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# Th22b

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## **STAFF REPORT: APPEAL *DE NOVO***

**Appeal No.:** **A-1-MEN-10-015**

**Applicants:** **Barbara Bethel and James Hupp**

**Agent:** Amy Wynn, Amy Wynn Coastal Development Permits

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

**Project Description:**  
(as approved by the County): Modify coastal development permit granted for development of a single-family residence to (1) substitute guest bedroom for previously approved guest cottage, (2) alter approved building footprint and increase total development from 4,229 sq. ft. to 4,563 sq. ft., (3) add additional windows, and (4) authorize temporary occupancy of travel trailer during construction.

**Staff Recommendation:** Denial.

## **SUMMARY OF STAFF RECOMMENDATION *DE NOVO*: DENIAL**

Staff recommends that the Commission DENY the coastal development permit for the proposed material modification to the previously-approved CDP on the basis that the project, as proposed by the applicant, is inconsistent with Mendocino County's certified LCP regarding the protection of visual resources including, but not limited to LUP Policy 3.5-1 and CZC Section 20.504.015.

The project site is located within a designated "highly scenic area." The certified LCP requires in part that new development in highly scenic areas be subordinate to the character of its setting. The site is prominently visible from the historic Town of Mendocino and the adjoining Mendocino Headlands State Park. These viewing areas are major visitor destinations along the Mendocino coast and are visited by many thousands of visitors every year. The residence is also visible from turnouts on Highway 1, and a portion of Van Damme State Park at Brewery Gulch.

A partially-built structure is currently developed at the site that substantially deviates from the previously-approved Coastal Development Permit Modification (CDPM) # 98-2001(2005) authorized by the County in January 2006. The modifications proposed in the after-the-fact request result in an increase in total development from 4,229 square feet to 4,563 total square feet. More significantly, there is an increase in both the size and number of windows on the western elevation from the previously-approved 18 (plus a gable end window) to 28 (plus a gable end window). The window changes result in an approximate 100% increase in window glazing (from 426 ft<sup>2</sup> to 839 ft<sup>2</sup>) on the western elevation, which is the side of the house that is particularly prominent from major viewing areas. The large amount of window glazing included in the proposed amendment reflects sunlight in a glaring manner at certain times of the day, greatly increasing the prominence of the development against the landscape. In addition, even at times of the day when glare is not a problem, the flat surface of the glass contrasts with the siding and roofing materials of the structure. The contrast in appearance draws attention to the structure, causing the development as it is proposed to be amended to be insubordinate to the character of its setting. In addition, the County staff report notes that the trim and window frame color chosen by the applicant and described as "Mendocino Blond" "contrasts with the siding and is a prominent feature visible from the Town of Mendocino and Headlands State Park," also causing the amended development to be insubordinate to the character of its setting.

The County's approval included modified final conditions requiring planting of vegetation to screen the structure with a requirement that a minimum of 50% of all required landscaping be planted, staked and fenced for protection prior to a building inspection. While vegetative screening may aid in buffering the view of the approved amended development, no screening vegetation currently exists to visually buffer the development. Furthermore, due to the location within 150 feet of the top of the seaward face of the coastal bluff, strong winds and salt spray will inhibit and delay the successful growth of vegetation. If successful at all, planted vegetation will take a few years to a decade or more to fully achieve a height that functions as screening. Therefore, even if vegetation is planted immediately, it will not fully mitigate the visual impacts that continue to occur, and if the vegetation is unsuccessful, there will be no other recourse to ensure conformance with LUP Policy 3.5-1 and CZC Section 20504.015.

Denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment backed

expectations of the subject property. Denial of this application to develop the project site to the extent and manner proposed by the applicant would still leave the applicant feasible alternatives to use the property in a manner that is both economically beneficial as well as consistent with the certified LCP, including developing the project as previously authorized by the County prior to the current permit amendment request.

Commission staff recommends **denial** of Appeal No. A-1-MEN-10-015.

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## APPENDICES

- [Appendix A](#) – List of Substantive File Documents
- [Appendix B](#) – Submittal of Additional Information by the Applicant
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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 – Coastal Records Project Aerial Image
- Exhibit 7 – Western Elevation of Approved CDPM 98-2001 (2005)
- Exhibit 8 – Appeal
- Exhibit 9 – Notice of Final Local Action & County Staff Report
- Exhibit 10 – Visual Simulations of Vegetative Screening Submitted by Applicant’s Agent
- Exhibit 11 – Applicant’s Analysis of Glazing Authorized by CDPM 98-2001 (2005)
- Exhibit 12 – Commission Staff’s Analysis of Glazing Authorized by CDPM 98-2001 (2005)
- Exhibit 13 – County Determination of Glazing Authorized by CDPM 98-2001 (2005)
- Exhibit 14 – Correspondence Between Applicant and County
- Exhibit 15 – Correspondence from Applicant following Substantial Issue Hearing
- Exhibit 16 – Photos of Development from Project Site and Vicinity

