traffic capacity of Highway One consistent with the applicable provisions of LUP Policy 3.8-1.

### **Conclusion**

As discussed below, the proposed development has been conditioned to include mitigation measures, which will minimize all significant adverse environmental impacts consistent with the limitations of Section 30010 of the Coastal Act. Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.9-1 and 3.8-1 and CZC Section 20.532.095 because (1) development of the site as a single-family residence was envisioned under the certified LCP; (2) the development is within the range of principally permitted uses in the Range Lands zoning district; (3) there are adequate services to serve the proposed development, and (4) the development will not significantly contribute to adverse cumulative impacts on highway capacity, or, as discussed in the Findings below, on scenic

values, geologic hazards, environmentally sensitive habitats, water quality, or public access, and is compatible with the long-term protection of resource lands of the RL zoning district.

## F. ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)

### Results of Biological Assessments

Biological consultant William Maslach prepared a Botanical Survey and ESHA Assessment dated November 2007 that was subsequently revised in February 2009 (**Exhibit 11**). The assessment included a seasonally and floristically-appropriate survey for sensitive plant occurrences. Mr. Maslach also delineated wetlands at the subject site as part of the 2007 evaluation consistent with the definition of wetlands contained in the Coastal Act and its implementing regulations and used the procedures outlined in the 1987 Army Corps of Engineers Wetlands Delineation Manual<sup>1</sup>.

The surveys identified the following ESHAs: (1) approximately 1.1 acres of Grand Fir forest (*Abies grandis*) on the eastern side of the parcel and that extends into adjacent parcels; (2) approximately 75 individuals of Pt. Reyes checkerbloom (*Sidalcea calycantha*) located near Highway One within the access easement; and (3) approximately 1.07 acres of Coastal Act wetlands within the access easement adjacent to Highway One.

As noted above, the eastern side of the subject parcel contains approximately 1.1 acres of Grand Fir Forest ESHA (Refer to [Appendix E](#) for details). LUP Policy 3.1-7 and CZC Section 20.496 contain specific requirements for the establishment of a buffer area between development and an adjacent ESHA to protect ESHA from disturbances associated with proposed development. The width of the buffer area is required to be a minimum of 100 feet, unless an applicant can demonstrate, after consultation 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 from possible significant disruption caused by the proposed development. The buffer area is required to be measured from the outside edge of the ESHA and shall not be less than 50 feet in width. Development permitted within a buffer area is required to be generally the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply within the standards set forth in CZC Section 20.496.020(A)(4)(a)-(k).

The original project approved by the County maintained a 50-foot buffer between the workshop/guest cottage and the Grand Fir forest ESHA. As discussed further in the “Visual Resources” findings below, the project as revised for the Commission’s *de novo* review includes relocation of the workshop/guest cottage such that a 100-foot buffer is now maintained between the development and Grand Fir ESHA.

The wetlands are located along the northeast side of Highway One at the base of the roadway fill prism and consist of a seasonally wet meadow. The proposed house and accessory structure are located well to the south and east of this wetland. However, the proposed project includes construction of a driveway that runs roughly parallel to Highway One for approximately 600 feet (**See Exhibit 3**). Portions of the proposed driveway would be constructed immediately adjacent to the wetland (varying from 0 to a maximum of approximately 15 feet) and the proposed connection from the driveway to Highway One would be constructed partially within the seasonally wet meadow (**See page 2 of Exhibit 3**).

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<sup>1</sup> Environmental Laboratory. 1987. *Corps of Engineers wetlands delineation manual*. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Stations, Vicksburg, Mississippi.

### **Proposed Development Located Within Wetland ESHA**

The proposed driveway construction to serve the residential development will result in the direct filling of 500 square feet of Coastal Act wetlands (refer to [Appendix F](#) for additional information).

In response to the Commission's request for additional information needed regarding wetland impacts and mitigation for the Commission's *de novo* review, the applicant submitted a Wetland Mitigation Plan (**Exhibit 13**) prepared by biological consultant Playalina Nelson dated August 2010. The plan indicates that approximately 167 square feet of wetland will be displaced by the asphalt apron, and 333 square feet will be displaced by a permeable gravel surface driveway. The August 2010 mitigation plan additionally notes that approximately 4800 square feet (400 feet long by 12 feet wide) of the driveway will occur within 50 feet of the wetland.

In a biological addendum submitted to Mendocino County on June 1, 2009, consulting biologist Playalina Nelson states:

*“any feasible approach to the parcel will have to cross a Coastal Act wetland...Any other approach along Highway 1 that is designed to avoid the wetland would result in a large amount of excavation of the eastern bank along Highway 1, thus altering what little natural topography remains along the cut bank. Additionally, this approach would not meet the requirements of line-of-sight establish [sic] by CalTrans and would render the project unfeasible.”*

Thus, alternative access routes to the development site are extremely limited and no feasible approach to the parcel would avoid Coastal Act wetlands. As described previously, no access is feasible from the south side of the subject property because that side of the property and the adjoining land drops too steeply to the Salmon Creek drainage to be able to support an access driveway. The east side of the subject parcel is covered by Grand Fir ESHA and thus extending an access driveway from the east side of the parcel would require encroachment into and destruction of ESHA just as the proposed driveway does. In addition, the applicant would need to secure another easement from the adjoining property owner.

For the purposes of the Commission's *de novo* review, Commission staff requested the applicant evaluate whether alternate access could be obtained to the subject parcel by way of an easement through the adjoining property north of the subject parcel. The applicant's agent submitted a memo to Commission staff dated June 28, 2011, indicating that such a driveway construction would result in “considerable length that would transverse his lands and interfere with his grazing operations.” Therefore, the adjacent parcel owner, Mr. Danhakl, was not supportive of granting such an easement.

Therefore, although such an alternative access route through the adjoining parcel would avoid the need to place fill in wetlands for driveway construction, this alternative is not a feasible less environmentally damaging alternative because the applicant does not have the legal right to cross the adjacent property under separate ownership, and if allowed, the access would not be compatible with the current agricultural uses of the adjacent property.

Mendocino County Local Coastal Plan (LCP) policies including LUP Section 3.1-4 and CZC Section 20.496.025 limit the types of development allowable within wetland areas and do not include driveways for residential use. Furthermore, CZC Section 20.496.015 states that a project has the potential to impact an ESHA if development is proposed to be located within the ESHA.

CZC Section 20.496.015(D) further restricts development in an ESHA to only those instances where: (1) agreement as to the extent of the ESHA has been reached among the members of the site inspection party; and (2) findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1). That section further indicates that no development shall be allowed in an ESHA unless: (a) the resource will not be significantly degraded by proposed development, (b) no feasible, environmentally less damaging alternative exists; and (c) all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. In addition, CZC Section 20.496.015(E) states that if findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.

Thus, because (a) a driveway for residential use is not an allowable form of development in wetlands, and (b) the proposed project would significantly degrade the ESHA, the Commission finds that the proposed development is inconsistent with the provisions of LUP Policy 3.1-4 and CZC Section 20.496.025. As findings for approval cannot be made consistent with these LCP policies, CZC Section 20.532.100(A)(1) and CZC Section 20.496.015(E) mandate that the project be denied. However, as discussed below, the Commission has determined that it must allow a reasonable residential development on the subject property in order to comply with Section 30010 of the Coastal Act.

#### **Proposed Development Located Within ESHA Buffer**

Mendocino County LUP Policy 3.1-7 and CZC Section 20.496.020 contain specific requirements for the establishment of a buffer area between development and an adjacent ESHA to protect ESHA from disturbances associated with proposed development. The width of the buffer area is required to be a minimum of 100 feet, unless an applicant can demonstrate, after consultation 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 from possible significant disruption caused by the proposed development. The buffer area is required to be measured from the outside edge of the ESHA and shall not be less than 50 feet in width. Development permitted within a buffer area is required to be generally the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply within the standards set forth in CZC Section 20.496.020(A)(4)(a)-(k).

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, is compatible with the continuance of the habitat, 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. CZC Section 20.532.100(A)(1)(a) requires that ESHA resources affected by development will not be significantly degraded by the proposed development.

In addition, CZC 20.532.100(A)(1) states that no development shall be allowed within an ESHA unless (a) the resource will not be significantly degraded by the proposed development, (b) there is no feasible less environmentally damaging alternative, and (c) all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. Therefore, because LUP Policy 3.1-7 and CZC Section 20.496.020 require development permitted within a buffer area to be generally the same as those uses permitted in the adjacent ESHA, the only types of development allowed within wetland ESHA buffer include those that meet these three criteria.



Due to the fact that the only feasible access to the subject parcel and proposed residential development is through the 40-foot-wide access easement, and 1.07 acres of wetlands span throughout most of the easement and onto adjoining property to the east, it is not possible to develop the driveway to serve the subject parcel without locating a large portion of the driveway within ESHA and ESHA buffer (i.e., less than 50 feet from ESHA). This driveway development will require site grading (estimated by the applicant at 273 cubic yards total, of which 11.1 cubic yards is anticipated within the wetland area).

Therefore, because (1) the driveway that will serve the proposed residential use is not a use that would be allowed in the wetland ESHA, (2) the proposed driveway would be located less than 50 feet from ESHA inconsistent with LUP Policy 3.1-7 and CZC Section 20.496.020(A), and (3) the proposed driveway would significantly degrade wetlands, the Commission finds that findings for approval cannot be made consistent with LUP Policy 3.1-7 and CZC Sections 20.496.015 and 20.532.100(A)(1) regarding development within ESHA buffer, and these policies mandate that the project be denied. However, as discussed below, the Commission has determined that it must allow a reasonable residential development on the subject property in order to comply with Section 30010 of the Coastal Act.

### **Need to Allow a Reasonable Residential Development to Avoid an Unconstitutional Taking of Property**

As discussed above, the proposed development is inconsistent with LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496.020, 20.496.025, and 20.532.100(A)(1) regarding development in wetlands and wetland ESHA buffer. Therefore, CZC Section 20.496.015(E) requires that the project be denied. However, when the Commission denies a project, a question may arise whether the denial results in an unconstitutional “taking” of the applicant’s property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

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

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Coastal Act imposes on the Commission the duty to assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project with the assurance that its actions are consistent with Section 30010. If the Commission determines that its action would constitute a taking, then application of Section 30010 would overcome the presumption of denial. In this latter situation, the Commission will propose modifications to the development to minimize its Coastal Act inconsistencies while still allowing some reasonable amount of development.<sup>2</sup>

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<sup>2</sup> For example, in CDP A-1-MEN-03-029 (Claiborne and Schmitt), the Commission in 2004 approved residential development on a site that was entirely ESHA, even though it was not resource-dependent development and thus was inconsistent with the LCP (which was the standard of review in that case).

In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, its denial of the project would constitute a taking. As discussed further below, the Commission finds that to avoid a takings in compliance with Section 30010, the Commission determines it will allow the development of an access driveway that encroaches into wetland ESHA and ESHA buffer inconsistent with LCP policies.

### **General Takings Principles**

The Fifth Amendment of the United States Constitution provides that private property shall not “*be taken for public use, without just compensation.*”<sup>3</sup> Article 1, section 19 of the California Constitution provides that “[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner.”

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* [(1922) 260 U.S. 393]. Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories [see *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523]. First, there are the cases in which government authorizes a physical occupation of property [see, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419]. Second, there are the cases whereby government merely regulates the use of property (*Yee, supra*, 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation [e.g., *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18]. The Commission’s actions here would be evaluated under the standards for a regulatory taking.

In its recent takings cases, the Supreme Court has identified two circumstances in which a regulatory taking might occur. The first is the “categorical” formulation identified in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a “case specific” inquiry into the public interest involved (*Id.* at p. 1014). The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only “in the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted” or the “relatively rare situations where the government has deprived a landowner of all economically beneficial uses” or rendered it “valueless” [*Id.* at pp. 1016-1017 (emphasis in original)] (see *Riverside Bayview Homes, supra*, 474 U.S. at p. 126 (regulatory takings occur only under “extreme circumstances”)).<sup>4</sup>

The second circumstance in which a regulatory taking might occur is under the three-part, *ad hoc* test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations [*Id.* at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005]. In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found

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<sup>3</sup> The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

<sup>4</sup> Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036).

to occur [see *id.* (rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*)].

### **Before a Landowner May Establish a Taking, Government Must Have Made a Final Determination Concerning the Use to Which the Property May Be Put**

Before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, however, it must demonstrate that the taking claim is “ripe” for review. This means that the takings claimant must show that government has made a “final and authoritative” decision about the use of the property [e.g., *Williamson County Regional Planning Com. v. Hamilton Bank* (1985) 473 U.S. 172; *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348]. Premature adjudication of a takings claim is highly disfavored, and the Supreme Court’s cases “uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it” (*Id.* at p. 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (e.g., *McDonald, supra*).

In this case, and as discussed further below, although the LCP instructs the Commission to deny the proposed driveway in wetlands that would provide access to the proposed residential building site, the Commission’s denial would preclude the applicant an economic use on the site. The subject property, APN 123-350-06, is planned and zoned for range land uses that include agricultural and residential uses as principal permitted uses. Due to the fact that the only feasible access to the subject parcel and proposed residential development is through the 40-foot-wide access easement, and 1.07 acres of wetlands span throughout most of the easement and onto adjoining property to the east, it is not possible to develop the driveway to serve the subject parcel without locating a large portion of the driveway within ESHA and ESHA buffer (i.e., less than 50 feet from ESHA). This driveway development will require site grading (estimated by the applicant at 273 cubic yards total, of which 11.1 cubic yards is anticipated within the wetland area). As discussed further below, to deny the applicant an access driveway, and hence agricultural or residential use of the parcel would leave no economic use of the property. In these circumstances, the applicant could successfully argue that the Commission has made a final and authoritative decision about the use of the subject property. Therefore, the applicant could successfully argue that the Commission’s denial is a taking because a taking claim is “ripe.”

### **Determination of Unit of Property Against Which Takings Claim Will be Measured**

As a threshold matter, before a taking claim can be analyzed, it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be aggregated as a single parcel for takings purposes. In determining whether lots should be aggregated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition, and the extent to which the parcel has been treated as a single unit [e.g., *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 (nine individual lots treated as single parcel for takings purposes); *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318].

In this case, the applicant owns the subject vacant parcel proposed to be developed with a single-family residence (APN 123-350-06), but does not own any adjacent parcels. Therefore, the evidence establishes that the Commission should treat APN 123-350-06 as a single parcel for the purpose of determining whether a taking occurred.

### **The Commission Will Allow Reasonable Development in Order to Comply with Section 30010 of the Coastal Act**

#### **Categorical Taking**

Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council* (1992).

In *Lucas*, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of *all* economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use, unless the proposed project would constitute a nuisance under State law.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive his or her property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act or LCP provision would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, unless the proposed project would constitute a public nuisance under state law, the applicable provisions of the certified LCP cannot be read to deny all economically beneficial or productive use of land because these sections of the certified LCP cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property owner of some economically viable use.

Section 20.368.010 of the CZC sets forth the principal permitted use types in the RL district, which include (1) single-family residential, (2) vacation home rental, (3) general agriculture; (4) light agriculture, (5) row and field crops, (6) tree crops, (7) passive recreation, and (8) fish and wildlife habitat management. Additionally, CZC Section 20.368.015 sets forth the conditional permitted use types in the RL district, which include residential (dwelling groups, cluster development, farm employee housing, and farm labor housing); civic use types (on-site and off-site alternative energy facilities, community recreation, major impact utilities, and minor impact utilities); commercial (animal auctioning sales and services, horse stables, kennels, large animal veterinary, outdoor sports and recreation, and cottage industries); agricultural use types (animal waste processing; limited forest production and processing, commercial woodlots forest production and processing, horticulture, general packing and processing, and fisheries byproducts packaging and processing); open space use types (active recreation); extractive use types (mining and processing, and onshore oil and gas development facilities); and natural resource use types (watershed management).

The Commission finds that in this particular case, none of the other allowable principally permitted or conditionally permitted uses at the subject property would avoid development within and adjacent to environmentally sensitive wetlands, be feasible, and at the same time provide the property with an economically viable use. As discussed further below, the applicants submitted an agricultural analysis report prepared by a consultant whose background includes experience in agricultural economics, rural appraisals, and farm management, and renewed agricultural use of the subject property was determined to be economically infeasible. Making use of the subject property for any of the principally permitted or conditional uses except perhaps for passive recreation, wildlife habitat management, or watershed management would still require building an access driveway. Since there is only one feasible location for the driveway, these other developments would similarly result in driveway impacts to wetland ESHA and ESHA buffer inconsistent with LUP Policies 3.1-2, 3.1-4, and 3.1-7, and CZC Sections 20.496.015, 20.496.020, 20.496.025, and 20.532.100(A)(1).

Regarding wildlife habitat management or watershed management, while these use types wouldn't necessarily require building a driveway within and adjacent to wetland ESHA in a manner inconsistent with the LCP, neither of these uses afford the property owners an economically viable use.

Regarding "passive recreation" which is a principally permitted use type that also wouldn't necessarily require building a driveway within and adjacent to wetland ESHA in a manner inconsistent with the LCP, the passive recreation use type is defined in CZC Section 20.340.015 as follows:

*Leisure activities that do not require permits pursuant to this Division nor constitute "development" as defined in Section 20.308.035(D), and that involve only minor supplementary equipment. Examples include sight seeing, hiking, scuba diving, swimming, sunbathing, jogging, surfing, fishing, bird watching, picnicking, bicycling, horseback riding, boating, photography, nature study, and painting.*

However, none of these kinds of leisure activities afford the property owners an economically viable use. Commercial recreational uses that incorporate the leisure activities included in the definition of passive recreation activities such as renting bicycles from the property, leading nature study tours on the property for a fee, or conducting photography lessons for a fee at the site come under the separate use type of "Active Recreation" as defined in CZC Section 20.340.020. Although "Active Recreation" is a conditionally permitted use, such a use would likely still necessitate a driveway to transport clientele the approximately 350 feet to the parcel boundary, plus another 300 feet to a building site on the parcel that could support an active recreation use. Therefore, commercial development of a business in a manner that avoids impacts to wetland or wetland buffers is not feasible.

The passive recreation use also does not include setting aside lands for parks or open space preserves. These kinds of uses come under the separate use type of "Open Space" as defined in CZC Section 20.340.010. Even if the open space use type were allowed on the property, which it is not, the property is likely too small to be of value as a habitat preserve. Additionally, the property is located east of Highway One and is not adjacent to any Open Space-designated lands, thus there is little impetus for public agencies to purchase the lot.

Therefore, the Commission finds that it is reasonable to conclude that denial of the proposed residential use would deprive the applicant of all economically viable use. Therefore, whether or not denial of the permit would constitute a taking under the *ad hoc* inquiry required by *Penn Central* and discussed below, the Commission finds it necessary to approve some residential use of the property to avoid a categorical *Lucas*-type taking.

### **Taking Under *Penn Central***

Although the Commission has already determined it is necessary to approve some residential use to avoid a categorical taking under *Lucas*, a court may also consider whether the permit decision would constitute a taking under the *ad hoc* inquiry stated in *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This *ad hoc* inquiry generally requires an examination into factors such as the sufficiency of the applicant's property interest, the regulation's economic impact, and the regulation's interference with reasonable, investment-backed expectations.

**Sufficiency of Interest.** In the subject case, the applicant purchased APN 123-350-06 for \$500,000 with a closing date of May 4, 2005. On May 5, 2005, a Grant Deed was recorded in Volume 2005, page 09629 of the Official Records, Mendocino County Records Office, effectively transferring and vesting fee-simple ownership of APN 123-350-04 to applicant Michael Marr.

Based upon an examination of copies of these documents and related entries within the current property tax rolls of the County of Mendocino's Assessor's Office, a subsequent deed was recorded on September 20, 2007 that transferred the property to coastal development permit co-applicants Judith Malin and Mike Marr as joint tenants of the real property described as APN 123-350-06. Upon review of these documents, the Commission concludes that the applicant has demonstrated that they have sufficient real property interest in the subject parcel to allow pursuit of the proposed project.

**Reasonable Investment-Backed Expectations.** In this case, the applicant's proposal to construct a residence on APN 123-350-06 was both a reasonable expectation and an investment-backed expectation.

To determine whether the applicant had an investment-backed expectation to construct a house on APN 123-350-06, it is necessary to assess what the applicant invested when he purchased that lot. Since the Commission's Substantial Issue determination in August 2009 that Appeal No. A-1-MEN-09-034 raised a substantial issue of conformance with the certified LCP, the applicant submitted additional information requested by Commission staff concerning the applicants' reasonable investment-backed expectations, which was received in the Commission's North Coast District office on December 22, 2009. The applicant purchased APN 123-350-06, a 4.17-acre parcel, for a single purchase price of \$500,000. The applicant did not provide a review of comparable properties in the Albion area that were sold around the same time, but instead stated the following: "Market value was determined by the Seller and his agent. After spending several years looking for property in the Mendo/Sonoma area it was our view that we paid a fair price for this property. In 2009 the Mendocino County assessor accessed [sic] the property at \$530,605."

No records are available for comparison of recent sales of undeveloped surrounding agricultural lands, and available information is limited regarding other surrounding land sales in residentially zoned and designated lands. For example, west of Highway One, a 5.54-acre residentially-zoned

parcel sold in 2005 for \$600,00, and is currently for sale for \$650,000; however, according to data accessed from Zillow Real Estate Network<sup>5</sup>, the property advertised alleges to have an approved coastal development permit for a lodging facility, which could not be confirmed at the time of staff report preparation.

The applicant's submittal additionally describes their investment-backed expectations as follows:

*Although we have no intention of selling the property, it should be noted that this is an investment property. Acting as the General Contractor and Builder, we will save 60% of actual out-of-pocket building costs. Costs which will become profit when/if we sell the property...*

Consequently, the applicant did have an *investment-backed* expectation that he had purchased one developable lot (APN 123-350-06), and his investment reflected that the future development of a residential use could be accommodated on the subject parcel.

In addition, the expectation that APN 123-350-06 could be developed with a single-family residence would be reasonable. To determine whether an expectation is reasonable, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed for the applicant's proposed use, taking into account all the legal, regulatory, economic, physical and other restraints that existed when the property was acquired. As part of the submittal provided by the applicant to address their reasonable investment-backed expectations (**Exhibit 14**), the applicant stated the following: "We reviewed the Local Coastal Plan and met with the County Planning Department to review the rules and codes prior to purchase of the property. We hired many local design professionals familiar with the coastal plan, the rural architecture and the county process."

While the expressed intent of the Range Lands district is to "support continued agricultural use" as described in Chapter 2 and Section 3.2-1 of the Mendocino County LUP, the Range Lands district includes development of a single family residence as a principal permitted use. In addition, as discussed above, any economic use of the subject property would necessitate a driveway along the easement (and consequently, through the wetland) to serve the subject property. Therefore, a reasonable person could have had a reasonable expectation that APN 123-350-06 could be developed to include a single family residence.

When the applicant purchased the property in May 2005 with a 40-foot-wide, non-exclusive easement for access and utility purposes extending from the east side of Highway One along a length of several hundred feet to the subject property boundary, there was no indication that development of a single-family residence on the parcel would not be possible due to wetland constraints. Although the applicant hired a consulting botanist to conduct field surveys at the site, botanical surveys were conducted on April 17, May 3, and June 20, 2005 whereas wetland delineation work did not occur until June 18, 2005, after the applicant had assumed ownership of the property. Furthermore, at the entrance to Highway One where the proposed impacts to wetlands will occur, there exists a ranch gate and unpaved road serving the adjacent property to the north. Viewed objectively, a reasonable person would thus have had a reasonable expectation that APN 123-350-06 could be developed with a residential parcel served by a driveway along the access easement.

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<sup>5</sup> Accessed July 2012 at [http://www.zillow.com/homes/for\\_sale/Albion-CA/#/homes/for\\_sale/Albion-CA/8334\\_rid/39,217043,-123,747575,39,199419,-123,788002\\_rect/14\\_zm/1\\_rs/](http://www.zillow.com/homes/for_sale/Albion-CA/#/homes/for_sale/Albion-CA/8334_rid/39,217043,-123,747575,39,199419,-123,788002_rect/14_zm/1_rs/)

Therefore, the applicant had both a reasonable, and an investment-backed expectation that he could develop APN 123-350-06 with a residence as he is currently proposing.

**Economic Impact.** In this case, the evidence demonstrates that the Commission’s action would have substantial impact on the value of the subject property.

As noted previously, the subject property is planned and zoned for Range Lands (RL) uses. According to the LCP, the expressed intent of the Range Lands district is to “support continued agricultural use” as described in Chapter 2 and Section 3.2-1 of the Mendocino County LUP. Section 20.368 of the Coastal Zoning Code (CZC) sets forth the principal permitted use types in the RL district, which include (1) single-family residential, (2) vacation home rental, (3) general agriculture; (4) light agriculture, (5) row and field crops, (6) tree crops, (7) passive recreation, and (8) fish and wildlife habitat management. Additionally, CZC Section 20.368.015 sets forth the conditional permitted use types in the RL district, which include residential (dwelling groups, cluster development, farm employee housing, and farm labor housing); civic use types (on-site and off-site alternative energy facilities, community recreation, major impact utilities, and minor impact utilities); commercial (animal auctioning sales and services, horse stables, kennels, large animal veterinary, outdoor sports and recreation, and cottage industries); agricultural use types (animal waste processing; limited forest production and processing, commercial woodlots forest production and processing, horticulture, general packing and processing, and fisheries byproducts packaging and processing); open space use types (active recreation); extractive use types (mining and processing, and onshore oil and gas development facilities); and natural resource use types (watershed management).

The Commission finds that in this particular case, none of the other allowable principally permitted or conditionally permitted uses at the subject property would avoid development within and adjacent to environmentally sensitive wetlands, be feasible, and at the same time provide the owners with an economic return on their investment. As discussed further below, the applicants submitted an agricultural analysis report prepared by a consultant whose background includes experience in agricultural economics, rural appraisals, and farm management, and renewed agricultural use of the subject property was determined to be economically infeasible. Making use of the subject property for any of the principally permitted or conditional uses except perhaps for passive recreation, wildlife habitat management, or watershed management would still require building a driveway. Since there is only one feasible location for the driveway, these other developments would similarly result in driveway impacts to wetland ESHA and ESHA buffer inconsistent with LUP Policies 3.1-2, 3.1-4, and 3.1-7, and CZC Sections 20.496.015, 20.496.020, 20.496.025, and 20.532.100(A)(1). Regarding wildlife habitat management or watershed management, these use types wouldn’t necessarily require building a driveway within and adjacent to wetland ESHA in a manner inconsistent with the LCP, neither of these uses afford the property owners an inherent economically viable use. As discussed above, none of the kinds of leisure activities (pursuant to CZC Section 20.340.015) afford the property owners an inherent economic use. Commercial recreational uses that incorporate the leisure activities included in the definition of passive recreation activities such as renting bicycles from the property, leading nature study tours on the property for a fee, or conducting photography lessons for a fee at the site come under the separate use type of “Active Recreation” as defined in CZC Section 20.340.020. Although “active recreation” is a conditionally permitted use, such a use would likely still necessitate a driveway to transport clientele the approximately 350 feet to the parcel boundary, plus another 300 feet to a building site on the parcel that could support an



active recreation use. Therefore, commercial development of a business in a manner that avoids impacts to wetland or wetland buffers is not feasible.

The passive recreation use also does not include setting aside lands for parks or open space preserves. These kinds of uses come under the separate use type of “Open Space” as defined in CZC Section 20.340.010. Even if the open space use type were allowed on the property, which it is not, the property is likely too small to be of value as a habitat preserve. Additionally, the property is located east of Highway One and is not adjacent to any Open Space-designated lands, thus there is little impetus for public agencies to purchase the lot.

In these circumstances, it is reasonable to conclude that the denial of the proposed residential use would have a substantial economic impact on the value of the subject property. For all of these reasons, the Commission determines it will allow a reasonable residential development on APN 123-350-06 to avoid an unconstitutional takings in compliance with Section 30010 of the Coastal Act. This determination is based on the Commission’s finding in this staff report that residential development is commensurate with the investment-backed expectations for the property, and that none of the uses otherwise allowable under the certified LCP would provide an economic use.

### **A Taking Cannot Be Avoided Because the Project Could Not Be Prohibited Under Background Principles of State Property Law**

Finally, *Lucas* provides that a regulatory action does not constitute a taking if the restrictions inhere in the title of the affected property; that is, “background principles” of state real property law would have permitted government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036). These background principles include a State’s traditional public nuisance doctrine or real property interests that preclude the proposed use, such as restrictive easements. Here, the proposed project would not constitute a public nuisance, so as to preclude a finding that the Commission’s denial of the project would constitute a taking.

California Civil Code Section 3479 defines a nuisance as follows:

*Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.*

California Civil Code Section 3480 defines a public nuisance as follows:

*A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.*

There is no evidence that construction of a residence with a driveway on the subject property would create a nuisance under California law. Several residential developments currently surround the agricultural lands on lands zoned for residential uses. As discussed further below, the project as conditioned limits additional residential development, is compatible with the long-term protection of the RL resource lands, and ensures that the development does not diminish the ability to keep surrounding agricultural land in production. Additionally, water service will be provided to the single family residential development by an on-site well, and sewer service will be provided by an on-site septic system that has been reviewed and approved by the County

Division of Environmental Health. This ensures that the proposed new residence would not create public health problems in the area. Furthermore, the proposed use is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance.

Therefore, the Commission finds the proposed project would not constitute a public nuisance that would preclude a finding that the regulatory action constitutes the taking of private property without just compensation.

### **Conclusion**

To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit approval allows for the construction of a residential development to provide a reasonable economic use of the subject property. In view of the evidence that: (1) permanently restricting use of the property to resource dependent uses could potentially eliminate the economic value of the property; (2) residential use of a small portion of the property would provide an economic use; and (3) an applicant would have had a reasonable investment-backed expectation that a fully mitigated residential use would be allowed on the property, there is a reasonable possibility that a court might determine that the final denial of a residential use, based on the inconsistency of this use with LCP Policies and LCP Zoning would constitute a taking. Therefore, the Commission determines that the County LCP in this case does not preclude developing the proposed driveway within the wetland ESHA.

Having reached this conclusion, however, the Commission also finds that the LCP only instructs the Commission to construe the resource protection policies of the Mendocino County LCP in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on this appeal. Thus, the Commission must still comply with the requirements of the LCP by avoiding, to the maximum extent feasible, the significant disruption of habitat values at the site. To achieve consistency with the LCP's ESHA policies in light of constitutional takings issues, the project must be mitigated to the maximum extent feasible to best avoid the significant disruption to sensitive habitat that would accompany any development of this property.

### **Maximizing LCP Conformity while Avoiding Takings**

Though applicants are entitled under Coastal Act Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to completely avoid application of the policies and standards of the certified LCP, including LUP Policy 3.1-4 and CZC Section 20.496.0020(A)(4)(C). Instead, the Commission is only directed to avoid construing these applicable policies in a way that would take private property for public use. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the LCP. Therefore, in this situation, the Commission must still comply with LUP Policies 3.1-4 and CZC Section 20.496.0020(A)(4)(C) by requiring measures to mitigate for adverse environmental effects on the filling of wetlands and to ensure that development adjacent to environmentally sensitive wetlands are sited and designed to prevent impacts which would degrade the adjacent environmentally sensitive wetland areas.

### **Alternatives Analysis**

Commission staff considered several alternatives to the proposed project including alternate access routes, and no project. As discussed above, the Commission finds that there is no feasible less environmentally damaging alternative to the project as conditioned.

As discussed previously, no other connection to Highway One through the west side of the subject property or its access easement would be feasible and/or avoid wetlands. Steep slopes and the presence of Grand Fir Forest ESHA preclude developing an accessway from the south and east sides of the subject parcel. Finally, developing an accessway from the north side of the property is not feasible as this alternative would require securing an easement from the adjoining property owner who does not support granting such an easement.

As discussed in Section 2 above, the no project alternative would deny the applicant an economically viable use of his property, thereby resulting in an unconstitutional “taking” of the applicant’s property without payment of just compensation inconsistent with Coastal Act Section 30010. Therefore, the Commission finds that this alternative is not a feasible less environmentally damaging alternative to the proposed project.

Therefore, for all of the above reasons, the Commission finds that as conditioned, the proposed project is the least environmentally damaging feasible alternative consistent with LUP Section 3.1-4 and CZC Sections 20.496.025, 20.496.015, and 20.532.100(A)(1).

### **Mitigation Measures to Minimize Adverse Environmental Effects on ESHA**

The proposed driveway has been sited and designed to minimize impacts to wetland habitat to the maximum extent feasible. The driveway is proposed to be constructed along the easternmost extent of the access easement and connect to Highway One at a narrower part of the wetland where an existing ranch gate and unpaved road provide access from Highway One to the adjacent property to the north of the subject parcel. The driveway that serves the proposed development will be the minimum width to meet CalFire and County standards.

As noted previously, the construction of the driveway would result in approximately 500 square feet of wetland fill. In addition, according to the August 2010 wetland mitigation report described below, approximately 4,800 square feet (400 feet long by 12 feet wide) of the driveway will occur within 50 feet of the wetland.

The June 2009 biological addendum prepared by Ms. Nelson identified the following measures to mitigate for the placement of fill in wetlands and the encroachment into wetland ESHA buffer: (1) enhance the quality of the wetland by removing exotic plant species; (2) use permeable road surfaces with exception to the required asphalt surface of the apron approach; (3) install temporary fencing to limit equipment and sediment encroachment into the wetland; and (4) design the entrance road to be sited on the easternmost portion of the road easement to avoid additional wetland impacts and provide the greatest buffer to the wetland.

For the purposes of the Commission’s *de novo* review, Commission staff requested the applicants submit a wetland mitigation plan that should include the following components: (1) compensation for direct loss of wetlands and wetland values and functions associated with filling wetlands for the driveway and its connection to Highway One; (2) the creation of new or expanded wetlands at a ratio large enough to compensate for temporal loss of wetland values and functions; (3) detailed descriptions and diagrams of the wetland mitigation site and proposal; (4) success criteria; and (5) monitoring proposals.

In response to the Commission's request for additional information needed regarding wetland impacts and mitigation for *de novo* review, the applicant submitted a Wetland Mitigation Plan (**Exhibit 13**) prepared by Ms. Nelson and dated August 2010. To avoid a no-net-loss of wetlands, the August 2010 wetland mitigation plan includes a proposal that the consultant indicates would expand the existing wetland area at a ratio of 2.6:1 by planting native wetland plants in areas currently dominated by non-natives.

The 2010 mitigation plan states:

*The difference between the proposed wetland expansion site and the impacted wetland site is subtle; both are dominated by nonnative grasses that are not good indicators of wetlands. The mitigation site has several species of wetland plant, but they are not present with enough cover to characterize the site as a wetland.*

The proposed mitigation including the creation of wetlands includes the following components: (1) plant 50 one-gallon Pacific rush (*Juncus effusus*) and 150 one-gallon slough sedge (*Carex obnupta*) approximately 30 inches on center to cover 1,300 square feet, with the consultation of a qualified biologist to determine the correctness of species and planting locations; (2) monitor plantings for five years; and (3) submit brief progress reports prepared by a qualified biologist to the Coastal Commission at the end of the second and fourth spring after project implementation. The mitigation plan includes a performance standard of 75% wetland vegetation cover within the mitigation area, as measured by visual estimation, within two years, with monitoring to occur for five years.

Commission staff consulted with Staff Ecologist John Dixon, P.h.D. to discuss the mitigation measures proposed for the subject site. Dr. Dixon indicated that in past permit actions in the Northern California coastal zone, the Commission has encouraged wetland mitigation proposals that provide (1) in-kind habitat replacement, (2) mitigation on-site whenever possible, (3) mitigation at ratios of habitat creation to habitat loss of generally 4:1, in recognition that wetland restoration projects are difficult to implement successfully and that there is often a significant time lag between the time when the wetlands are filled and the time when wetland vegetation at the mitigation site has grown to the point where it can provide comparable habitat values, and (4) that the mitigation proposal be adequately supported with appropriate success standards, a suitable monitoring program, and proposed remedial action. Wetland mitigation measures that fully conform to these goals are more likely to provide adequate mitigation as required by LUP 3.1-4 and CZC Sections 20.496.025, and 20.532.100.

The applicant's proposed wetland mitigation site conforms with two of the objectives above in that the proposed mitigation is on-site and in-kind. The proposed mitigation would ostensibly create approximately 1,300 square feet of freshwater wetlands to mitigate for the 500 square feet of fill in freshwater wetland for the proposed driveway construction and would be created on the same property where the impact would occur and directly adjacent to an area where wetlands currently exist. However, the mitigation plan is inadequate for the following reasons: (1) the plan does not propose a sufficient amount of new wetland creation; (2) the plan does not sufficiently analyze site hydrology for both the wetland area and proposed wetland creation in adjacent upland sites; (3) the plan lacks details on the methodology for wetland creation; and (4) the plan lacks sufficient success standards and monitoring criteria.

Specifically, it is unclear how the mitigation plan that proposes to plant wetland plants in adjacent upland areas will succeed. In February 2011, Commission staff asked the applicants for

additional information to demonstrate how the wetland mitigation area, which is topographically higher than the adjacent wetland area, would support the planting of hydrophytic plants without facilitating site hydrology by lowering the elevation. On March 3, 2011, the applicant's agent responded to the inquiry in a transmittal memo as follows:

*Upon discussion with our consulting Botanist, Playalina Nelson, we believe this issue has been address [sic] thoroughly in our 2010 Wetland Mitigation Plan, with a focus towards increasing the wetland function in the wetland and the buffer. See section 3.1 in the report.*

*In brief, Ms Nelson states (section 3.2b) that the objective of the wetland enhancement for this project is to remove invasive nonnative plants. And like the impacted wetland, there is no standing water in this area...and that hydrology is not a factor in measuring the success of enhancement.*

The response provided by the applicant's agent and consulting botanist refers to the enhancement component of the mitigation plan rather than the compensatory wetland creation component that Commission staff referred to in their inquiry. The fact that the adjacent upland habitat does not currently support a prevalence of hydrophytic vegetation, as described by Ms. Nelson above, suggests that the water table in this upland area- unlike the adjacent delineated wetland area- is not at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes. The consulting biologist did not provide any hydrologic data for the existing wetland and wetland mitigation area. Thus, the mitigation plan lacks sufficient evidence to demonstrate how planting hydrophytic plants in an upland that is topographically higher than the adjacent wetland area will result in the creation of new wetland habitat. Therefore, the Commission imposes **Special Condition No.10** which requires the applicant to submit, prior to permit issuance, a revised wetland mitigation plan prepared by a qualified biologist with experience conducting wetland delineations and installing wetland mitigation projects.

The revised mitigation plan shall at minimum: (1) identify additional existing upland areas adjacent to existing wetland areas where new wetlands can be created to achieve a total mitigation ratio of 4:1; (2) provide a topographic plan that depicts site topography of existing wetland and adjacent upland areas; (3) depict proposed final topographic elevations of proposed constructed wetland areas; (4) evaluate the existing soil conditions and specify any soil preparation necessary to create soil conditions that will support the creation of wetlands; and (5) specify how the mitigation design will successfully create wetland features in upland areas. In addition, because the rare plant Pt. Reyes checkerbloom has been identified within the northern portion of the easement area (more than 100 feet from proposed development), floristically appropriate surveys should be conducted to ensure that any wetland mitigation efforts to not impact rare plant ESHA.

**Special Condition No. 10(A)(vii)** also requires the revised wetland mitigation plan to include a schedule for the creation of the wetland area such that the driveway shall be completed prior to completion of the wetland excavation and grading. This condition will ensure that the grading, excavation, and fill placement work needed to be performed for the driveway construction will be completed and thus will not adversely affect the creation and maintenance of the nearby new wetlands to be created under the revised wetland mitigation plan. The condition further requires that (a) excavation and grading at the wetland creation site be performed during the non-rainy

season between May 1 and October 15 and completed within three months of commencement of construction of the access driveway, (b) the wetland vegetation planting be completed during the first rainy season following completion of the mitigation site excavation and grading work, and (c) removal of invasive exotic plants from the wetland enhancement area be completed within one year of the commencement of construction. These requirements will limit the amount of wetland habitat value lost due to time lag between when the impact occurs and when the mitigation wetland is in place. In addition, these requirements will minimize potential adverse wetland impacts that could otherwise occur from sedimentation and compaction if the proposed project was constructed during the rainy season when the wetlands are most sensitive to disturbance. **Special Condition No. 10(A)(vii)(a)** further requires that the wetland vegetation planting occur in the rainy season between November 1 and April 15 to ensure a better chance of survival and establishment of the plants.