## I. MOTION AND RESOLUTION

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to the standards set forth in the certified Local Coastal Program and **deny** the permit. The proper motion is:

### **Motion:**

*I move that the Commission approve Coastal Development Permit No. A-1-MEN-10-015 for the development proposed by the applicant.*

Staff recommends a **NO** vote on the foregoing motion. Failure of this motion will result in denial of the permit amendment 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 **denies** the proposed amendment to the coastal development permit for the proposed development on the ground that the development as amended will not conform with the policies of the certified LCP. Denial of the proposed amended development is an action to which the California Environmental Quality Act does not apply.*

## II. 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 as amended is consistent with Mendocino County's certified Local Coastal Program (LCP).

After the County approved a material modification to a previously granted coastal development permit, one appeal was filed with the Commission's North Coast District Office on April 21, 2010 from Commissioners Mary Shallenberger and Richard Bloom (**Exhibit No. 8**). The appeal contended that the approved amendment to the coastal development permit was inconsistent with the policies and standards of the Mendocino County certified Local Coastal Program (LCP) relating to protection of visual resources. On June 9, 2010, the Coastal Commission found that the appeal of the County of Mendocino's approval of CDPM No. 98-2001 (2009) 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 amendment de novo. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the amendment 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 subject 1.06-acre parcel is located on a coastal terrace knoll situated just 150 feet inland from Mendocino Bay. As the crow flies, the parcel is situated approximately 0.75 mile across Mendocino Bay and southeast of the Town of Mendocino, and approximately 1.5 miles south of the Town of Mendocino by car.

The coastal terrace parcel is situated at an average elevation of about 170 feet (190 feet at its highest point), with moderately to steeply sloping ground extending down to an elevation of about 100 feet. The property is located on the east side of Frontage Road 500B (County Road #500B), approximately 50 feet southeast of its intersection with Highway One at 9401 Brewery Gulch Road (aka Road 500B) (APN 119-320-04).

The project site is located within a designated “highly scenic area” as described in LUP Policy 3.5-3 and as mapped on LUP Map No. 17. The site is visible from the historic Town of Mendocino and the adjoining Mendocino Headlands State Park. These viewing areas are major visitor destinations along the Mendocino coast and are visited by many thousands of visitors every year. The residence is also visible from turnouts on Highway 1, and a portion of Van Damme State Park at Brewery Gulch.

As described further below, in 2002 Mendocino County authorized the development of a 3,900-square-foot single family residence on the subject property under Coastal Development Permit (CDP) No. 98-01. According to a botanical survey report dated July 2, 2001 that was prepared for the original permit, the site at that time consisted predominantly of Northern Bishop Pine Forest and Coastal Scrub plant community types. In addition to Bishop pine (*Pinus muricata*), tree overstory at the site includes Douglas-fir (*Pseudotsuga menziesii*) and shore pine (*Pinus contorta* ssp. *contorta*). Along the slopes on the property boundaries, scrub-shrub species such as coyote brush (*Baccharis pilularis*), poison-oak (*Toxicodendron diversilobum*), and thimbleberry (*Rubus parviflorus*) occur. Several trees were removed after 2006 as part of the development authorized by Coastal Development Permit Modification (CDPM) # 98-2001(2005), however the County staff report indicates approximately 14 additional trees were removed from the site without the benefit of a permit.

## **D. BACKGROUND**

### **CDP 98-01**

In 2002, Mendocino County authorized the development of a two-bedroom, 3,900-square-foot single family residence with 600-square-foot garage (4,500 square feet total) on the subject property under CDP No. 98-01. The maximum average height<sup>1</sup> of the structure authorized by CDP 98-01 was 16’2” as measured from natural grade. The permit authorized removal of two bishop pine trees, and included Special Condition No. 1 that required in part that: (a) any other screen trees that remain and are damaged during construction shall be replaced at a ratio of 3:1;

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<sup>1</sup> “Building height,” as defined in Mendocino County CZC Section 20.308.025(L), “means the vertical distance from the average ground level of the building to the highest point of the roof ridge or parapet wall. (Ord. No. 3785 (part), adopted 1991)”

(b) no less than seven evergreen trees (such as Bishop pine or shore pine) be planted in a location specified in the permit to provide maximum screening of the northern and western façade as viewed from Mendocino Village; and (c) the required final landscape plan shall be implemented and planted prior to the final building inspection or occupancy, whichever comes first. The exterior house materials included dark brown natural redwood shingles, “greenish brown copper” roofing; and non-reflective windows “with greenish brown bronze frames, wooden jambs.” The proposed design included a concrete chimney with a surface “made with aggregate from the former on-site rock quarry (tannish brown). However, the County required as Special Condition No. 2 that the applicant submit a revised color for the chimney for the review and approval of the Coastal Permit Administrator (CPA) “to minimize contrast and to be visually compatible with the surroundings (i.e. dark browns or dark greens). Special Condition No. 3 required in part that “any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.” The original permit was issued to the applicant on May 30, 2002.