Furthermore, to ensure that the proposed planting of natives and wetland plants is conducted under the revised mitigation plan as approved, **Special Condition No. 10(C)** requires submittal within 30 days of completion of the wetland mitigation work of a description of the number, types, location, and condition of vegetation planted at the mitigation site. The Commission further finds that to ensure that the wetland creation site is successful and that the new habitat area becomes fully established, functioning wetland habitat, the area must achieve 100% vegetative cover, with at least 60% of the vegetative composition consisting of native hydrophytic species. Therefore, **Special Condition No. 10(B)(2)** also requires that the revised mitigation plan includes provisions for monitoring the site for at least five years. **Special Condition No. 10 (B)(2)** further requires that final monitoring for success shall not take place until after at least three consecutive years with no remediation or maintenance activities other than weeding have occurred. In addition, although the mitigation plan as submitted calls for monitoring, the plan does not include specific remedial measures for ensuring success should the monitoring determine that the success criteria are not being met. Instead, the 2010 mitigation plan only states that monitoring efforts “will trigger contingency planting if the set performance standards are not met,” rather than specifying what “contingency planting” entails or evaluating whether alternate approaches are necessary. Therefore, **Special Condition No. 10 (D)** also requires that if the final monitoring report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant is required to submit a revised or supplemental mitigation program to compensate for those portions of the original program which did not meet the approved performance standard. The revised mitigation program shall be processed as an amendment to this coastal development permit. **Special Condition No. 10 (E)** further requires that no changes shall be made to the mitigation plan without a coastal development permit amendment.

As conditioned, the creation of at least 2,000 square feet of wetlands from an upland area adjacent to existing wetlands affords an opportunity to ensure that no net loss of wetlands will occur due to the direct impacts of 500 square feet of wetlands. However, the development of 4,800 square feet (400 feet long by 12 feet wide) of the driveway within 50 feet of the wetland (and in some cases, as close as 2 feet to the wetland) will likely compromise the quality of adjacent wetlands. For example, grading of the driveway surface could result in the deposition of sidecast material within adjacent wetland areas; heavy equipment navigation such as turning could encroach into and damage surrounding soils and vegetation; and staging of materials near wetland areas could result in accidental encroachment into sensitive wetland areas. Therefore, the Commission finds that because of the net loss of wetland habitat values resulting from the

project as proposed, the wetland expansion proposal does not alone provide adequate wetland mitigation and must be supplemented by providing greater mitigation that includes enhancing the value of the existing wetland.

To address this issue, the applicant's biologist included as part of the mitigation plan a proposal to enhance 5,200 square feet within wetland ESHA and ESHA buffer by removing invasive non-native plant species. The proposal includes removal of periwinkle (*Vinca major*) and bearded iris (*Watsonia bulbifera*) from 2,700 square feet of existing wetland and wetland buffer habitat. In addition, the proposal includes removal of Himalaya berry (*Rubus armeniacus*) from 2,500 square feet of wetland and wetland buffer areas. The plan further proposes to mitigate for development that encroaches within the wetland ESHA buffer by enhancing current wetland function by planting native plants in the wetland areas currently dominated by non-natives.

Because the mitigation areas occur within an easement adjacent to Highway One, the applicants consulted with CalTrans and have obtained permission in advance for the removal of invasive species. However, the authorization does not specify that CalTrans has authorized the creation of new wetlands within the easement. Therefore, the Commission attaches as **Special Condition No. 4** a requirement that prior to permit issuance, the applicants submit written evidence that the California Department of Transportation (Department) has granted all necessary rights to the applicant to implement the revised wetland mitigation plan within the easement area that the applicant has obtained from the Department for construction of the driveway that will serve the approved residential development.

In addition, **Special Condition No. 2** requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property and that will help assure that future owners are aware of these CDP requirements applicable to all future development.

In conclusion, although the proposed development is not an allowable use within the wetland ESHA or within the area immediately adjoining the ESHA, the Commission finds that as discussed in detail above, the project will include measures to mitigate all significant adverse environmental effects on the filling of wetland areas and developing adjacent to other environmentally sensitive wetland habitat to the greatest extent feasible consistent with the requirements of LUP Policy 3.1-4 and CZC Section 20.496.0020(A)(4)(C), while providing for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use.

## **G. PROTECTION OF RANGE LAND RESOURCES**

### **Agricultural Issues Overview**

The Mendocino County Land Use Plan (LUP) Section 3.2 includes a narrative that highlights the agricultural issues of the area. According to this narrative, approximately 3,500 acres of land in the coastal zone are tilled, irrigated or cropped, mostly for forage, including 40 livestock operators in the coastal zone that raise 1,200 head of beef and 4,300 sheep. Full-time operations are concentrated between Elk and Point Arena, where the largest areas of prime soils are found. Coastal agriculture also includes several nurseries principally raising fuchsias, azaleas, and rhododendrons. Forty acres near Caspar support daffodils, suggesting a potential for a bulb industry similar to that in Del Norte County. Mendocino County LUP Section 3.2 states that

“The land use policies of the Coastal Element, with its emphasis on the preservation and enhancement of agriculture, should encourage these landowners to maintain their farms in production.” To that end, Mendocino County Coastal Zoning Code (CZC) Section 20.532.100(A)(2) requires that proposed development in the Range Lands (RL) zoning district be compatible with the long-term protection of the resource lands.

### **The Coastal Act Policy Framework**

The Coastal Act protects coastal agriculture first and foremost by requiring that “new development be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it . . .” (Section 30250(a)). This requirement to concentrate urban development in existing urban areas establishes the fundamental framework for assuring that new urban development, including urban services, are not located in rural coastal areas where the protection of agricultural, scenic, biological, and other coastal resources is paramount. Coupled with this framework for limiting urban development to existing developed areas, the Coastal Act requires the establishment of stable urban-rural boundaries to assure that urban sprawl from existing urban areas does not overtake rural agricultural areas. The Coastal Act also requires that the maximum amount of prime agricultural land be maintained in agricultural production, and that the conversion of agricultural land be limited to instances where agriculture is no longer feasible or where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where conversion of agricultural lands would complete a logical neighborhood and contribute to the establishment of a stable limit to urban development or would concentrate development in urban areas. Specifically, Coastal Act Section 30241 states:

*The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area’s agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:*

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*
- (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent*



*to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

The clear intent of section 30241 is to maintain prime agricultural land in agricultural production and assure that agricultural land is not converted to non-agricultural land uses except in limited circumstances on the periphery of designated urban areas. Thus, the presumption inherent in Coastal Act Section 30241 is that conversion of agricultural lands is prohibited unless there is some basic incompatibility or conflict with immediately adjacent urban land uses that makes agricultural use no longer viable, or unless conversion would complete a logical urban area and/or help to establish a stable urban-rural boundary that better protects agricultural land.<sup>6</sup>

The Coastal Act also contemplates that both the identification and protection of agricultural land, and its possible conversion to non-agricultural land uses, will be specifically addressed through LCP planning. In particular, the Coastal Act contemplates that in conjunction with the identification of urban-rural boundaries, agricultural lands will be designated and restricted to agricultural land uses, unless a future LCP amendment is approved that allows the conversion of the land to non-agricultural uses. Coastal Act Section 30241.5 identifies a viability test for conversion of agricultural lands around the urban periphery when conversion is an issue in any LCP or LCP amendment.

In comparison to Section 30241 and its focus on conversions of agricultural lands around the urban fringe and creating a stable urban-rural boundary, Section 30242 addresses conversions of land suitable for agriculture that are not addressed by the conversion standards of Section 30241. Coastal Act section 30242 states:

*All other lands suitable for agricultural use shall not be converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

Section 30242 states it is to be applied for conversion of “all other lands suitable for agricultural use,” i.e., all conversions not addressed by the general Section 30241 policy against prime land conversions (“the maximum amount of prime agricultural land shall be maintained in agricultural production...”) or the specific conversion standards of Section 30241 and 30241.5. Section 30242 includes no direct requirement for considering the resulting stability of the urban limit and in general provides a different standard of review than does 30241(b). Notably, Section 30242 does not deal with “agricultural land,” but rather with “all other lands suitable for agriculture.” One of the tests for conversion of such land is that agricultural use cannot feasibly be continued

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<sup>6</sup> Coastal Act section 30113 defines prime agricultural land as those lands defined as prime in sections (1), (2), (3), and (4) of Williamson Act section 51201(c). This includes: (1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications. (2) Land which qualifies for rating 80 through 100 in the Storie Index Rating. (3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture. (4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

or renewed. This wording indicates that the policy was intended to be broadly applied, even to land, which is not currently in agricultural use.

In summary, the Coastal Act provisions on conversion of agricultural lands are as follows: Prime agricultural lands are to be maintained in production. Prime and non-prime agricultural lands either on the urban periphery or surrounded by urban uses may be converted if they satisfy standards stated in subsections (b) and (c) of Section 30241, as well as other applicable provisions of the Coastal Act. All other lands suitable for agricultural use may be converted only if conversion is consistent with section 30242 and other applicable provisions of the Act. When an LCP or LCP amendment proposes conversion of any agricultural land on the urban periphery under the viability provision of Section 30241(b), the viability tests of Section 30241.5 also must be satisfied.

### **The Agriculture Policies of the Mendocino County LCP**

The Mendocino County LCP carries out the requirements of Coastal Act Sections 30241, 30242, and 30250, through land use and zoning policies designed to maintain the maximum amount of agricultural lands in agricultural production and to concentrate development within or in close proximity to existing areas that are able to accommodate it (See [Appendix G](#)). LUP Policy 3.9-1 implements Coastal Act Section 30250 by requiring that new development be allowed *only* if it is demonstrated that it will not have significant impacts on coastal resources.

In addition to the general urban-rural planning framework of the LCP, the Agriculture component of the certified LCP contains provisions to carry forward key provisions of the Coastal Act. First, LUP Section 3.2 and CZC Section 20.308.095(J) define prime agricultural land and other land suitable for agriculture. The LCP definition of prime land is based on the Williamson Act, consistent with Coastal Act Section 30113. Second, LUP Policies 3.2-1 through 3.2-16 strictly limit the circumstances under which agricultural land can be divided or converted to non-agricultural land uses. LUP Policies 3.2-5 and 3.2-16 implement Coastal Act Sections 30241 and 30242 by requiring that development on lands suitable for agricultural use (or, in LUP Policy 3.2-16, designated AG or RL) be allowed only if it is demonstrated that the development does not convert agricultural lands to a non-agricultural use, unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Coastal Act Section 30250. LUP Policy 3.2-5 further requires that any such permitted conversion shall be compatible with continued agricultural use on surrounding lands. LUP Section 3.2 describes agricultural land as including prime agricultural land, land in existing agricultural use, land with agricultural potential, or lands under Williamson Act contracts. CZC Section 20.336.005 describes agricultural use types as including the on-site production of plant and animal products by agricultural methods, and further includes certain uses that are accessory to said agricultural uses, as specified in CZC Chapter 20.456.

The Mendocino County Coastal Zoning Code (CZC) implements these land use policies through requirements such as CZC Section 20.532.100(A)(2)(a) that prohibits the granting of a coastal development permit unless it can be found that any proposed use in resource lands designated AG, RL, and FL is compatible with the long-term protection of resource lands.

LUP Policy 3.2-1 requires that all agricultural land use shall be designated AG 60 or RL 160 for the purpose of determining density, and to support continued agriculture use. The subject property is zoned RL-160 (rangelands, 160-acre minimum). The 4.17-acre size of the subject

property is recognized by the County of Mendocino as a legal non-conforming parcel size (in existence prior to County land use designations and Coastal Commission certification of the County's LCP) that cannot be subdivided. Chapter 2 of the Mendocino County LUP describes the intent of the Range Lands classification as follows:

*The Range Lands classification is intended to be applied to lands which are suited for and are appropriately retained for the grazing of livestock and which may also contain some timber producing areas. The classification includes land eligible for incorporation into Type II Agricultural Preserves, other lands generally in range use, intermixed smaller parcels and other contiguous lands, the inclusion of which is necessary for the protection and efficient management of range lands. (Emphasis added)*

The principal permitted use for Range Lands includes grazing and forage for livestock, including raising of crops and wildlife habitat improvement; and one single family dwelling per legally created parcel. In addition to the allowance of one single-family residence on Range Lands, Mendocino County CZC identifies general agriculture (e.g., raising of livestock, animal husbandry, grazing); light agriculture (e.g., grazing, bee keeping, sale of agricultural products grown on the premises, raising/butchering/marketing of small farm animals); row and field crops, and tree crops as principal permitted use types, among others.

CZC Section 20.368.015 specifies the conditionally permitted uses allowable on agricultural lands in the Range Lands District. Most of these conditionally permitted uses are uses that are ancillary to or supportive of agricultural production and are therefore clearly consistent with the above-cited LCP and Coastal Act policies that require the maximum amount of agricultural lands to remain in agricultural production. However, some of the conditionally permitted uses specified in the LUP and zoning code are not ancillary to or supportive of agricultural production, including oil and gas development facilities, alternative energy facilities, and "family residential cluster development."

Consistent with Coastal Act Sections 30222, 30241 and 30242, the LCP gives priority to agricultural land protection over these other uses on agricultural lands by specifying that these conditionally permitted uses may only be authorized on agricultural lands provided they meet the LCP requirements for preservation of prime agricultural soils; prohibiting conversion of agricultural land to non-agricultural land uses; and maintaining productivity of on-site and adjacent agricultural lands, as set forth in CZC Section 20.532.100(B).

### **Site Conditions and Project Overview**

On September 29, 2011, the applicants submitted a 3-page Agricultural Feasibility Analysis in response to additional information requested by Commission staff for the purposes of *de novo* review. On May 29, 2012, the applicant submitted a more comprehensive agricultural analysis and economic feasibility evaluation (**Exhibit 15**) submitted in response to Commission staff identification of, and request for, outstanding information necessary for the Commission's evaluation of the subject development project. This supplemental "agricultural analysis report" includes information about the soils, water resources, economics, and historic uses of the subject property and surrounding area relative to the current and proposed uses from an agricultural perspective. The report was prepared by House Agricultural Consultants, whose background includes experience in agricultural economics, rural appraisals, and farm management.

### **Surrounding and Historic Land Uses**

The subject site is located approximately 0.25 mile south of the small town of Albion (population of the town “proper” was 168 according to 2010 census data<sup>7</sup>), and approximately 1.75 miles north of the Navarro River. Surrounding lands to the north, south and east of Highway One share the same 160-acre minimum Range Lands District zoning and land use designation as the subject parcel. Spring Grove Road borders the subject property to the south, forming a hairpin route to the mouth of Salmon Creek on the east side of Highway One, and continuing underneath Highway One to serve developments on the west side of the highway. Historically, this area just east of the confluence of Big and Little Salmon Creeks served as the town of Whitesboro, around 1876. As described in the archaeological survey report dated March 26, 2005 by Thad Van Bueren, a railroad established in this area at that time served to bring railroad ties down to the wharf at the mouth of the creek, and later to facilitate the delivery of milled wood in the area. A single family residence is located on the adjacent 6.5-acre Range Lands parcel to the south of the subject parcel between Spring Grove Road and above Salmon Creek.

According to the Mendocino County Tax Assessor’s office<sup>8</sup>, one parcel with Type II Agricultural Preserve designation occurs in the vicinity (APN 123-360-07), and is located three parcels to the south of the subject parcel. The adjoining property to the north and east of the subject parcel is currently leased to a local farmer as part of a cattle ranch, and is actively used for cattle grazing.

While the subject parcel is located in a relatively remote and rural setting, some residential development does occur in the surrounding area. For example, parcels west of Highway One are zoned for Rural Residential use at densities ranging from 1 acre minimum to 10 acre minimum parcel sizes. These lands include the Pacific Reefs subdivision located southwest of the subject parcel on the west side of Highway One and immediately south of Salmon Creek. The subdivision contains 41 parcels ranging in size from 1 to 3 acres. A handful of larger Rural Residential-zoned parcels occur to the northwest and southwest of the subject parcel.

Mendocino County Land Use Plan Section 3.2 describes current agricultural issues on nearby coastal lands in the narrative section in part as follows (emphasis added):

*Coastal terraces and bottom land historically were farmed in small units by families dependent on agriculture for their livelihood. Potatoes, truck crops, hogs, poultry, beef cattle and dairies did well and farm products were sold both locally and outside the areas. However, in the past 30 years, government regulations and technological changes in food processing and trucking have encouraged large-scale, centralized agricultural operations, ill-suited to the coast’s small areas of prime soils, relatively small land holdings, and family-run enterprises. Since the late 1960’s, commercial coastal agriculture has consisted primarily of livestock and dairy farms and flower and plant nurseries...*

*...About 3,500 acres of land in the coastal zone are tilled, irrigated or cropped, mostly for forage. Milk production has been reduced to three dairies, and former dairy operators are raising replacement dairy heifers. There are 40 livestock operators in the coastal*

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<sup>7</sup> Personal communication July 19, 2012 with Dirk Larson, County Appraiser.

<sup>8</sup> Personal communication July 19, 2012 with Dirk Larson, County Appraiser.

*zone, raising 1,200 head of beef and 4,300 sheep. However, only one quarter of these farms are operated as the fulltime occupation of their owners. Full-time operations are concentrated between Elk and Point Arena, where the largest areas of prime soils are found. Elsewhere, highly productive soils are found only in small patches, rendering full-time farming uneconomical at this time. North of the Navarro River, agricultural activity has been affected by residential development. This trend is not significant in the Point Arena area, but some farmers, uncertain about the continued viability of agriculture in the coastal zone, may have deferred capital investment. The land use policies of the Coastal Element, with its emphasis on the preservation and enhancement of agriculture, should encourage these landowners to maintain their farms in production...*

*...There are two main barriers to assembling parcels of a size sufficient for profitable, full-time farming. Land division and conversion to non-agricultural uses has progressed in certain sections of the coast to the point that consolidation to raise livestock is no longer practical. In other areas, property owners, anticipating subdivision of their Williamson Act lands, ask high prices of would-be buyers.*

*However, the outlook for coastal agriculture in Mendocino may not be as bleak as the previous discussion implies. Small-scale or part-time farming could become more practical if current agricultural trends change. Energy costs could increase to the point that local production of food becomes competitive. Indeed, many residents stress that coastal agriculture is not dead but growing in directions other than toward large-scale, one-crop farming.*

As described in the agricultural analysis report submitted by the applicant (**Exhibit 15**), “the subject property has been used in the past as range land for cattle when this parcel was owned by a family which owned numerous parcels of adjoining lands.” The applicant’s agent further describes in a July 28, 2011 memo (**Exhibit 10**) that the subject parcel was previously leased by a landowner with adjacent landholdings for cow grazing from the late 1970’s to the late 1990’s. The memo describes that at the time, the cows grazed approximately two acres of the subject property in addition to grazing the adjoining lands. The applicants purchased the subject property in 2005 and according to the applicant’s agent, the adjacent property was sold shortly thereafter. In 2006, the adjacent property owner constructed a fence along the common property lines thereby excluding the subject lands from subsequent grazing.

### **Water for Agricultural Use**

The agricultural analysis report indicates that a 195-foot-deep water well capable of a production rate of four gallons per minute has been installed on the subject property. The agricultural report calculates water usage for the site considering recharge times, the maximum summer-time evapotranspiration rate (0.15 inches per day) of irrigated vegetation, and water consumption rates for various agricultural uses and concludes the well is insufficient to support much more than 400 gallons of domestic water use per household per day plus a small plot (calculated at 0.05 acre, or 2,210 square feet) of irrigated vegetation such as trees, shrubs, and crops (page 29 of **Exhibit 15**). The report further describes the water requirements for various livestock and notes that livestock have lesser water requirements than crops when considering their drinking needs.

### **Prime vs. Non-prime Soils**

As cited above, Coastal Act Sections 30241 and 30242 require the protection of prime agricultural lands and set limits on the conversion of all agricultural lands to non-agricultural uses. Coastal Act Section 30113 defines “*prime agricultural land*” through incorporation-by-reference of paragraphs (1) through (4) of Section 51201(c) of the California Government Code:

*“Prime agricultural land entails land with any of the follow characteristics: (1) a rating as class I or class II in the Natural Resource Conservation Service land use capability classifications; or (2) a rating 80 through 100 in the Storie Index Rating; or (3) the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; or (4) the ability to normally yield in a commercial bearing period on an annual basis not less than two hundred dollars (\$200) per acre of unprocessed agricultural plant production of fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years.”*

The four different prongs of the definition of “prime agricultural land” relate to the value and utility of the land in terms of range of agricultural uses and productivity. The land use capability classification rates the utility of the land based on various physical factors (e.g., rock type, soil type, slope, erosion potential, etc.). The lower the rating the more utility the land is considered to have for various agricultural uses. The Storie Index Rating is based on soil characteristics that govern the land’s potential utilization and productive capacity (e.g., characteristics of the soil profile, surface texture, slope, drainage, nutrient level, acidity, alkalinity, etc.) independent of other physical or economic factors that might determine the desirability of growing certain plants in a given location. The third paragraph of the definition speaks to the number of “animal units” the land can sustain. An “animal unit” (AU) is a standardized measure of animals used for various agricultural purposes. A 1,000-pound beef cow with nursing calf is the standard measure of an animal unit; for smaller animals, 5 sheep or goats comprise one AU, and 70 to 75 laying hens are recognized as one AU. Animal unit equivalents (AUE) are calculated for various other animals. A 700-pound steer is 0.80 animal units. A 1,300-pound horse is 1.20 animal units. A 120-pound sheep is 0.20 animal units. The dry matter forage requirement of one animal unit is 26 pounds per day. The amount of forage used by one animal unit in a month is an “animal unit month” (AUM). Finally, the fourth prong of the definition of prime agricultural land relates to the agricultural value of the land in terms of its capacity to generate a minimum commercial revenue of \$200 per acre. Land that meets any one of the four criteria in the definition is considered “prime” under the Coastal Act.

The Mendocino County Land Use Plan Section 3.2 incorporates the definition of “prime agricultural lands” used in Coastal Act Section 30113 and Section 51201 of the California Government Code as:

- All land which qualifies for rating as Class I or Class II in the Soil Conservation Service land use capability classifications.
- Land which qualifies for rating 80 through 100 in the Storie Index Rating.
- Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

- Land planted with fruit or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than \$200 per acre.

As described above, approximately 1.1 acres of the subject parcel contain Grand Fir forest, which is ESHA, and as ESHA the Mendocino County LCP only allows those uses that are dependent on ESHA to occur within the ESHA and the 100-foot minimum ESHA buffers. Commission staff has visited the site on several occasions and reviewed aerial imagery, site topography, and on-site conditions of the subject parcel. Based upon review of these features and on calculations using ArcGIS software, approximately 1.28 acres of the subject property occurs on steep (greater than 40%), rocky slopes that would not support agricultural use. The remaining portion of the 4.17 acre property that is neither ESHA nor steep slopes comprises 1.79 acres. [4.17 acre parcel minus (1.1 areas of ESHA + 1.28 acres of steep slopes) = 1.79 acres.]

The agricultural analysis report submitted by the applicant (**Exhibit 15**) indicates that according to the United States Department of Agriculture Natural Resource Conservation Service (NRCS) Web Soil Survey interactive website<sup>9</sup>, the subject 4.17-acre property contains approximately 60 percent (2.5 acres) of soil unit 139, Dystropepts, 30 to 75 percent slopes; and 40 percent (1.67 acres) of soil unit 117, Cabrillo-Heeser complex, 0 to 5 percent slopes (see Figure 3.2 in **Exhibit 15**). The agricultural analysis report describes the Dystropepts soil types as occurring on side slopes of marine terraces that support shrubs, grasses, and trees such as grand fir or redwood. The report describes the Cabrillo-Heeser soil complex as consisting of sandy loam soils that support perennial grasses and forbs. Table 1 below summarizes soil characteristics relative to the criteria for prime agricultural land designation using data from NRCS:

Table 1. Summary of NRCS Soil Characteristics for the Subject Property.

Map Unit Symbol	Map Unit Name	Land Use Capability Classification (Nonirrigated)	Land Use Capability Classification (Irrigated)	Storie Index Rating
117	Cabrillo-Heeser complex, 0 to 5 percent slopes	3	2	58/0*
139	Dystropepts (bluff face and forested areas)	N/A	N/A	Not rated

\* Note: Cabrillo soils have a Storie Index of 58 and Heeser soils have a Storie Index of 0; however, these soil units cannot be separated at the scale of the subject property without in-depth analysis.

The authors of the May 2012 agricultural analysis report walked the subject parcel and determined that approximately one-third of an acre of the area mapped as the Dystropepts soil unit appears to be relatively flat and grazed in the past, and similarly approximately one-third of an acre of the area mapped as the generally more agriculturally-productive Cabrillo-Heeser complex soil unit appears to be steep, forested, and *not* grazed (i.e., 1.37 acres are flat and

<sup>9</sup> Accessible at <http://websoilsurvey.nrcs.usda.gov>

previously grazed). Based upon their observation, the authors concluded that 1.67 acres of the subject parcel could be used for agriculture, and their subsequent agricultural analysis of the parcel uses this size as their baseline for evaluation. As discussed above, this 1.67 acres approximates the 1.79 acre portion of the 4.17 acre property that is neither ESHA nor comprised of steep slopes.

The agricultural analysis report submitted by the applicant (**Exhibit 15**) includes a methodology for calculating the carrying capacity of the subject parcel. The report authors utilized vegetative productivity statistics provided by NRCS *Soil Survey of Mendocino County, Western Part* for the Cabrillo-Heeser complex soil unit, in addition to observations of site conditions to determine that the carrying capacity of the land could support 2,800 pounds of dry matter per acre in a normal rainfall year, and that one AU will consume 20 pounds of dry matter forage per day (See page 28 of **Exhibit 15**). The report authors conclude that the subject parcel could support one AU per acre grazing the Cabrillo-Heeser soil unit for a total 140 days. In other words, the agricultural analysis concludes that the 1.67 acres of land determined suitable for grazing could support one AU for 7 months per year.

The “prime agricultural lands” definition requires only one of the items described above to be satisfied to meet this designation. Based upon the above analysis, the subject property does not meet the criteria for prime agricultural land designation for each soil type because: (1) while the Land Use Plan Map 18 depicts a portion of the soils onsite as “prime,” the land use capability rating for a portion of the site soils only meets the prime agricultural ranking if irrigated; (2) the soils do not support the minimum necessary Storie Index Rating of 80; (3) none of the land is capable of supporting one animal unit per acre per year; and (4) limitations on water supply and windy site conditions do not support a minimum commercial revenue from crops of \$200 per acre.

### **Economic Analysis of Agricultural Uses**

The agricultural analysis submitted by the applicant (**Exhibit 15**) includes an economic analysis of potential agricultural activities for the subject site. While the subject property was historically leased for grazing along with adjacent landholdings by previous land owners, the property has not been grazed since at least 2006, when a new property owner on the adjoining parcel built a fence along the shared property line. With its total annual carrying capacity of one head of cattle for approximately seven months or seven head of cattle for one month, the report concludes that the subject parcel is inadequate to support year-round production of livestock. The applicant has approached the neighboring cattle rancher to inquire about potential interest in running cattle on the land for one month of the year and the rancher (Mike Biaggi) has indicated he is not interested.

The agricultural analysis highlights that favorable soils, a limited water supply, and an engaged community supporting locally-grown foods could support some agricultural use consistent with the Range Land use designation at the subject parcel. However, the analysis also identifies site constraints that, when viewed in their entirety, render the parcel economically infeasible to support a stand-alone agricultural venture. These constraints include but are not limited to: small parcel size; limited water resources; strong off-shore winds; distance from population centers that could support a commercial venture; and the designation of the site as a highly scenic area that would limit construction of greenhouses or other structures that could not be subordinate to the surrounding area, inconsistent with Mendocino County LCP policies such as LUP Policy 3.1-1 or 3.1-3, or CZC Section 20.504.015.



The agricultural analysis indicates that the 1.67 acres of usable agricultural land could support either 1 or 2 goats for an entire year with a \$118 net annual income, or a combined organic small-scale venture of: a) pastured chickens for egg production; b) apiary for honey production; and c) cool season crops. In the latter scenario, the agricultural analysis estimates the 1.67 acres of usable agricultural land could support a venture of: a) raising a flock of 30 laying hens producing 300 to 450 dozen eggs annually; b) building 4 to 5 bee hives generating 250 to 300 pounds of honey annually; and c) growing seasonal crops that would consume 7,000 gallons of water per year in 600 square feet of space. The analysis assumes the venture would be certified organic and incorporates both the cost of certification and an anticipated higher income from organically-certified products. Using these figures, the agricultural analysis projects annual gross sales as follows: a) \$1,350 for 450 dozen eggs at \$3.00 per dozen; b) \$1,125 for 250 pounds of honey; and c) \$250 for vegetables not consumed by the family or the poultry. The analysis concludes that based upon operating costs, fixed expenses, and depreciation from capital and start-up costs (see **Exhibit 15**), and assuming the farm uses unpaid family labor living on site, the annual net income for the entire site would be \$812, or \$486 per acre (assuming 1.67 acres of usable space as described in Section 3.3.4 of the agricultural report).

### **Proposed Uses**

As described previously, the applicant submitted revised plans (**Exhibit Nos. 3, 4, and 5**) for the purposes of *de novo* review by the Commission, that make changes to the development originally approved by the County. The proposed project as revised for the Commission's *de novo* review reconfigures the placement and size of structures in a way that addresses visual subordination requirements by reducing building height and bulk, and clustering development more than the originally-approved design.

The project as revised for the Commission's *de novo* review includes construction of: (1) a 1,790-square-foot house with a 576-square-foot attached garage, and 353 square feet of attached covered porches with decks (total building footprint of 2,719 square feet); (2) a detached 2,040-square-foot accessory structure containing a 1,295-square-foot garage/workshop, a 640-square-foot guest cottage, and a 105-square-foot covered porch; and (3) an 870-foot-long driveway (total area of 11,130 sq. ft.). The applicant proposes to use the garage/workshop space to support his woodworking skills.

### **Agricultural Land Conversion**

Mendocino County LUP Policy 3.2-1 and CZC Section 20.368.005 describes the designation of the rangelands districts as intending to encompass lands within the Coastal Zone which are suited for and are appropriately retained for the grazing of livestock. As described above, the purpose of the proposed development is to support a full-time residential use, rather than a continued coastal agriculture use.

While the Mendocino County LCP does explicitly allow a single family residence as a principally-permitted use on agricultural lands as indicated in CZC Section 20.368.010, such use may be permitted only if consistent with all other applicable LCP policies. Each LCP policy must be applied in a manner that maximizes consistency with all other LCP provisions, including CZC Section 20.532.095 which requires that the granting of any coastal development permit must be supported by findings that the development is in conformity with the certified LCP and that the development is consistent with the purpose and intent of the zoning district and preserves the integrity of the zoning district. Neither the single-family residence nor the accessory structure

designed to support a guest cottage and woodworking workshop would support agricultural uses and thus would convert agricultural lands to non-agricultural uses. LUP Policies 3.2-4 and 3.2-5 limit conversion of agricultural lands to non-agricultural uses. For the conversion of agricultural lands resulting from the development to be allowed under the Mendocino County agricultural conversion policies, continued or renewed agricultural use of the subject property must not be feasible and the proposed conversion must be compatible with continued agricultural use on surrounding lands. Additionally, CZC Section 20.532.100 further requires that no permit shall be granted on lands designated RL unless the proposed use is compatible with the long-term protection of resource lands.

### **Feasibility of Continued or Renewed Use of Agricultural Lands**

Mendocino County LUP Section 3.2 “Agriculture” states the following in its definition of “Feasible Agricultural Use:”

*Section 30242 prohibits conversion to nonagricultural uses unless “continued or renewed agricultural use is not feasible” or if it “would preserve prime land or concentrate development.” Section 30108 defines feasible as capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social, and technological factors.*

Mendocino County LUP Policies 3.2-5 and 3.2-16 require that all agricultural lands designated AG or RL not be divided nor, as in this case, converted to non-agricultural uses unless certain conditions can be demonstrated, including that continued *or* renewed agricultural use is not feasible. Mendocino County CZC Section 20.532.100(B)(3) further requires that an economic feasibility evaluation be prepared pursuant to CZC Section 20.524.015(C)(3) to demonstrate whether continued or renewed agricultural use of the land is infeasible before allowing conversion of agricultural lands.<sup>10</sup> As described above, the applicant submitted a comprehensive agricultural analysis and economic feasibility evaluation (**Exhibit 15**) dated May 15, 2012 and prepared by House Agricultural Consultants, whose background includes experience in agricultural economics, rural appraisals, and farm management. The agricultural analysis includes information about the soils, water resources, economics, and historic uses of the subject property and surrounding area relative to the current and proposed uses from an agricultural perspective, and provides 5-year gross income statistics for selected coastal Mendocino County agricultural enterprises as presented below:

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<sup>10</sup> CZC sections 20.532.100(B)(3) and 20.524.015(C)(3) requires an economic feasibility evaluation prepared by a land use economist with expertise in the economics of agriculture which shall contain the following:

- (a) An analysis of the gross revenue from the agricultural products grown in the area for the five (5) years immediately preceding the date of the filing of proposed conversion and/or division; and
- (b) An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for five years immediately preceding the date of the filing of the proposed conversion and/or division.

Commodity	Total value	Reporting units	Value per unit
vegetables	\$1,030,920	acres	\$3,222 /ac
nursery	\$3,314,580	acres	\$50,994 /ac
live cattle	\$6,305,680	cwt	\$82.37 /cwt
live goats	–	head	\$200 /head
eggs	–	dozen	\$1.13 /dozen
honey	–	hive	\$84.45 /hive

**Table 2.1** Five-year gross income average of selected Mendocino County agricultural commodities. Nursery, vegetables, and cattle values from Mendocino County Agricultural Commissioner’s annual crop reports 2006–2010; goats, eggs and honey from other sources— see text, section 2.5.1.

(From House Agricultural Consultants, May 15, 2012)

Enterprise	Full investment amount	Annual depreciation	Per production unit
vegetables	\$1,401	\$145	acre
nursery	\$16,618	\$1,612	acre
live cattle	\$128	\$12.80	cwt
live goats	\$372	\$37.16	head
eggs	\$0.53	\$0.05	dozen eggs
honey	\$195.57	\$1.96	hive

**Table 2.2** Estimated investment of selected Mendocino Coast agricultural enterprises. The investment is expressed both as the full, up-front investment and as an annual depreciation charge based on a 10-year straight-line basis.

(From House Agricultural Consultants, May 15, 2012)

Enterprise	Operating	Overhead	Total	Production unit
vegetables	\$2,295	\$185	\$3,612	acre
nursery	\$14,251	\$27,529	\$41,780	acre
live cattle	\$79.63	\$2.54	\$82.17	cwt
live goats	\$132	\$9	\$141	whole animal
eggs	\$0.89	\$0.07	\$0.96	dozen eggs
honey	\$61.20	\$4.50	\$65.70	hive

**Table 2.3** Estimated production costs of selected Mendocino coast agricultural enterprises. All figures are in dollars per production unit.

(From House Agricultural Consultants, May 15, 2012)

Enterprise	Gross income	Production costs	Net income	Per unit
vegetables	\$3,222	\$2,480	\$742	acre
nursery	\$50,994	\$42,752	\$8,242	acre
live cattle	\$82.37	\$92.34	(\$9.97)	cwt
live goats	\$200	\$141	\$59	head
eggs	\$1.13	\$0.96	\$0.17	dozen
honey	\$84.45	\$65.70	\$18.75	hive

**Table 2.4** Estimated net income of selected Mendocino coast agricultural enterprises.  
(From House Agricultural Consultants, May 15, 2012)

As described above, the agricultural analysis report estimates the 1.67 acres of land suitable for agricultural use on the subject parcel could support a venture of: a) raising a flock of 30 laying hens producing 300 to 450 dozen eggs annually; b) building 4 to 5 bee hives generating 250 to 300 pounds of honey annually; and c) growing seasonal crops that will consume no more than 7,000 gallons of water per year in 600 square feet of space. The agricultural analysis report demonstrates that while some agricultural use of the subject parcel is possible (mostly at a hobbyist or home-garden level), it is not *economically* feasible to renew agricultural use of the site CZC section 20.532.100(B)(3) and CZC section 20.524.015(C)(3) because the 1.67 acres of the site suitable for agricultural use could be expected to provide a gross annual yield of only \$812 total- or \$486 per acre, even assuming the applicants use unpaid family labor living on site.

Therefore, the analysis demonstrates that renewed agricultural use is not economically feasible CZC section 20.532.100(B)(3) and CZC section 20.524.015(C)(3) under a variety of agricultural operations scenarios. Accordingly, the Commission finds that conversion of designated agricultural lands at the subject site may be permitted consistent with LUP Policies 3.2-5 and 3.2-16 and CZC Code Sections 20.532.100(B)(3) and 20.524.015(C)(3) because continued or renewed agricultural use is not feasible.

### **Non-agricultural Development on Agricultural Lands**

A core policy concern of the Coastal Act is the protection of coastal agriculture through the limitation of non-agricultural land uses on agricultural lands. The original Coastal Plan that formed the basis for the Coastal Act identified this concern, including the issue of land speculation and valuation that could effectively undermine the goal of maintaining agricultural lands. Akin to the Williamson Act goal against valuing agricultural land at non-agricultural prices, the Coastal Act agricultural policies emphasize the protection of an area's agricultural economy, and require that increased assessments due to public services or non-agricultural development do not impair agriculture (30241; also 30241.5).

The Mendocino County LCP only permits conversion of agricultural land where the conversion is compatible with continued agricultural use on surrounding lands. The Commission addressed the concern for the trend towards development of large rural residential projects in agricultural areas in the 2001 Periodic Review of the San Luis Obispo County LCP. In particular, the Commission adopted recommendations that the SLO County LCP be amended to establish stronger standards for non-agricultural residential development on agricultural lands, including performance standards for the size of development envelopes and other constraints that would

better maintain lands in agricultural production (see Recommendation 5.8 of Commission's Adopted Periodic Review of SLO County LCP).

In addition, several studies have been prepared in other parts of the state, particularly in Marin and San Mateo Counties, that evaluate economic and development pressures affecting agriculture in those areas. For example, the American Farmland Trust (AFT) conducted a study in 2004 of San Mateo County agriculture under contract with the Peninsula Open Space Trust (POST), which reviewed among other things the economic and development pressures affecting agriculture in the County.<sup>11</sup> This study shows that over the past 25 years the county's land in farms decreased 45 percent from 75,110 acres to 41,530 acres. Although the AFT Study does not differentiate between agricultural lands lost inside and outside of the coastal zone, much of the agricultural lands in San Mateo County are in the coastal zone and, according to POST, AFT's findings are representative of the trends for San Mateo coastal agricultural lands.<sup>12</sup> Although the AFT Study cites farmers' concerns regarding ranchette and urban development and contends that new development is likely the chief factor driving high land costs, it does not specifically examine how high value residential development such as the proposed project affect land costs and related viability of agriculture.

The impacts of high value residential development on the viability of agriculture and the ability to keep agricultural lands in production is specifically addressed in a 2003 study prepared for the Marin County Community Development Agency (Strong Associates Study)<sup>13</sup>. This study "analyzes the economic issues facing agriculture in Marin County with the primary focus on the impact of estate development on agricultural lands." The study reviews an earlier study of Marin's agricultural economy from 1973, analyzes current data regarding Marin agricultural production, costs, land values, etc., and evaluates five case studies identified by the Marin Planning Department where new homes are either proposed or have been recently constructed on agricultural parcels to determine to what extent the County's efforts to preserve agricultural lands over the past 30 years have been successful and whether prior strategies for farmland protection remain effective.