The Commission notes that specified incidental development normally associated with single family residences such as additions to the residence, construction of outbuildings, decks and patios, or installation of additional landscaped areas is exempt from the need to obtain a coastal development permit under Section 30610(a) of the Coastal Act. The Commission further notes that 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, any improvements to a single family residence are not exempt from permit requirements and would require either a coastal development permit amendment or a new CDP.

#### **CDPR 98-01(04)**

In 2004 prior to expiration of the original permit, the County authorized the renewal of CDP 98-01 and additionally authorized the assignment of the permit to a new owner, Barbara Bethel, and indicated there were no changed circumstances that would warrant a change to the project or a new hearing. The renewal extended the permit expiration to October 28, 2005.

#### **CDPM 98-01(05)**

In 2005, applicant Barbara Bethel submitted an application to the County to modify the original project design. The modification request included the following changes as described on the

application form: (1) reduce house size from 3,900 square feet plus 600-square-foot garage to 2,900 square feet with a maximum height of 18 feet plus 689-square-foot garage; (2) add a 640-square-foot guest cottage; (3) change style from contemporary to craftsman; (4) install septic, water, and underground utilities; (5) change roof to composite slate roof with black, green, dark grey colors; (6) use wood shake siding with oil stained “weathered shake” color; (7) use cultured stone lower siding on house and columns with tan color; (8) use wood for trellis and entry covers with shake stain color; and (9) install “Arroyo craftsman” down cast lights. The proposed modifications including the residence, garage, and guest cottage would result in a total development footprint of 4,229 square feet. In addition, the modification requested removal of 12-14 trees over 12 inches in diameter from the proposed building footprint. The project also proposed grading of 180 cubic yards of material, of which 50 cubic yards would be relocated onsite. The Coastal Permit Administrator approved the proposed modifications consistent with County staff recommendations on January 26, 2006.

The County included Special Condition No. 3 requiring the applicant to comply with all requirements set forth by the project engineer (KPFF Engineering) and specified that the design “shall not deviate from this plan unless a written modification is submitted by the engineer and approved by the Coastal Permit Administrator.” To protect visual resources, Special Condition No. 4 required all landscaping to be installed prior to final clearance of the building permits for the residence, or occupancy of the residence, whichever occurs first. The condition further required that any tree that became diseased or died should be replaced on a 3:1 ratio, and that “any future tree removal on the site shall require prior authorization from the Planning Division or, if it constitutes “major vegetation removal,” shall require a coastal development permit amendment.” In addition, Special Condition No. 5 required the following:

*All exterior siding and trim finish colors shall match those specified in the coastal development permit application. All exterior lighting fixtures shall match those submitted with the permit application and be downcast and shielded. Any changes shall be subject to the review and approval by the CPA for the life of the project.*

### **Permit Deviations**

The local record indicates that during review of the Building Permit application BF 2006-1024, the Mendocino County project coordinator that processed the 2006-approved CDP amendment [(CDPM 98-01(05))] observed deviations between the submitted building permit application and the 2006-approved project. On December 21, 2006, the staff of the County Planning Division of the Department of Planning and Building Services submitted a letter to the applicant (page 5 of **Exhibit 14**) that states in part the following:

*It appears that the structure applied for in the building permit fails to meet the approved CDP plans in the following manner:*

- *The building footprint does not match (the guest cottage is now an attached guest bedroom, the open breezeway is now an enclosed walkway, the angle of the structure is different than that of the approved plans).*
- *The amount of glass has increased and is considered excessive.*
- *The setbacks are not noted on the site plan.*

- *The landscaping area is not located in the originally-approved area, where it is imperative that it be located.*
- *The “doghouse” structure covering the well house was not in the original approval.*
- *The exterior lighting appears to be excessive.*

*Please submit plans that reflect what was approved in your Coastal Development Permit CDP-98-01(05), or apply for a material modification to your CDP.*

*Staff would reiterate the importance of retaining the visual integrity of the site, as any changes to the proposed development would require adherence to Special Condition #5, which states:*

*All exterior siding and trim finish colors shall match those specified in the coastal development permit application. All exterior lighting fixtures shall match those submitted with the permit application and be downcast and shielded. **Any changes shall be subject to the review and approval by the CPA for the life of the project.***