In contrast to residential development that is incidental to and/or in support of agricultural production such as farmer and farm labor housing, the development of non-farming uses on agricultural lands can be contrary to the goal of keeping agricultural lands in agricultural production. Given increasingly high housing costs, agricultural use cannot compete with the use of land for residential development even on a large un-subdivided farm parcel or ranch on The recent statewide trend to develop large expensive homes on coastal properties exacerbates this problem by increasing the speculative value of these large parcels in the scenic rural coast side as sites for such homes. The development resulting from these pressures is widely recognized as contributing to the loss of agricultural production on agricultural land in conflict with the LCP requirement to maintain the maximum amount of agricultural land in agricultural production.

The loss of available lands for farming to residential development is now being recognized as a national trend and many states, including California have recently taken actions in attempt to

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<sup>11</sup> San Mateo County Agricultural Industry Profile & Strategic Farmland Maps - Final Report. July 30, 2004. American Farmland Trust.

<sup>12</sup> Pers. Comm Paul Ringgold, POST, May 9, 2005.

<sup>13</sup> Marin County Agricultural Economic Analysis, Final Report, Strong Associates November 2003

curb this “rural sprawl.” The American Farmland Trust views rural residential sprawl as a major threat to farm production stating:

*The majority of the Central Valley’s population lives in urban areas totaling more than 1,236 square miles. Yet that number does not tell the full story. What are not counted are the rural-residential parcels. These residences, also known as “ranchettes,” dot the rural landscape and affect everything from routine farming practices... a ranchette removes more farmland from agriculture than any higher density suburban dwelling.<sup>14</sup>*

And:

*The subdivision of land into ranchettes fuels speculation that drives up the cost of land and eventually makes it unaffordable for commercial agricultural production. The proliferation of rural residences throughout agricultural areas also poses a very real risk, right-to-farm laws notwithstanding, that agricultural insurance premiums will rise and that farming practices may be further regulated to protect public health and safety. Thus, agricultural policy should also address the need to significantly reduce scattered, rural development.*

*Greater certainty about land use expectations is critical to both farmers and developers. Places to farm and places to build should be clearly delineated, mutually exclusive and consistently enforced... [This] will also insulate agricultural production from speculation and other pressures exerted by urban proximity, and encourage reinvestment in California agriculture to meet the demands of a changing global marketplace.<sup>15</sup>*

California FarmLink states:

*An owner predominantly depending on agricultural income will presumably not be able to afford a significantly larger than average size house (i.e. 4,000 sq. ft.). If such an estate home were built, a farmer looking to purchase the land in the future would be priced out of the market.*

The New Jersey Farmland Affordability/Availability Working Group observed:

*The viability of New Jersey’s agricultural industry depends on ensuring that farmland is affordable and available to new and established farmers. If farmers don’t have access to farmland they can’t farm.*

*Under the State Agricultural Retention and Development Act, the investment of Public Funds is intended to preserve land and strengthen the viability of agriculture. Estate situations – where the landowner does not farm the land or only minimally farms it – run counter to that purpose. To maintain public confidence in the Farmland Preservation Program and ensure preserved farmland remains available and affordable to farmers, the issue of housing on preserved farms needs to be addressed.<sup>16</sup>*

Measures identified to address this issue include: (1) prohibiting all non-farm dwellings on agricultural lands where continued or renewed agricultural use is feasible, (2) limiting the size of new homes on agricultural lands, and (3) requiring agricultural conservation restrictions that ensure that land remains *in* agricultural use as opposed to simply remaining *available* for agricultural use. These measures have been adopted or are currently under consideration by

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<sup>14</sup> Ranchettes: The subtle Sprawl, A study of Rural Residential Development in California’s Central Valley, AFT 2000.

<sup>15</sup> Suggestions for an Agricultural Component of Governor Arnold Schwarzenegger’s Smart Growth Initiative, AFT, May 2004.

<sup>16</sup> Recommendations of the New Jersey Farmland Affordability/Availability Working Group, September 23, 2004.

many jurisdictions throughout the state and nation. As further discussed below, the Commission finds that the decreased house size proposed by the applicant for purposes of its *de novo* review adequately ensures that the permitted conversion is compatible with continued agricultural use on surrounding lands and thereby ensures that the proposed development conforms to the agricultural protection requirements of the County's LCP.

### **Protecting the Productivity or Viability of Adjoining Agricultural Land**

The Mendocino County LCP only permits conversion of agricultural land where the conversion is compatible with continued agricultural use on surrounding lands. The Commission's findings for the certification of the LCP support the interpretation of these policies to mean that agricultural uses have clear priority over residential uses where appropriate. The LCP policies including LUP Policy 3.9-1 further support the requirement of Coastal Act Section 30250(a) to concentrate development in order to avoid individual or cumulative impacts to coastal resources, such as agricultural lands and highly scenic areas, by requiring that new development be allowed *only* if it is demonstrated that it will not have significant impacts on coastal resources.

Several studies evaluating the size of single-family residences nationally report that the average size of single-family residences ranges from 2,100 to 2,200 square feet. The available information thus shows the average house size in the surrounding area is 2,354 square feet, with a median house size of 2,315 square feet. (See [Appendix K](#).)

The Commission, like other agencies throughout the state and nation, recognizes that non-agricultural residential development can threaten continued agricultural use of agricultural lands in conflict with the LCP agricultural land use protection policies and zoning. In response to an increase in the conversion of agricultural lands to development sites for large single-family homes and the related loss of agricultural lands, the Williamson Act was amended in 2004 to limit the size of new single-family homes on parcels under Williamson Act contracts to 2,500 square feet (AB1492- Laird). Under AB 1492, Williamson Act contract violations involving non-agricultural development over 2,500 square feet in floor area that are not required for or part of the agricultural use, are subject to substantially higher penalties. This amendment reflects the concerns of the Department of Conservation that non-agricultural development on protected farmlands is undermining both the intent and integrity of the Williamson Act throughout the state.<sup>17</sup> The New Jersey Farmland Affordability/Availability Working Group has also recommended establishing a 2,500-square-foot limit for new residential development on farmlands in order to address the issue of residential development on preserved farmland.<sup>18</sup>

As stated in the Strong Associates Report, setting a limitation on the size of residential development on agricultural lands "is a policy decision that balances the long-term economic viability of agricultural use with the expectation of landowners to build a livable residence." In this case, the certified LCP does not provide specific guidance or requirements regarding residential size limitations on agricultural lands.

In this instance, the applicants have revised their project for the purposes of the Commission's *de novo* review and propose to develop a 1,790-square-foot, 18'-6"-high single-story house with a 576-square-foot attached garage, and 353 square feet of attached covered porches with decks (total building footprint of 2,719 square feet); and a detached 2,040-square-foot, 19'-4"-high

<sup>17</sup> Dennis O'Bryant, California Department of Conservation, May 9, 2005.

<sup>18</sup> Recommendations of the New Jersey Farmland Affordability/Availability Working Group, September 23, 2004.

accessory structure containing a 1,295-square-foot garage/workshop, a 640-square-foot guest cottage, and a 105-square-foot covered porch, plus ancillary developments.

The revised project design reduces the house size by 768 square feet and reduces the height of the house by 2.5 feet. Similarly, the applicants reduced the footprint of the workshop/garage/guest cottage structure by 98 square feet, and reduced the building height by 4.7 feet from natural grade. In addition, the revised design attaches the garage behind (northeast of) the house such that it is less visible from Highway One, and shifts the location of the house farther from the southern bluff edge and closer to the backdrop of trees along the northern parcel boundary. The resulting design not only reduces the overall height, profile, and footprint of the development, but clusters the buildings more closely together consistent with the agricultural provisions of the LCP requiring the concentration of development.

Therefore, the project as revised for the Commission's *de novo* review consists of a total habitable internal floor area (excluding non-habitable space such as garages and unenclosed decks or patios) of 2,430 square feet, including 1,790 square feet for the single-family residence and 640 square feet for the guest cottage space, which is consistent with the nationwide recommended 2,500-square-foot limit for new residential development on farmlands.

While the subject property will not be maintained in agricultural use, the adjacent property is actively maintained in agricultural production. The Commission finds that the decreased size of the residential development proposed by the applicant for purposes of its *de novo* review adequately ensures that the permitted conversion is compatible with continued agricultural use on surrounding lands. The decreased size of the residential development not only conforms to the typical scale of existing residential development in the surrounding Rural Residential areas (median 2,315 square feet, average 2,354 square feet), it also conforms to the 2,500 square foot limit recently established under the California Land Conservation Act (Williamson Act).

Further, since **Special condition 14** requires a coastal development permit amendment for all future improvements and changes to the approved development, no increase in the maximum internal habitable floor area (excluding non-habitable space such as garages and unenclosed decks or patios) of the single-family residence and 640-square-foot guest cottage will occur without a Commission approved amendment to this coastal development permit ensuring that the amended development remains compatible with continued agricultural use on surrounding lands.

If the permittee seeks such a coastal development permit amendment, the amendment application must be accompanied by evidence demonstrating that the amended development is compatible with continued agricultural use on surrounding lands.

#### **Minimizing Direct Conflicts with Adjacent Agricultural Lands**

Conflicts may occur between residential and agricultural land uses when in close proximity. Typical conflicts where urban and agricultural lands meet include noise, dust, and odors from agricultural operations; trespass and trash accumulation on agriculture lands; road-access conflicts between agriculturally related machinery and automobiles; limitations of pesticide application, urban garden pest transfer, theft, vandalism; and human encroachment from urban lands. Such conflicts can threaten continued agricultural cultivation when its proximity to non-agricultural uses (such as residential) raises issues and/or concerns with standard agricultural practices (such as chemical spraying and fertilizing) or ongoing agricultural by-products (such as dust and noise from machine operations associated with cultivating, spraying, and harvesting), which may pose a threat to the non-agricultural uses.



The land use policies of the certified LCP strive to minimize such conflicts by requiring buffers between developments in residential areas and agricultural lands. LUP Policy 3.2-9 and CZC Section 20.508.020(A)(1) require that site plans in a residential area should not result in a residential structure being located closer than 200 feet from a parcel designated for agricultural use unless there is no other feasible building site on the parcel. LUP Policies 3.2-12 and 3.2-13 limit residential development adjacent to Type I and Type II Agricultural Preserves, respectively, to restrict such developments from occurring closer than 200 feet from the property lines of the protected agricultural resource or from the farthest feasible point from said property lines.

The adjacent parcels to the north, south, and east are not Type I or Type II Agricultural Preserves. According to the Mendocino County Tax Assessor's office<sup>19</sup>, one parcel with Type II Agricultural Preserve designation occurs three parcels to the south of the subject parcel. The adjoining property to the north and east of the subject parcel is currently leased to a local farmer as part of a cattle ranch, and is actively used for cattle grazing. The subject parcel is not located in a residential area but rather is located on Range Lands-designated agricultural lands. The residential development is located 25-30 feet from the northern property line, 75-100 feet from Grand Fir ESHA along the eastern portion of the property, and is sited the recommended 40 feet minimum from the steep bluff edge along the southern property boundary. Given these site constraints in addition to the visual subordination requirements discussed further below, the development has been sited in the only feasible site.

In other agricultural communities statewide, local governments have required Right to Farm provisions for non-agricultural land use projects that extend into agricultural areas or that exist side by side. Since agricultural operations can be the subject of nuisance complaints where residential uses encroach on agricultural lands, Right to Farm disclosures effectively put current and future property owners on notice to be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and a healthy agricultural sector. Therefore, to ensure that potential conflicts between residential use on the project site and agricultural land uses on the adjacent properties do not impair the continued viability of agricultural production, the Commission imposes **Special Condition No. 1** that requires Permittees to acknowledge and accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses. In addition, **Special Condition 2** requires the applicant to record a deed restriction imposing the Special Conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

## Conclusion

The proposed project as revised for the purposes of the Commission's *de novo* review seeks to develop a 1,790-square-foot single-story house with a 576-square-foot attached garage, and 353 square feet of attached covered porches with decks (total building footprint of 2,719 square feet); and a detached 2,040-square-foot accessory structure containing a 1,295-square-foot garage/workshop, a 640-square-foot guest cottage, and a 105-square-foot covered porch, plus ancillary developments on designated agricultural land. The proposed uses result in a permissible conversion of agricultural lands allowable under LUP Policies 3.2-5 and 3.2-16, and CZC Section 20.532.100(B)(3) only if it can be demonstrated by an economic feasibility evaluation

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<sup>19</sup> Personal communication July 19, 2012 with Dirk Larson, County Appraiser.

that continued or renewed agricultural use is not feasible, and that such a conversion shall be compatible with continued agricultural use of surrounding parcels.

Approximately 1.1 acres of the subject parcel contain Grand Fir forest, which is ESHA, and as ESHA the Mendocino County LCP only allows those uses that are dependent on ESHA to occur within the ESHA and the 100-foot minimum ESHA buffers. Commission staff has visited the site on several occasions and reviewed aerial imagery, site topography, and on-site conditions of the subject parcel. Based upon review of these features and on calculations using ArcGIS software, approximately 1.28 acres of the subject property occurs on steep (greater than 40%), rocky slopes that would not realistically support agricultural use. The remaining portion of the 4.17 acre property that is neither ESHA nor steep slopes comprises 1.79 acres. [4.17 acre parcel minus (1.1 areas of ESHA + 1.28 acres of steep slopes) = 1.79 acres.]

Although the subject property has been used in the past as range land for cattle when this parcel was owned by a family which owned numerous parcels of adjoining lands, the parcel has not been grazed since prior to the applicant's acquisition of the parcel in 2005. The applicants have submitted an agricultural analysis which demonstrates, consistent with CZC sections 20.532.100(B)(3) and 20.524.015(C)(3), that while some non-economic agricultural use of the subject parcel is possible (mostly at a hobbyist or home-garden level), it is not *economically* feasible to renew agricultural use of the site because the 1.67 acres of space useable for agriculture could be expected to provide a gross annual yield of only \$812 total- or \$486 per acre, even assuming the applicants use unpaid family labor living on site.

The Commission finds that with the reduced development footprint submitted by the applicants for *de novo* review, the pressure placed on the land values of agricultural lands in the area by developing the subject parcel for a residential use is minimized. The reduced development footprint not only conforms to the typical scale of existing residential development in the surrounding Rural Residential areas (median 2,315 square feet, average 2,354 square feet), it also conforms to the limit recently established under the California Land Conservation Act (Williamson Act).

Furthermore, the requirements of **Special Condition Nos. 1 and 2** that the applicants record a deed restriction stating that the owners acknowledge and accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses, will help reduce potential conflicts between the residential use and the adjacent agricultural lands.

Therefore, the Commission finds that the proposed development, as conditioned, is a permissible conversion of agricultural land and is compatible with the long-term protection of the RL resource lands as required by LUP Policies 3.2-1, 3.2-5, and 3.2-16, and Sections 20.368.005, 20.524.015, and 20.532.100 of the certified coastal zoning code.

## **H. GEOLOGIC HAZARDS**

The June 2008 geologic report that was prepared for the subject site by SHN Consulting Engineers and Geologists (SHN) describes the parcel as occurring on a gently southwest sloping stream valley wall or bluff top. The parcel slopes gently to the southwest before dropping steeply along the southern and eastern parcel boundaries. The bluff-top parcel is located east of Highway One and does not have ocean frontage. As described in the geologic report, the southerly boundary of the project site abuts the crown of a southwest facing cliff that parallels the north bank of Salmon Creek. Slope gradients on the southerly cliff face range from 50% to near

vertical. An access road (Spring Grove Road) has been cut into the lower benches of the southerly bluff and continues underneath Highway One to serve developments on the west side of the highway.

The geologic report indicates that “recent and historic ground movement is evident along portions of the bluff edge as well as on the surfaces of the bluff slope leading down to the Little and Big Salmon Rivers.” The report identifies a possible older scarp feature (**Exhibit 16**) southwest of the proposed residence, and the head of a small gully (“erosion feature”) immediately south of the project site. According to the geologic report, a trace of the San Andreas Fault is located approximately three miles west (off the coast) of the subject site. The report indicates that “no known faults have been mapped passing through the project site, nor was any evidence of active faulting observed in the field.”

The Mendocino County LCP requires that a bluff setback for new structures be determined by multiplying the structure life (~75 years) by the retreat rate of the bluff, which shall be determined from historical observation and/or a complete geotechnical investigation (Policy 3.4-7 of the LUP). Following a site investigation and comparison of aerial photographs taken between 1963 and 2005, SHN determined that a long-term average retreat rate of 4 feet would occur over the design life (75 years) of the proposed project. However, given the proximity of the project site to the San Andreas Fault, and taking into consideration the geomorphic observations from their field assessment, SHN recommends a setback of 40 feet from all structures and both the potential scarp and bluff edge. The proposed development establishes development setbacks of at least 40 feet back from the scarp and bluff accordingly.

SHN concluded based upon their field and laboratory investigations that the project site can be developed as proposed if their recommendations for the site development are followed. The geologic report contains recommendations regarding site preparation and grading, foundations, slabs-on-grade, corrosion, drainage, and erosion. The recommendations are found in Section 7 of the geotechnical report dated June 2008, which is reproduced and included as **Exhibit No. 16** of the Commission staff report.

To ensure that the development conforms to the recommendations listed in the engineering geologic report, the Commission attaches **Special Condition No. 7**, which requires the applicant, prior to issuance of the coastal development permit, to submit, for the review and approval of the Executive Director, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans for the project element and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation.

Although the project has been evaluated and designed in a manner to minimize the risk of geologic hazards, and although the Commission is requiring with **Special Condition No. 7** that the applicant adhere to all recommended specifications to minimize potential geologic hazards, some risk of geologic hazard still remains. This risk is reflected in the June 2008 SHN geotechnical report, which references various “limitations” of the analysis. The SHN geotechnical report states that the geotechnical investigation and review of the proposed development was performed in substantial accordance with the generally accepted geotechnical engineering practice as it exists in the site area at the time of their study. The report further states, “...*No warranty is expressed or implied*” This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that

no guarantees can be made regarding the safety of the proposed development with respect to geologic hazards.

Given that the risk cannot be eliminated, the Commission finds that due to the inherently hazardous nature of this lot and the fact that no geology report can conclude with certainty that a geologic hazard does not exist, it is necessary to attach **Special Condition No. 8**, whereby the applicant acknowledges in part, by acceptance of this permit, that the site may be subject to hazards from landslide, erosion, subsidence, and earth movement. Given that the applicant has chosen to implement the project despite the geologic risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, **Special Condition No. 2** requires the applicants to record a deed restriction to impose the special conditions of the permit as covenants, conditions and restrictions on the use and enjoyment of the property. This special condition is required, in part, to ensure that the development is consistent with the Coastal Act and to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, and will ensure that future owners of the property will be informed of the Commission's immunity from liability, and the indemnity afforded the Commission.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the LCP regarding geologic hazards, including LUP Policy 3.4-7, and CZC Sections 20.500.010(A), 20.500.015, and 20.500.020 because the development as conditioned (1) will not contribute significantly to the creation of any geologic hazards, and (2) will not have adverse impacts on the stability of the coastal bluff or on erosion. Only as conditioned is the proposed development consistent with the LCP.

## **I. VISUAL RESOURCES**

As described above, the project site is located approximately ¼-mile south of the small rural town of Albion and directly north of the Highway One bridge over Salmon Creek, east of and adjacent to Highway One. The project site is located within a designated highly scenic area.

The surrounding landscape consists of rolling hills east of Highway One and uplifted marine terrace bluff-tops west of Highway One. There is very little development located on either side of the highway in the immediate vicinity of the development site. Notable exceptions include a restaurant west of Highway One about 1/8-mile north, the Pacific Reef's residential subdivision south of Salomon Creek on the west side of Highway One (which is not readily visible from the highway), and a few other scattered residences not readily visible from Highway One on either side of the highway.

The protection of visual resources is required under Section 30251 of the Coastal Act, and in certifying LUP Policy 3.5-1, the Commission concurred with the introductory language of that policy that the scenic and visual quality of the Mendocino County coastal area be considered and protected as a resource of public importance. The proposed development would be visible from State Highway One, the sole continuous highway through the Mendocino County coastal zone. Highway One brings visitors from throughout the region, state, and world to the coast to enjoy its beauty.

Many appeals from Mendocino County raise issues of visual resource protection, and in acting on these appeals *de novo*, the Commission has denied some projects because of inconsistencies with visual resource protection policies. The Commission often conditions permits it approves to require the applicant to relocate, redesign, or screen proposed development specifically to protect views of the ocean and scenic coastal areas.

LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.020(D) require in part that new development in highly scenic areas be visually compatible with and subordinate to the character of its setting. The original project approved by the County included construction of: (1) a 2,524-square-foot, 21-foot-high single-story house with a 634-square-foot attached garage, and 329 square feet of attached covered porches (3,487 square feet total); and (2) a detached 2,138-square-foot, 24-foot-high accessory structure containing a 1,516-square-foot garage/workshop, a 501-square-foot guest cottage and a 121-square-foot covered porch. The County staff report described the development as follows:

*Story poles for both of the proposed buildings have been erected on site...the building site is a relatively gently sloping open grassland which provides stunning views of the Little-Big Salmon Rivers mouth, bridge, and ocean beyond. The building site is highly visible from Highway 1 south of the site. When a traveler is south of the Salmon River Bridge heading north, the proposed buildings will be highly visible. When a traveler is on the bridge traveling north, the buildings will silhouette the skyline. ...*

Commission staff has visited the project site on several occasions and worked with the applicants to reduce the visual impact of their development design. Part of the challenge of siting and designing the development to be subordinate to the character of its setting is the site's prominence from Highway One to northbound travelers and the fact that the immediate setting east of the highway consists of mostly undeveloped rangeland and Grand Fir forest with virtually no other development visible east of the highway. The applicants have revised their project for the purposes of the Commission's *de novo* review and propose to develop a 1,790-square-foot, 18'-6"-high single-story house with a 576-square-foot attached garage, and 353 square feet of attached covered porches with decks (total building footprint of 2,719 square feet); and a detached 2,040-square-foot, 19'-4"-high accessory structure containing a 1,295-square-foot garage/workshop, a 640-square-foot guest cottage, and a 105-square-foot covered porch, plus ancillary developments. The revised project design reduces the house size by 768 square feet and reduces the height of the house by 2.5 feet. Similarly, the applicants reduced the footprint of the workshop/garage/guest cottage structure by 98 square feet, and reduced the building height by 4.7 feet from natural grade. In addition, the revised design attaches the garage behind (northeast of) the house such that it is less visible from Highway One, and shifts the location of the house farther from the southern bluff edge and closer to the backdrop of trees along the northern parcel boundary. The resulting design not only reduces the overall height, profile, and footprint of the development, but clusters the buildings more closely together and against a backdrop of existing trees. To facilitate further screening of the proposed development, the applicants have additionally proposed to plant native vegetation landward of the bluff edge to augment the sparser, existing herbaceous and shrub vegetation located along the bluff edge. After revising the siting and design of the project, the applicant erected new story poles matching the redesigned project. The applicant has also submitted a visual analysis showing the visual effects of the proposed planting of vegetation on the property (**Exhibit 6**). The analysis demonstrates that

although portions of the development will still be visible to some extent from the highway as travelers cross the Salmon Creek Bridge in the northbound directions, the buildings will (a) appear relatively small and low against the landscape, (b) be set against a backdrop of the Grand Fir forest trees that will tower over the maximum height of the structures and will continue to be the dominant feature of the landscape, (c) be partially screened by existing and planted vegetation. In addition, the design of the structures incorporates architectural features of wooden barns and agricultural structures found along that part of the Mendocino Coast to help ensure the development is compatible with character of development within the general setting of the development. As redesigned, and as conditioned as discussed below, the Commission finds that the development will be visually compatible with and subordinate to the character of its setting.

LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.020(D) require permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas from public areas including highways and roads. The principal public vantage point for viewing the coast in the immediate project vicinity is Highway One. As the subject site will be located east of the highway, the development will not block views to the ocean. In addition, the development is sited far enough off the highway in a location where it will not block views from the highway along the coast. As discussed above, the development will be visually compatible and subordinate to the character of its setting. Therefore, the Commission finds that development will be sited and designed to protect views to and along the ocean and scenic coastal areas.

LUP Policy 3.5-1 and CZC Section 20.504.020 in part require that new development in highly scenic areas minimize the alteration of natural landforms. The applicant anticipates approximately 15 cubic yards of grading will occur for the construction of the house with attached garage and the workshop/garage/guest cottage. While the proposed driveway will require 273 cubic yards of grading, the applicant indicates that eight inches of existing earth will be cut and replaced with five inches of base drain rock and a three-inch top coat of shale, such that the area will be graded back to existing grade. In addition, the project as modified for the Commission's *de novo* review results in a smaller driveway footprint than that originally approved by the County. Thus, the Commission finds that the development as conditioned will minimize the alteration of natural landforms consistent with LUP Policy 3.5-1.

As noted above, the Commission's finding that the development will be visually compatible with and subordinate to the character of its setting is based in part on the inclusion of certain special conditions. Special Condition No. **15A** requires that the applicants finish the exterior of the buildings with the colors and materials proposed. The house exterior siding will consist of redwood shingles with a warm brown semi-transparent stain (Sherwin Williams "charwood") and will include a red brick masonry chimney. The applicants propose to use redwood vertical board and batten siding with a warm brown semi transparent stain (Sherwin Williams "charwood") for the workshop/garage/guest cottage (also described as "the Barn" in **Exhibits 4 and 5** building floor plans and elevations). For both structures, the applicants propose to use black or charcoal grey roof shingles and paint all metal features (except copper) either black or charcoal grey. The applicants additionally propose to use Milgard windows with bronze anodized aluminum frames. The courtyard fence will be constructed using cedar boards stained to match the house. Proposed exterior lighting consists of downcast lights enclosed in a custom-built wood box on the western house porch, southeastern house porch, northwestern house elevation, along the northwestern (fenced) courtyard wall, and along the western "barn" porch.

In addition, a gooseneck downcast light is proposed for the northern side of the “barn.” Refer to pages 3 and 4 of **Exhibit 4** for details.

The Commission finds that the dark colors of the roof, siding and trim, combined with the backdrop of trees will help blend the residence into its surroundings as seen from these vantage points rather than cause the residence to stand out. However, the Commission finds that if the applicant or future owner(s) of the property choose to change the materials or colors of the residence to brighter, non-earth-tone colors or materials, the development may no longer be visually compatible with or subordinate to the character of the surrounding area and may become increasingly visible from public vantage points. To ensure that the exterior building materials and colors used in the construction of the development are compatible with natural-appearing earth-tone colors that blend with their surroundings as proposed, the Commission attaches **Special Condition No. 15A**, which requires that all exterior siding and roofing be composed of the colors proposed in the application or darker earth-tone colors only. The condition prohibits the current owner or any future owner from modifying the colors or materials of the house or other approved structures with products that will lighten the color of the house or other approved structures without a permit amendment. In addition, all exterior materials, including roofs and windows, are required to be non-reflective to minimize glare. Additionally, **Special Condition No. 15B** requires that exterior lights be shielded and positioned in a manner that will not allow glare beyond the limits of the parcel. These requirements will help ensure that the proposed residence in this location will be visually subordinate to the character of the surrounding area.

The Commission has determined that the particular development as revised for purposes of the Commission’s *de novo* review and as conditioned will be subordinate to the character of its setting. Future additions or changes to the development could have significant adverse visual impacts and could result in a modified development that is not subordinate to the character of its setting as required by the LCP policies.

Section 30610(a) of the Coastal Act and Chapter 20.532 of the County’s Coastal Zoning Code exempt certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

However, Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect. Section 13250(b)(1) indicates that improvements to a single-family structure in an area within 50 feet of the edge of a coastal bluff and/or within a designated highly scenic area involve a risk of adverse environmental effect and therefore are not exempt. The subject property is within a designated highly scenic area. Therefore, pursuant to Section 13250(b)(1) of the Commission’s regulations, **Special Condition No. 14** expressly requires all future improvements and change to the approved development obtain a coastal development permit amendment to ensure that future improvements are sited and designed in a manner that protect coastal views from public vantage points and remains subordinate to the character of its setting. As discussed above, **Special Condition No. 2** also requires that the applicant record and execute a deed restriction approved

by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. **Special Condition No. 2** will also help assure that future owners are aware of these CDP requirements applicable to all future development.

**Special Condition No. 9(A)(iii)** requires the applicants to submit a final landscaping plan showing the species, size, and location of all plant materials that will be retained and newly planted on the developed site, and further requires that all proposed plantings shall be obtained from local genetic stocks within Mendocino County. In addition, **Special Condition No. 9(A)(iii)** requires all plantings installed for visual screening on the parcel shall be maintained in good condition throughout the life of the project and replaced if any die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, with another native species common to the coastal Mendocino County area that will grow to a similar or greater height.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, gophers, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to pose significant primary and secondary risks to non-target wildlife present in urban and urban/wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize potential significant adverse impact of rodenticide use to other environmentally sensitive wildlife species, the Commission has included as **Special Condition No. 9(A)(iii)** a prohibition against the use of any rodenticides on the property.

LUP Policy 3.5-8 and CZC Section 20.504.015(C)(12) (refer to visual resource policies in [Appendix I](#)) require that power distribution lines be placed underground in designated “Highly Scenic Areas” west of Highway One. While the subject development is located east of Highway One, the applicants propose to place power transmission lines underground. Thus, the Commission attaches **Special Condition No. 15C** to require that all utility extensions connected to development authorized pursuant to CDP No. A-1-MEN-09-034 are placed underground as proposed, and that all areas disturbed by underground utility installation be recontoured and revegetated with native grasses and forbs of local genetic stock appropriate to coastal Mendocino County.

In conclusion, the Commission finds that as conditioned, the siting and design of the proposed development as modified for the Commission’s *de novo* review is consistent with the visual resource protection policies of the Mendocino County certified LCP, including but not limited to LUP Policies 3.5-1, 3.5-3, 3.5-4, 3.5-5, 3.5-8, and 3.5-15, and Coastal Zoning Code Sections 20.504.010 and 20.504.015 as the development will (1) be visually compatible and subordinate to the character of its setting, (2) not adversely affect coastal views from public vantage points, (3) minimize alteration of natural landforms, and (4) ensure that exterior lighting is minimized and installed so as not to shine or glare beyond the limits of the parcel.

#### **J. STORMWATER RUNOFF**

Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. LUP Policy 3.1-25 requires the



protection of the biological productivity of coastal waters. Mendocino County Coastal Zoning Code (CZC) Sections 20.492.015 and 20.492.020 set forth erosion control and sedimentation standards to minimize erosion and sedimentation of environmentally sensitive areas and off-site areas (refer to [Appendix J](#) for stormwater runoff LCP policies). Specifically, Sections 20.492.015 and 20.492.020(B) require that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation. Furthermore, CZC Section 20.492.025 requires that provisions shall be made to infiltrate and/or safely conduct surface water to prevent runoff from damaging cut and fill slopes.

As discussed above, the subject parcel is located on a bluff top. Runoff from the parcel flows southerly and westerly downward toward the stream valley wall (bluff face) above the junction of Little and Big Salmon Creeks. Runoff originating from the development site that is allowed to drain off the site would contain entrained sediment and other pollutants that would contribute to degradation of the quality of coastal waters, including downstream marine waters. Sedimentation impacts from runoff would be of the greatest concern during and immediately after construction.

The geotechnical report prepared for the project by SHN specified erosion control/drainage measures that include designing the finish grade to allow sheet runoff rather than concentrated runoff, connecting roof gutters and downspouts into a storm drain system where possible, and dissipating concentrated runoff with energy flow dissipators and erosion resistant surfacing as appropriate. Consistent with CZC Section 20.492.020(B), the Commission includes within attached **Special Condition No. 9A(ii)** a requirement that the applicants minimize erosion and sedimentation impacts from the proposed construction of the residence. **Special Condition No. 9A(ii)** requires that the applicants submit for the review and approval of the Executive Director revised plans that include erosion and runoff control measures. **Special Condition 9 (A)(ii)(5)** requires that runoff from the driveway and rooftops shall be collected and conveyed to a drainage sump, rain garden, rain storage barrel, rock gabion, or other facility designed for collection and infiltration in a non-erosive manner. In addition, all disturbed soil areas should be reseeded and covered with native vegetation to control erosion, pursuant to **Special Condition 9 (A)(ii)(3)** and that conforms with the planting limitations of **Special Condition Nos. 9 (A)(iii)(3) and 9 (A)(iii)(4)**. The erosion and runoff control plan must also include provisions that: (1) hay bales be installed to contain runoff from construction and demolition areas; (2) on-site vegetation be maintained to the maximum extent possible during construction; and (3) washing-out of concrete delivery vehicles, disposal of solid waste, or release of any hazardous materials on the parcel be prohibited.

In addition, best management practices outlined in **Special Condition Nos. 13D, 13F, 13G, 13H, and 13I** require that during construction: (1) weed-free hay bales be installed to contain runoff from construction and demolition areas; (2) best management practices be effective at controlling sediment and surface runoff during the rainy season; (3) on-site vegetation be maintained to the maximum extent possible during construction; (4) any disturbed areas be replanted with noninvasive native plants obtained from local seed stock immediately following project completion and covered with jute netting, coir logs, and rice straw; and (5) on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff. Consistent with CZC Section 20.492.025(E), the applicants propose to surface the

driveway with gravel to facilitate infiltration into the ground of greater amounts of runoff from the driveway.

The Commission finds that as conditioned, the proposed development is consistent with CZC Sections 20.492.015 and 20.492.020 because erosion and sedimentation will be controlled and minimized by (1) maintaining on-site vegetation to the maximum extent possible; (2) replanting or seeding any disturbed areas with native vegetation following project completion; (3) using hay bales to control runoff during construction, and (4) directing runoff from the completed development in a manner that would provide for infiltration into the ground. Furthermore, the Commission finds that the proposed development as conditioned to require these measures to control sedimentation from storm water runoff from the site is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained. Moreover, the Commission finds that the proposed development is consistent with CZC Section 20.492.025(E) because, as conditioned, runoff from the roofs will be directed into vegetated areas and the gravel driveway will facilitate infiltration of runoff and minimize erosion and sedimentation from stormwater runoff.

#### **K. ARCHAEOLOGICAL RESOURCES**

Coastal Act Section 30244 provides for protection of archaeological and paleontological resources and requires reasonable mitigation where development would adversely impact such resources.

According to the Archaeological Survey report dated March 26, 2005 and prepared by Registered Professional Archaeologist Thad Van Bueren, the coastal area around the project site was part of the traditional territory of the Northern Pomo indigenous peoples. Their territory extended from the west shore of Clear Lake to the Pacific Ocean, encompassing coastal lands from Cleone south to the vicinity of the Navarro River.

More than ten prior archaeological surveys have been conducted within a 1.5- mile radius of the subject parcel, but the report author indicates these survey projects were small in scope and “do not provide a scientifically valid basis generating confident predictions regarding where sites are likely to be found.” The archaeological report indicates the following:

While less than 5% of the land within a one mile radius of the subject site has been subject to systematic archaeological survey, four sites have been recorded within the nearby area. They include a prehistoric site, a logging camp, a logging railroad, and a historic refuse dump.”

The archaeological report describes non-indigenous settlement of the surrounding area as initiated in the 1840s in connection with Mexican land grants, at which time some effort was made to harvest and mill coastal redwoods. The report states that “in 1844 Mexican Governor Michelton gave William Richardson the eleven-league Albion land grant, which included much of the coastal area surrounding the project area... The town of Whitesboro was established just east of the confluence of Big and Little Salmon creeks around 1876.” The report describes the creation of a railroad up Salmon Creek at that time which was used to bring railroad ties down to the wharf at the mouth of the creek, and the construction of a mill in Whitesboro in 1880. The report further describes that the south edge of the subject parcel fronts on the former historic road that went south from Albion to Whitesboro, and that served as a precursor to the modern coast highway. In 1950 CalTrans built the current bridge that crosses Salmon Creek.

No evidence of archaeological resources was observed during Mr. Van Bueren's intensive archaeological field survey of the subject parcel that included transects spaced no more than 10 meters apart. Mr. Van Bueren notes that findings are based on surface inspection and limited shallow probing only, and recommends that in the unlikely event archaeological remains come to light during construction activities, that all work should be halted until a professional archaeologist can examine the finds.

To ensure protection of any cultural resources that may be discovered at the site during construction of the proposed project, and to implement the recommendation of the archaeologist, the Commission attaches **Special Condition No. 17**. This condition requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease, and a qualified cultural resource specialist must analyze the significance of the find. To recommence construction following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are *de minimis* in nature and scope, or whether an amendment to this permit is required.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30244, as the development will not adversely impact archaeological resources.

#### **L. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Mendocino County is the lead agency for the purposes of CEQA review. On June 25, 2009, the County coastal permit administrator determined that the proposed project was categorically exempt from CEQA pursuant to Class 3 consistent with the findings of the County staff report.

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified Mendocino County LCP, the proposed project has been conditioned to be found consistent with the certified Mendocino County LCP and Section 30010 of the Coastal Act. All feasible mitigation measures, which will minimize all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

## **Appendix A**

### **Substantive File Documents**

House Agricultural Consultants. May 5, 2012. Agricultural Feasibility Study: Malin-Marr Property, Albion, CA. Revision number 3502.

Maslach, William. November 2007. Botanical Survey and ESHA Assessment for 2800 Highway One, Albion, California, Mendocino County, APN 123-350-04. Revised February 2009.

Mendocino County CDP No. 57-2008.

Mendocino County Local Coastal Program

Nelson, Playalina. August 2010. Wetland Mitigation Plan Prepared for 2800 Highway One, Albion, California (APN 123-350-04), CDP-57-2008 Marr & Malin. Santa Rosa, CA.

\_\_\_\_\_. June 1, 2009. Mitigation Measures for Project Changes at 2800 Highway One, Albion, California (APN 123-350-04).

SHN Consulting Engineers and Geologists, Inc. June 2008. Geotechnical and Geological Investigation: Proposed Single-Family Residence, 2800 North Highway 1, Albion, Mendocino County CA, APN 123-350-06 prepared for Mike Marr.

Van Buren, Thad. March 26, 2005. Archaeological Survey of the Marr Property in Albion, Mendocino County, California. Prepared for Michael Marr by Thad Van Buren, Registered Professional Archaeologist, Westport, CA.

## **Appendix B**

### **Submittal of Additional Information by the Applicant**

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of the following:

1. Wetland Mitigation Plan prepared by Playalina Nelson, Consulting Botanist, and dated August 2010;
2. Property interest and lot legality analysis information including Chain of Title documentation;
3. Revised site plans and artistic renderings dated January 10, 2011 (**Exhibits 3, 4, 5, and 6**);
4. Transmittal dated March 3, 2011, submitted to Commission staff from Agent Hartstock regarding 2010 Wetland Mitigation Plan (**Exhibit 13**);
5. Agricultural Feasibility Analysis transmitted September 27, 2011 by Stephen K. Butler;
6. Agricultural Feasibility Study prepared by House Agricultural Consultants, Revision number 3502 dated May 5, 2012 (**Exhibit No. 15**);

The supplemental information addresses issues that were raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit. A comprehensive list of substantive file documents is included in [Appendix A](#).

## **Appendix C**

### **Mendocino County LCP Policies Regarding Planning and Locating New Development**

**Mendocino County Land Use Plan (LUP) Policy 3.9-1** states (emphasis added):

*An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating residential sites has been given to:*

- *each community's desired amount and rate of growth.*
- *providing maximum variety of housing opportunity by including large and small sites, rural and village settings, and shoreline and inland locations.*

*In addition to the considerations pertaining to the allocation of residential sites listed above, all development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.*

*One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.*

***Sec. 20.368.020 Minimum Lot Area for RL Districts.***

*One hundred sixty (160) acres. (Ord. No. 3785 (part), adopted 1991)*

***Sec. 20.368.025 Maximum Dwelling Density for RL Districts.***

*One (1) unit per one hundred sixty (160) acres except as provided pursuant to Section 20.316.020 (Farm Employee Housing), Section 20.316.025 (Farm Labor Housing), Section 20.456.015 (Accessory Uses), Section 20.460.035 (Use of a Trailer Coach) and Section 20.460.040 (Family Care Unit). In no case shall there be more than four (4) dwellings per parcel whether single family residential, farm employee housing, farm labor housing, accessory living unit or family care unit, except where Chapter 20.412 "Clustering Development Combining District" applies. (Ord. No. 3785 (part), adopted 1991)*

***Sec. 20.368.030 Minimum Front, Rear and Side Yards for RL Districts.***

*Fifty (50) feet each. (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.035 Setback Exception.**

*Any nonconforming parcel which is less than five (5) acres shall observe a minimum front, side and rear yard of twenty (20) feet. (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.040 Building Height Limit for RL Districts.**

*Twenty-eight (28) feet above natural grade for non-Highly Scenic Areas and for Highly Scenic Areas east of Highway One. Eighteen (18) feet above natural grade for Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Thirty-five (35) feet above natural grade for uninhabited accessory structures not in an area designated as a Highly Scenic Area (See Section 20.504.015(C)(2)). (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.045 Maximum Lot Coverage for RL Districts.**

*Twenty (20) percent for parcels less than two (2) acres in size. Fifteen (15) percent for parcels from two (2) acres to five (5) acres in size. Ten (10) percent for parcels over five (5) acres in size. (Ord. No. 3785 (part), adopted 1991)*

**CZC Section 20.456.015** “Residential and Agricultural Use Types” specifies the accessory buildings and uses permissible in the district, as follows (emphasis added)

*Subject to the restrictions and limitations of this Chapter, including the granting of a Coastal Development Permit, where applicable, the following accessory buildings and uses shall be permitted in all zoning districts which allow a single-family residence:*

- (A) Private Garages.
- (B) Children's playhouse, patios, porches, gazebos, etc.
- (C) Windmills.
- (D) Shops (non-business purposes).
- (E) Barns.
- (F) Private swimming pools and hot tubs (not subject to setback requirements in the side or rear yards of any district).
- (G) Accessory Living Unit. Not more than one accessory living unit for each legal parcel.

...

- (J) Travel Trailer or Camper. The maintaining of one (1) travel trailer or camper in dead storage where it is not used for occupancy or business purposes. All stored travel trailers or campers in excess of one (1) shall be stored out of sight from a public right-of-way. The connection, for any continuous period exceeding forty-eight (48) hours, of any utility or service such as electrical, water, gas or sewage to the travel trailer or camper shall be prima facie evidence that it is being used for habitation or business purposes.

...

*(O) Other Necessary and Customary Uses. Accessory non-residential uses and nonresidential structures, in addition to those identified above, which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to a principal permitted use, as determined by the Director of Planning and Building Services. (Ord. No. 3785 (part), adopted 1991)*

**CZC Section 20.308.020** defines “Accessory Living Unit” as follows:

*...a detached bedroom as defined in Section 20.308.035(B) or a guest cottage as defined in Section 20.308.050(I).*

**CZC Section 20.308.050(I)** defines “Guest Cottage” as follows:

*...a detached building (not exceeding six hundred forty (640) square feet of gross floor area), of permanent construction, without kitchen, clearly subordinate and incidental to the primary dwelling on the same lot, and intended for use without compensation by guests of the occupants of the primary dwelling.*

**Land Use Plan (LUP) Policy 3.8-1** states, in applicable part, as follows (Emphasis added):

*Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.*

*On the rural side of the Urban/Rural boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies.*

**Coastal Zoning Code (CZC) Section 20.532.095** “Required Findings for All Coastal Development Permits” states:

- (A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish 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 this Division 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.*



## **Appendix D**

### **Mendocino County LCP Policies Regarding Environmentally Sensitive Habitat Areas**

#### **Summary of Applicable LCP Provisions**

Wetlands are defined in Section 3.1 of the Mendocino County Land Use Plan (LUP) as follows:

***Wetlands.** Lands which may be covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are extremely fertile and productive environments. Tidal flushing from the ocean and/or nutrient-rich freshwater runoff mix to form a delicate balance responsible for their productivity. They function as nurseries for many aquatic species and serve as feeding and nesting areas for waterfowl, shorebirds and wading birds, as well as a few rare and endangered species.*

*The edge or upland limit of wetlands is designated by the California Coastal Commission guidelines on wetlands as: (a) the boundary between land with predominantly hydrophytic (adapted to wet conditions) cover and land with predominantly mesophytic (adapted to average conditions) or xerophytic (adapted to dry conditions) cover; (b) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or, in the case of wetlands without vegetation or soils; (c) the boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not. Areas with drained hydric soils that are no longer capable of supporting hydrophytes (species adapted to wet conditions) are not considered wetlands.*

Wetlands are defined in Section 13577 of the Commission Regulations as follows:

*Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.*

LUP Policy 3.1-4 states:

*As required by the Coastal Act, development within wetland areas shall be limited to:*

- 1. Port facility construction or expansion, Section 30233(a)(1).*
- 2. Energy facility construction or expansion, Section 30233(a)(1).*
- 3. Coastal-dependent industrial facilities such as commercial fishing facilities, construction or expansion, Section 30233(a)(1).*

4. *Maintenance or restoration of dredged depths or previously dredged depths in: navigational channels, turning basins, vessel berthing and mooring areas, and associated with boat launching ramps.*
5. *In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that in a degraded wetland, other boating facilities may be permitted under special circumstances, Section 30233(a)(3). New or expanded boating facilities may be permitted in estuaries, Section 30233(a)(4).*
6. *Incidental public services purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
7. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
8. *Nature study purposes and salmon restoration projects.*
9. *Aquaculture, or similar resource dependent activities excluding ocean ranching. (See Glossary)*

*In any of the above instances, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes, shall be permitted in accordance with all other applicable provisions of this plan. Such requirements shall include a finding that there is no feasible less environmentally damaging alternative and shall include mitigation measures required to minimize adverse environmental effects, in accordance with Sections 30233 and 30607, and other provisions of the Coastal Act.*

Section 20.496.025 of the Mendocino County Coastal Zoning Code states, in part, that:

(A) Development or activities within wetland and estuary areas shall be limited to the following:

- (1) *Port facility expansion or construction.*
- (2) *Energy facility expansion or construction.*
- (3) *Coastal-dependent industrial facilities, such as commercial fishing facilities, expansion or construction.*
- (4) *Maintenance or restoration of dredged depths or previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and associated boat launching ramps.*
- (5) *In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that, in a degraded wetland, other boating facilities may be permitted under special circumstances.*
- (6) *New or expanded boating facilities may be permitted in estuaries.*

(7) *Incidental public service purposes which temporarily impact the resource including but not limited to burying cables and pipes, or inspection of piers, and maintenance of existing intake and outfall lines.*

(8) *Restoration projects which are allowable pursuant to Section 30233(a)(7) of the Coastal Act are publicly or privately financed projects in which restoration is the sole purpose of the project...*

(9) *Mineral extraction, including sand for restoring beaches, except in ESHA's.*

(10) *Nature study purposes and salmon restoration projects.*

(11) *Aquaculture, or similar resource dependent activities excluding ocean ranching.*

Mendocino County Land Use Plan (LUP) Policy 3.1-2 states the following (emphasis added):

*Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.*

*If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.*

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 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 3.1-18 states the following (emphasis added):

*Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.*

*Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.*

CZC Section 20.496.015 states, in applicable part, the following (emphasis added):

**(A) Determining Extent of ESHA.** *The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if:*

...

*(2) The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information; ...*

*(3) The development is proposed to be located within one hundred (100) feet of an environmentally sensitive habitat and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through the project review.*

...

**(D) Development Approval.** *Such development shall only be approved if the following occurs:*

*(1) All members of the site inspection team agree to the boundaries of the sensitive resource area; and*

*(2) Findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1).*

**(E) Denial of Development.** *If findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.*

CZC Section 20.532.100 states, in applicable part, the following (emphasis added):

*In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:*

**(A) Resource Protection Impact Findings.**

**(1) Development in Environmentally Sensitive Habitat Areas.** *No development shall be allowed in an ESHA unless the following findings are made:*

- (a) The resource as identified will not be significantly degraded by the proposed development.*
- (b) There is no feasible less environmentally damaging alternative.*
- (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.*

...

Section 20.496.020 of the CZC states, in applicable part, the following (emphasis added):

**(A) Buffer areas.** *A buffer 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 with the California Department of Fish and Game, and County Planning staff, that one hundred 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...*  
...
- (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...*

...  
(g) *Type and Scale of Development Proposed...*

...  
**(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 whenever 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.*

## **Appendix E**

### **Grand Fir Forest ESHA**

The Grand fir (*Abies grandis*) forest alliance consists predominantly of grand fir but can also include coast redwood (*Sequoia sempervirens*), Douglas-fir (*Pseudotsuga menziesii*), Bishop pine (*Pinus muricata*) and other conifers. Grand fir has a limited and scattered range in California, and can be found more widely in Oregon, Washington, Idaho, and British Columbia<sup>20</sup>. As described by Lanner (1999), grand fir occurs in coastal northwestern California “from the Oregon border south to about Humboldt Redwoods State Park in Humboldt County, then from about Westport south down the coast to Fort Ross, with an outlier across the Russian River on Willow Creek. According to Sawyer et al. (2009<sup>21</sup>), Grand fir can achieve heights up to 60m, and live 250-300 years with cone and seed production beginning at approximately 20 years. Grand fir occurs on exposed coastal headlands such as those in Mendocino County. It can also be found in river valleys, along streams, and at elevations up to 2,000 feet.

As background, the limited number of rare vegetation types that are listed in the CNDDDB (referred to as “natural communities”) are based on the Holland classification scheme, even though the science of vegetation classification has evolved and has been refined over the past two decades, and the Holland classification is no longer used as the state standard.

The currently accepted vegetation classification system for the state that is standardly used by CDFG, CNPS, and other state and federal agencies, organizations, and consultants for survey and planning purposes is *A Manual of California Vegetation* (MCV; Sawyer, Keeler-Wolf, and Evens 2009). Unlike Holland, this vegetation classification system is based on the standard National Vegetation Classification System (NVCS) and includes alliances (a floristically defined vegetation unit identified by its dominant and/or characteristic species) and associations (the finer level of classification beneath alliance). Although the CNDDDB still maintains records of some of the old Holland vegetation types, these types are no longer the accepted standard, and the CDFG Vegetation Classification and Mapping Program (VegCAMP) has published more recent vegetation lists for the state (September 2003, October 2007, December 2009, September 2010) based on a standardized vegetation classification system that is currently being developed for California (and which is consistent with the MCV classification system). Although the rare vegetation types under the state’s new vegetation classification system have not yet been added to the CNDDDB to replace the old Holland types (but eventually are planned to be), global and state rarity rankings have been assigned for various types on the recent VegCAMP lists.

Instead of the previous “Sitka Spruce-Grand Fir Forest” type recognized by Holland, there is now a Grand Fir forest alliance. Unlike the G1/S1.1 ranking of the original Holland classification scheme (which is still maintained in the CNDDDB until field reconnaissance can confirm the status of these communities using current classification standards) the currently accepted Grand

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<sup>20</sup> Lanner, Ronald M. 1999. *Conifers of California*. Los Olivos, CA: Cachuma Press. 274 p.

<sup>21</sup> Sawyer et al. 2009. *A Manual of California Vegetation*, Second Edition. California Native Plant Society, Sacramento. 1300 pp.



Fir Forest alliance vegetation type is ranked G4/S2.1<sup>22</sup>. This ranking is considered “uncommon but not rare” at the global level, but imperiled and seriously endangered at the state level. Additionally CDFG Biogeographic Data Branch indicates that for alliances with State ranks of S1-S3, all associations within them are also considered to be highly imperiled<sup>23</sup> and of high priority for inventory in the CNDDDB (VegCAMP 2010).

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.** The CA Department of Fish and Game recognizes special status natural communities as communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects<sup>24</sup>. These communities may or may not contain special status species or their habitat. As described above, the CA Department of Fish and Game *List of California Terrestrial Natural Communities*<sup>25</sup> ranks Grand Fir forest community type as “G4S2.1,” meaning it is “uncommon but not rare” at the global level, but imperiled and seriously endangered at the state level, and of high priority for inventory in the CNDDDB. Because of its relative rarity at the state level, Grand Fir forest meets the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies.

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. As described in *A Manual of California Vegetation*, “Infrequent in California, the alliance is limited to the north coastal strip, where logging has removed virtually all old-growth stands. The few inventoried stands in Mendocino and Humboldt Cos. are generally less

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<sup>22</sup> In this case, the California Heritage (CNDDDB) ranking of G4/S2.1 describes the global rank (G rank) as “Apparently Secure—Uncommon but not rare; some cause for long-term concern due to declines or other factors.” The state rank (S rank) for Grand Fir forest in California indicates this community is “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.” The -.1 extension depicts the threat to this community as “seriously endangered in California.”

<sup>23</sup> [http://dfg.ca.gov/biogeodata/vegcamp/natural\\_comm\\_background.asp](http://dfg.ca.gov/biogeodata/vegcamp/natural_comm_background.asp) (accessed December 14, 2011)

<sup>24</sup> Department of Fish and Game. November 24, 2009. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. Available online at [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols\\_for\\_Surveying\\_and\\_Evaluating\\_Impacts.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols_for_Surveying_and_Evaluating_Impacts.pdf)

<sup>25</sup> <http://www.dfg.ca.gov/biogeodata/vegcamp/pdfs/natcomlist.pdf>. The rare natural communities are asterisked on this list.

than 20 ha in size.”<sup>26</sup> Sawyer additionally notes that “Several recent housing developments have caused impacts on stands in Mendocino Co. This is a rare forest alliance in California.” If development is not sited outside of ESHA and ESHA buffer, the Grand fir forest on the subject property could be easily disturbed or degraded by human activities and developments such as those that would be necessary to develop the identified building site including grading, paving, building construction, foot trampling, mowing etc. Additionally, the site is located in a designated moderate fire hazard area; California law (PRC 4291) requires property owners and/or occupants to create 100 feet of defensible space around homes and buildings, which could result in additional impacts to Grand fir forest if developments are not sited outside of ESHA and ESHA buffer. Such activities reduce habitat size, increase opportunities for establishment of nonnative and invasive species, and degrade and alter habitat quality and conditions that are integral to the “special nature” of the existing habitat area. Given these threats, the Grand Fir forest meets 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).

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<sup>26</sup> A Manual of California Vegetation, Second Edition. California Native Plant Society, Sacramento. 1300 pp.

## Appendix F Wetland Delineation

The most specific definition of LCP and Coastal Act wetlands is found in Section 13577 of the California Code of Regulations, which defines wetland<sup>27</sup> as “...*land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent....*” Therefore, in order to qualify as a wetland in the Coastal Zone, land must be at least periodically inundated or saturated for sufficient duration to result in a predominance of hydrophytes or a predominance of hydric soils. There is no specific periodicity or duration of inundation or saturation required. The primacy of hydrology is implicit in the definition, but is presumed adequate if either hydrophytic cover or hydric soils are predominant. However, neither the definitions of hydrophytes or hydric soils nor field methods for their identification are provided in California law. In practice, delineators primarily rely on the definitions and technical guidelines developed by the Army Corps of Engineers.<sup>28</sup> Several other technical publications also provide useful guidance.<sup>29</sup>

Consulting biologist Bill Maslach delineated Coastal Commission-jurisdictional wetlands at the site on June 18, 2007 using the 1987 ACOE guidelines. The delineation included three wetland sample pits. Two of the sample points yielded three-factor (vegetation, soils, and hydrology) wetland determinations, and the third point (Sample Pit #2) was sampled in adjacent upland. As described above, biological consultant Playalina Nelson subsequently submitted a biological addendum to the County on June 1, 2009 to address mitigation measures following the applicant’s change in the project design that reduced direct wetland impacts from 10,100 square feet to 500 square feet. In the two-page addendum submitted by Ms. Nelson, she states, “Any feasible approach to the parcel will have to cross a Coastal Act wetland (no hydrology was documented at the wetland, only hydric soils and hydrophytic plants).” The June 2009 addendum did not include a map depicting sample points nor any data forms that substantiated this claim.

In response to the Commission’s request for additional information needed regarding wetland impacts and mitigation for *de novo* review, the applicant submitted a Wetland Mitigation Plan (**Exhibit 13**) prepared by Ms. Nelson and dated August 2010. The plan indicates that a sample pit was dug within the 500-square-foot wetland area to be impacted because no sample points were previously collected in this area (sample points collected by Mr. Maslach were located north and south of the current proposed area of impact). Ms. Nelson concludes the impacted area is a Coastal Act wetland, consistent with the conclusion of the previous consulting biologist, albeit based upon an observation of fewer criteria.

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<sup>27</sup> The definition in the Regulations was adapted from Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRue. 1979. *Classification of wetlands and deepwater habitats of the United States*. Office of Biological Services, U.S. Fish and Wildlife Service, Washington, D.C. The definitions of upland limits are identical to those of the Service.

<sup>28</sup> Environmental Laboratory. 1987. *Corps of Engineers wetlands delineation manual*. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Stations, Vicksburg, Mississippi.

<sup>29</sup> Federal Interagency Committee for Wetland Delineation. 1989. *Federal manual for identifying and delineating jurisdictional wetlands*. Cooperative technical publication. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and USDA Soil Conservation Service, Washington, D.C.; National Research Council. 1995. *Wetlands: Characteristics and boundaries*. National Academy Press, Washington, D.C.; Tiner, R.W. 1999. *Wetland indicators. A guide to wetland identification, delineation, classification, and mapping*. Lewis Publishers, N.Y.

## **Appendix G**

### **Mendocino County LCP Policies Regarding Agricultural Resources**

#### **Applicable LCP Provisions** (Emphasis added)

##### **LUP Policy 3.2-1** states:

*All agricultural land use, as represented within the agriculturally designated boundaries on the land use maps, shall be designated AG 60 or RL 160 for the purpose of determining density.*

*This will support continued coastal agriculture use. One housing unit will be allowed for each existing parcel. Additional dwellings for resident agricultural workers shall be considered as conditional uses, subject to the provisions of this plan.*

##### **LUP Policy 3.2-4** states:

*No permit shall be issued to convert prime land and/or land under Williamson Act to non-agricultural uses, unless all of the following criteria are met:*

- 1. all agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable; and*
- 2. agricultural use of the soils can not be successfully continued or renewed within a reasonable period of time, taking into account economic, environmental, social, and technological factors (Section 30108 of the Coastal Act); and*
- 3. clearly defined buffer areas are developed between agricultural and nonagricultural uses (see Policies 3.2-9, 3.2-12 and 3.2-13); and*
- 4. the productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing; and*
- 5. public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality; and*
- 6. in addition, for parcels adjacent to urban areas, the viability of agricultural uses is severely limited by conflicts with urban uses, and the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*

**CZC Section 20.508.015** “General Criteria” of the Agricultural Resources Chapter states the following:

*An owner of property within an agricultural district, either AG or RL, may request agricultural preserve status under a Williamson Act contract pursuant to Chapter 22.08 of the Mendocino County Code. No permit shall be issued to convert prime lands and/or land under Williamson Act contracts to non-agricultural uses, without complying with Chapter 22.08 of the Mendocino County Code and making supplemental findings pursuant to Section 20.532.100(B)(2) and making the finding that continued, renewed, or potential*

agricultural use of the property is not feasible based upon an economic feasibility evaluation prepared pursuant to Section 20.524.015(C)(3). (Ord. No. 3785 (part), adopted 1991)

**LUP Policy 3.2-5** states:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

**Coastal Act Section 30250** states in applicable part the following:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

**CZC Section 20.508.010** “Purpose” of the Agricultural Resources Chapter states the following:

The purpose of this Chapter is to insure that the maximum amount of agricultural land shall be maintained in agricultural production to assure the protection of the area's agricultural economy. All other lands suitable for agricultural use shall not be converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands. (Ord. No. 3785 (part), adopted 1991)

**LUP Policy 3.2-9** states:

In order to minimize agricultural-residential conflicts, land divisions or site plans in a residential area shall not result in a residential structure being closer than 200 feet from a parcel designated for agricultural use unless there is no other feasible building site on the parcel.

**CZC Section 20.508.020** “Buffer Areas” of the Agricultural Resources Chapter states the following:

Development adjacent to agriculturally designated parcels is subject to the following:

**(A) Development Adjacent to Agriculturally Designated Parcels.**

(1) No new dwellings in a residential area shall be located closer than two hundred (200) feet from an agriculturally designated parcel unless there is no other feasible building site on the parcel.

*(2) New parcels shall not be created that would result in a dwelling within two hundred (200) feet of an agriculturally designated parcel.*

**LUP Policy 3.2-16** states the following:

*All agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. Any such permitted division or conversion shall be compatible with continued agricultural use of surrounding parcels.*

*"Feasible", as used in this policy, includes the necessity for consideration of an economic feasibility evaluation containing both the following elements:*

- 1. An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of proposed local coastal program or an amendment to any local coastal program.*
- 2. An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.*

*For purposes of this policy, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal plan.*

**CZC Chapter 20.368** "Rangelands District" describes the intent of the zoning district and includes certain allowable use types as follows:

***Sec. 20.368.005 Intent.*** *This district is intended to encompass lands within the Coastal Zone which are suited for and are appropriately retained for the grazing of livestock and which may also contain some timber producing areas. (Ord. No. 3785 (part), adopted 1991)*

***Sec. 20.368.010 Principal Permitted Uses for RL Districts.***

*The following use types are permitted in the Range Lands District:*

*(A) Coastal Residential Use Types.*

*Family Residential: Single-Family;*

*Vacation Home Rental.*

*(B) Coastal Agricultural Use Types.*

*General Agriculture;*

*Light Agriculture;*

*Row and Field Crops;*

*Tree Crops.*

*(C) Coastal Open Space Use Types.*

*Passive Recreation.*

(D) *Coastal Natural Resource Use Types.*

*Fish and Wildlife Habitat Management. (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.015 Conditional Uses for RL Districts.**

The following are permitted uses upon the issuance of a coastal development use permit:

(A) *Coastal Residential Use Types.*

*Family Residential: Dwelling Groups;*

*Family Residential: Cluster Development;*

*Farm Employee Housing;*

*Farm Labor Housing.*

(B) *Coastal Civic Use Types.*

*Alternative Energy Facilities: On-site;*

*Alternative Energy Facilities: Off-site;*

*Community Recreation;*

*Major Impact Utilities;*

*Minor Impact Utilities.*

(C) *Coastal Commercial Use Types.*

*Animal Sales and Services: Auctioning;*

*Animal Sales and Services: Horse Stables;*

*Animal Sales and Services: Kennels;*

*Animal Sales and Services: Veterinary (Large Animals);*

*Commercial Recreation: Outdoor Sports and Recreation;*

*Cottage Industries.*

(D) *Coastal Agricultural Use Types.*

*Animal Waste Processing;*

*Forest Production and Processing: Commercial Woodlots;*

*Forest Production and Processing: Limited;*

*Horticulture;*

*Packing and Processing: General;*

*Packing and Processing: Fisheries Byproducts.*

(E) *Coastal Open Space Use Types.*

*Active Recreation.*

(F) *Coastal Extractive Use Types.*

*Mining and Processing;*

*Onshore Oil and Gas Development Facilities.*

(G) *Coastal Natural Resource Use Types.*

*Watershed Management. (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.020 Minimum Lot Area for RL Districts.**

*One hundred sixty (160) acres. (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.025 Maximum Dwelling Density for RL Districts.**

*One (1) unit per one hundred sixty (160) acres except as provided pursuant to Section 20.316.020 (Farm Employee Housing), Section 20.316.025 (Farm Labor Housing), Section 20.456.015 (Accessory Uses), Section 20.460.035 (Use of a Trailer Coach) and Section 20.460.040 (Family Care Unit). In no case shall there be more than four (4) dwellings per parcel whether single family residential, farm employee housing, farm labor housing, accessory living unit or family care unit, except where Chapter 20.412 "Clustering Development Combining District" applies. (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.030 Minimum Front, Rear and Side Yards for RL Districts.**

*Fifty (50) feet each. (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.035 Setback Exception.**

*Any nonconforming parcel which is less than five (5) acres shall observe a minimum front, side and rear yard of twenty (20) feet. (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.040 Building Height Limit for RL Districts.**

*Twenty-eight (28) feet above natural grade for non-Highly Scenic Areas and for Highly Scenic Areas east of Highway One. Eighteen (18) feet above natural grade for Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Thirty-five (35) feet above natural grade for uninhabited accessory structures not in an area designated as a Highly Scenic Area (See Section 20.504.015(C)(2)). (Ord. No. 3785 (part), adopted 1991)*

**Sec. 20.368.045 Maximum Lot Coverage for RL Districts.**

*Twenty (20) percent for parcels less than two (2) acres in size. Fifteen (15) percent for parcels from two (2) acres to five (5) acres in size. Ten (10) percent for parcels over five (5) acres in size. (Ord. No. 3785 (part), adopted 1991)*

**CZC Section 20.456.015** “Residential and Agricultural Use Types” specifies the accessory buildings and uses permissible in the district, as follows (emphasis added)

*Subject to the restrictions and limitations of this Chapter, including the granting of a Coastal Development Permit, where applicable, the following accessory buildings and uses shall be permitted in all zoning districts which allow a single-family residence:*

- (A) Private Garages.*
- (B) Children's playhouse, patios, porches, gazebos, etc.*
- (C) Windmills.*
- (D) Shops (non-business purposes).*



(E) Barns.

(F) *Private swimming pools and hot tubs (not subject to setback requirements in the side or rear yards of any district).*

(G) Accessory Living Unit. Not more than one accessory living unit for each legal parcel.

...

(J) *Travel Trailer or Camper. The maintaining of one (1) travel trailer or camper in dead storage where it is not used for occupancy or business purposes. All stored travel trailers or campers in excess of one (1) shall be stored out of sight from a public right-of-way. The connection, for any continuous period exceeding forty-eight (48) hours, of any utility or service such as electrical, water, gas or sewage to the travel trailer or camper shall be prima facie evidence that it is being used for habitation or business purposes.*

...

(O) *Other Necessary and Customary Uses. Accessory non-residential uses and nonresidential structures, in addition to those identified above, which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to a principal permitted use, as determined by the Director of Planning and Building Services. (Ord. No. 3785 (part), adopted 1991)*

**Coastal Zoning Code (CZC) Section 20.532.095** “Required Findings for All Coastal Development Permits” states:

- (A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish 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 this Division 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.*

...

**Coastal Zoning Code (CZC) Section 20.532.100** “Supplemental Findings” states in applicable part the following:

*In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:*

**(A) Resource Protection Impact Findings.**

**(1) Development in Environmentally Sensitive Habitat Areas.**

...

**(2) Impact Finding For Resource Lands Designated AG, RL and FL. No permit shall be granted in these zoning districts until the following finding is made: (a) The proposed use is compatible with the long-term protection of resource lands.**

...

**(B) Agricultural Land Impact Findings.**

...

**(2) *Impact Findings for Conversion of Prime Agricultural or Williamson Act Contracted Lands.*** Conversion of prime land and/or land under Williamson Act Contract to non-agricultural uses is prohibited, unless all of the following findings are made. For the purposes of this section, conversion is defined as either development in an AG or RL designation not classified as a residential, agricultural, or natural resource use type or the amending and rezoning of the Coastal Element Land Use Designation AG or RL to a classification other than AG or RL including amendments to add visitor-serving facilities.

(a) All agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable;

(b) Agricultural use of the soils cannot be successfully continued or renewed within a reasonable period of time, taking into account economic, environmental, social and technological factors;

(c) Clearly defined buffer areas are established between agricultural and non-agricultural uses;

(d) The productivity of any adjacent agricultural lands will not be diminished, including the ability of the land to sustain dry farming or animal grazing;

(e) Public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality; and

(f) For parcels adjacent to urban areas, the viability of agricultural uses is severely limited by contacts with urban uses, and the conversion of land

would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

**(3) Impact Findings for Conversion of Non-prime Agricultural Lands.**

*Conversion of all other agricultural lands to non-agricultural uses will be prohibited unless it is found that such development will be compatible with continued agricultural use of surrounding lands and at least one of the following findings applies:*

*(a) Continued or renewed agricultural use is not feasible as demonstrated by an economic feasibility evaluation prepared pursuant to Section 20.524.015(C)(3);*

*(b) Such development would result in protecting prime agricultural land and/or concentrate development.*

*(a) Continued or renewed agricultural use is not feasible as demonstrated by an economic feasibility evaluation prepared pursuant to Section 20.524.015(C)(3);*

*(b) Such development would result in protecting prime agricultural land and/or concentrate development.*

**Coastal Zoning Code (CZO) Section 20.524.015(C)(3) states:**

*(3) An economic feasibility evaluation prepared by a land use economist with expertise in the economics of agriculture which shall contain the following:*

*(a) An analysis of the gross revenue from the agricultural products grown in the area for the five (5) years immediately preceding the date of the filing of proposed conversion and/or division; and*

*(b) An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for five years immediately preceding the date of the filing of the proposed conversion and/or division.*

...

## **Appendix H**

### **Mendocino County LCP Policies Regarding Geologic Hazards**

LUP Policy 3.4-1 states:

*The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.*

LUP Policy 3.4-7 states:

*The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:*

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*

*All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report.*

LUP Policy 3.4-8 states:

*Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.*

LUP Policy 3.4-9 states:

*Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.*

LUP Policy 3.4-10 states the following (emphasis added):

*No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.*

LUP Policy 3.4-12 states the following (emphasis added):

*Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following full environmental geologic and engineering review. This review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other adverse environmental effects. The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access, and shall minimize visual impacts through all available means.*

Mendocino County Coastal Zoning Code (CZC) Section 20.500.010 states the following (emphasis added):

*(A) The purpose of this section is to insure that development in Mendocino County's Coastal Zone shall:*

*(1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*

*(2) Assure structural integrity and stability; and*

*(3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Ord. No. 3785 (part), adopted 1991)*

Section 20.500.015 of the Coastal Zoning Code states:

**(A) Determination of Hazard Areas.**

*(1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*

*(2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and blufftop lots and areas delineated on the hazard maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

**(B) Mitigation Required.** *Where mitigation measures are determined to be necessary, the foundation, construction and earthwork shall be supervised and certified by a licensed engineering geologist or a registered civil engineer with soil analysis expertise who shall certify that the required mitigation measures are incorporated into the development. (Ord. No. 3785 (part), adopted 1991)*

Sec. 20.500.020, “Geologic Hazards - Siting and Land Use Restrictions,” states in applicable part (emphasis added):

**(A) Faults.**

*(1) Residential, commercial and industrial structures shall be sited a minimum of fifty (50) feet from a potentially, currently or historically active fault. Greater setbacks shall be required if warranted by geologic conditions.*

*(2) Water, sewer, electrical and other transmission and distribution lines which cross fault lines shall be subject to additional standards for safety including emergency shutoff valves, liners, trenches and the like. Specific safety measures shall be prescribed by a licensed engineering geologist or a registered civil engineer.*

**(B) Bluffs.**

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

$$\text{Setback (meters)} = \text{structure life (75 years)} \times \text{retreat rate (meters/year)}$$

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

*(2) Drought tolerant vegetation shall be required within the blufftop setback.*

*(3) Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*

**(D) Landslides.**

*(1) New development shall avoid, where feasible, existing and prehistoric landslides. Development in areas where landslides cannot be avoided shall also provide for stabilization measures such as retaining walls, drainage improvements and the like. These measures shall only be allowed following a full environmental, geologic and engineering review pursuant to Chapter 20.532 and upon a finding that no feasible, less environmentally damaging alternative is available.*

**(E) Erosion.**

*(1) Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses. Environmental geologic and engineering review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other significant adverse environmental effects.*

## **Appendix I Mendocino County LCP Policies Regarding Visual Resources**

Section 30251 of the Coastal Act has been specifically incorporated into LUP

**Policy 3.5-1** of the Mendocino LCP and states in part (emphasis added):

...

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

**Policy 3.5-3** of the certified LUP states as follows, in applicable part (emphasis added):

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

...

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

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

**CZC Section 20.504.020** states, in applicable part, as follows (emphasis added):

...

*(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal*



areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

**LUP Policy 3.5-4** states the following (emphasis added):

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

...

Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area...

**LUP Policy 3.5-5** states as follows, in applicable part (emphasis added):

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

...

**LUP Policy 3.5-8** states as follows (**emphasis added**):

Power transmission lines shall be located along established corridors. Elsewhere transmission lines shall be located to minimize visual prominence. Where overhead transmission lines cannot be located along established corridors, and are visually intrusive within a "highly scenic area", the lines shall be placed underground west of Highway One and below ridgelines east of Highway One if technically feasible. Certain lines shall, over time, be relocated or placed underground in accord with PUC regulations (see Big River Planning Area Policy 4.7-3 and Policy 3.11-9). Distribution lines shall be underground in new subdivisions.

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

(A) The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting:

...

(2) *Portions of the Coastal Zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusion of certain areas east of Highway 1...*

(C) *Development Criteria.*

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

...

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

...

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

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

...

(7) *Minimize visual impacts of development on terraces by the following criteria:*

- (a) *Avoiding development, other than farm buildings, in large open areas if alternative site exists;*
- (b) *Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*
- (c) *Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*
- (d) *Design development to be in scale with rural character of the area.*

...

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

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

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

**LUP Policy 3.5-15** states in applicable part (emphasis added):

*Installation of satellite receiving dishes shall require a coastal permit. In highly scenic areas, dishes shall be located so as to minimize visual impacts. Security lighting and floodlighting for occasional and/or emergency use shall be permitted in all areas. Minor additions to existing nightlighting for safety purposes shall be exempt from a coastal permit. In any event no lights shall be installed so that they distract motorists and they*

shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible.

**CZC Section 20.504.035** (“Exterior Lighting Restrictions”) states as follows, in applicable part (emphasis added):

(A) *Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone.*

(1) *No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser.*

(2) *Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.*

(3) *Security lighting and flood lighting for occasional and/or emergency use shall be permitted in all areas.*

(4) *Minor additions to existing night lighting for safety purposes shall be exempt from a coastal development permit.*

(5) *No lights shall be installed so that they distract motorists.*

## **Appendix J**

### **Mendocino County LCP Policies Regarding Stormwater Runoff**

LUP Policy 3.1-25 states:

*The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.*

CZC Section 20.492.015 sets erosion control standards and states in part:

*(A) The erosion rate shall not exceed the natural or existing level before development.*

*(B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.*

*(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily. In environmentally sensitive habitat areas, the revegetation shall be achieved with native vegetation...*

*(D) Mechanical or vegetative techniques to control erosion may be used where possible or necessary providing that they are fully discussed in the approved development plan.*

*(E) To control erosion, development shall not be allowed on slopes over thirty (30) percent unless adequate evidence from a registered civil engineer or recognized authority is given that no increase in erosion will occur... [Emphases added]*

CZC Section 20.492.020 sets sedimentation standards and states in part:

A. *Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.*

B. *To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*

C. *Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.*

D. *Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection. [Emphasis added.]*

CZC Section 20.492.025 sets runoff standards and states in applicable part:

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

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

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

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

## **Appendix K Information Regarding House Sizes in Surrounding Area**

### **Size of Residential Developments Near Agricultural Lands**

Commission staff reviewed available records of surrounding land use and development on both agricultural lands (Range Lands designation) and residential lands (Rural Residential designation) in the vicinity of the proposed development. Twenty-three contiguous parcels, located east of Highway One and including the subject parcel, are similarly-designated agricultural lands and range in size from less than one acre to 120 acres. These parcels collectively comprise slightly less than 700 contiguous acres of agricultural land. Details about current agricultural practices on the surrounding lands are limited. Many of the parcels were once held in common ownership but have since been transferred to various trustees, and some have subsequently been sold. Many of the surrounding parcels are held in common contiguous ownership by just a handful of owners. For example, of the 23 contiguous agricultural parcels, 12 parcels that share the same ownership and comprise approximately 364 acres (52% of total agricultural lands) occur adjacent to the subject parcel, of which some are actively leased to a cattle rancher for grazing. Slightly south of the subject parcel, another 3 parcels that comprise just over 100 acres (14% of total agricultural lands) are held by one ownership, and one of these 3 parcels (APN 123-360-07) holds Type II Agricultural Preserve designation. One parcel that totals approximately 120 acres (17% of total agricultural lands) forms the southernmost extent of agricultural lands in the Albion area. Thus, 83% of the agricultural lands in the Albion area are held by three owners, two of whom are known to actively manage at least a portion of the lands in continued agricultural production.

Detailed studies that evaluate surrounding home sizes and land values (such as the 2004 AFT report and the 2003 Strong Associates report) are not available for Mendocino County. Few records are available for comparison of surrounding developments. County permit history shows one 2,500-square-foot house plus 780-square-foot garage plus barn and personal horse arena authorized on three contiguous Range Lands-designated parcels (APNs 123-180-02, 123-200-10, and 123-350-08) in 2008 and constructed in 2009, however there is no assessed value for improvements as of 2011 records. According to parcel data from County records accessed through RealQuest<sup>30</sup> online subscription services, the most recent sales of agricultural-designated lands in the area is the applicant's 4.17-acre parcel, which the applicant purchased in 2005 for \$500,000.

Several residential developments currently surround the agricultural lands on lands zoned for residential uses. Few records are available for comparison of these surrounding developments. Many of these parcels have no record of issuance of a coastal development permit and it is unclear how many of these developments predate the Coastal Act. West of Highway One, parcels are zoned for Rural Residential use at densities ranging from 1 acre minimum to 10 acre minimum parcel sizes. These lands include the Pacific Reefs subdivision located southwest of the subject parcel on the west side of Highway One and immediately south of Salmon Creek.

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<sup>30</sup>CoreLogic Realquest subscription services for current parcel data accessed at [www.RealQuest.com](http://www.RealQuest.com)

The subdivision contains 41 parcels ranging in size from 1 to 3 acres. With the exception of parcels that extend to the bluff edge, most parcels within this subdivision are exempt from the requirement to obtain a coastal development permit for the construction of a single family dwelling under the terms of categorical exclusion orders issued by the Commission to the County, and therefore details regarding house size are limited. However, according to data accessed from Zillow Real Estate Network<sup>31</sup>, three homes within this subdivision ranging in size from 2,446 square feet to 2,840 square feet (plus garages) on approximate 1-acre lots have sold between December 2010 and December 2011, with sale prices ranging from \$699,000 to \$915,000 (two of the homes were bluff-top ocean-front parcels). One bluff-top one-acre parcel with a 1,240-square-foot house (plus 264-square-foot garage) is currently for sale at \$600,000. A handful of larger Rural Residential-zoned parcels occur to the northwest and southwest of the subject parcel. Two of these adjacent bluff-top parcels are currently for sale less than ½-mile from the subject parcel. These two adjacent undeveloped lots are currently advertised for sale with County-approved coastal development permits for \$1,450,000 (12 acres) and \$1,200,000 (11 acres).

According to RealQuest<sup>32</sup> parcel data, a three-acre bluff-top parcel located north of the Pacific Reefs subdivision and west of Highway One that contains a 2,183-square-foot home and 676-square-foot garage sold in 2004 for \$750,000. East of Highway One and north of Albion Ridge Road, a 3,525-square-foot house with 472-square-foot garage on a 1-acre parcel sold in 2006 for \$825,000, and a one-acre parcel with a 1,888-square-foot house and 576-square-foot garage approved in 2004 had a County-assessed value of \$621,000 in 2011.

The available information thus shows the average house size in the surrounding area is 2,354 square feet, with a median house size of 2,315 square feet.

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<sup>31</sup> Accessed July 2012 at [http://www.zillow.com/homes/for\\_sale/Albion-CA/#/homes/for\\_sale/Albion-CA/8334\\_rid/39.217043,-123.747575,39.199419,-123.788002\\_rect/14\\_zm/1\\_rs/](http://www.zillow.com/homes/for_sale/Albion-CA/#/homes/for_sale/Albion-CA/8334_rid/39.217043,-123.747575,39.199419,-123.788002_rect/14_zm/1_rs/)

<sup>32</sup> CoreLogic Realquest subscription services for current parcel data accessed at [www.RealQuest.com](http://www.RealQuest.com)