The Building Inspection Division of the Department of Planning and Building Services issued the building permit on June 7, 2007. However, the applicant did not apply for a CDP modification (i.e., amendment) to the permit to address the issues raised by the Planning Division in their December 21, 2006 letter. According to the County’s building inspection record, the applicant commenced construction in March 2008. The County staff report prepared for the current permit modification request states the following:

*Subsequent to this [December 21, 2006] letter, Planning signed off on the submitted building plans without a record as to how the deviations from the CDP plans were rectified. As construction progressed it became clear to PBS that what was being built deviated further from what was submitted on the building plans. The changes in construction design prompted the applicant to apply for the subject modification in order to complete construction.*

In 2009, at the request of the County, the applicant submitted an application for a coastal permit modification to request authorization for the deviations that had been constructed to date. The applicant met with County Planning staff on October 28, 2009. In a November 5, 2009 letter to Mendocino County Planning and Building Department (**Exhibit 14**), the applicant asserted that: (1) “the construction drawings were approved by the Mendocino Planning and Building departments without needing any CDP modification,” (2) after the house was staked for construction, the applicant decided to lower the elevation of the interior floor and add more windows, (3) from the applicant’s perspective, the changes blend the house into the adjoining hillside, and (4) the amendment for the modifications they made should be processed as a minor modification.

On November 12, 2009, County staff submitted a letter responding to the applicant’s letter of November 5, 2009 acknowledging that the approval of the building plans and issuance of the building permit was a staff mistake, but indicating that the development must still comply with the Mendocino County Coastal Zoning Code. The letter states (**Exhibit 14**) that “all proposed building elevations have been significantly altered from the approved modification in 2005,



namely the addition of windows.” The letter further noted that the square footage of the proposed plans has increased the bulk of the proposed residence and altered the footprint requiring that the permit amendment be processed as a material modification to the permit. In the letter, County staff highlighted Special Condition Nos. 3, 4, and 5 of CDP 98-01 (05) that required the applicant to seek approval by the Coastal Permit Administrator *prior* to changing development plans.

#### **E. PERMIT AMENDMENT DESCRIPTION**

A partially-built structure is currently developed at the site that substantially deviates from the previously-approved CDPM # 98-2001(2005) authorized by the County in January 2006. As described above, the applicant submitted an application for an after-the-fact permit amendment authorization of the deviations in 2009.

The modifications proposed in the after-the-fact request filed by the County as CDPM08-2001(2009), would add another 334 square feet to the previously approved building, resulting in an increase in total development from 4,229 square feet to 4,563 total square feet. In addition, there is “a significant increase” in both the size and number of windows on the western elevation from the previously-approved 18 (plus a gable end window) to 28 (plus a gable end window). The window changes result in an approximate 100% increase in window glazing (from 426 ft<sup>2</sup> to 839 ft<sup>2</sup>) on the western elevation, which is the side of the house that is particularly prominent from major viewing areas. The partially-built structure is visible in the 2009 California Coastal Records Project images numbered 200903160 and 200903159, available at <http://www.californiacoastline.org>.

In addition to increases in window number and surface area that affect whether the development is subordinate to the character of the setting, the County staff report notes submitted March 15, 2010 that the trim and window frame color chosen by the applicant and described as “Mendocino Blond” “contrasts with the siding “and is a prominent feature visible from the Town of Mendocino and Headlands State Park.”

The after-the-fact permit amendment also requests after-the-fact authorization to enclose a portion of the previously approved patio and attach what was previously-authorized as a detached guest cottage as an addition to the house with a separate entry from the house. The applicant additionally proposes to retain a wet bar installed in the cottage space.

After receiving the CDP amendment request, the County required the submittal of a revised grading plan from the applicant’s engineer to evaluate changed site conditions. The County staff report indicates that the changes to the house design amount to 290 cubic yards of excavated material, with approximately 90 cubic yards to be re-distributed on site.

The County additionally required the submittal of an updated landscape plan to evaluate the removal of additional trees that occurred without the benefit of a permit. According to the County staff report, an additional 14 trees were removed that were not authorized by CDPM 98-01 (05). County staff determined that eight trees were removed along the southwestern elevation. The remaining six were removed in the vicinity of the septic field; however County staff indicated that some trees originally authorized for removal along the driveway were not removed.

On March 25, 2010 the County of Mendocino approved Coastal Development Permit Modification (CDPM) #98-2001(2009). The project approved by the County included modified

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

For the purposes of the Commission's *de novo* review, the applicant has submitted supplemental information in support of the application (**Exhibit Nos. 11 and 15, and Appendix B**). At the request of Commission staff, the applicant has also submitted an alternatives analysis to evaluate whether redesigning the development with fewer windows and darker trim colors would reduce visual impacts to a greater degree than the approved project. However, the applicant has indicated the project submitted to the County remains the preferred alternative and the proposed project remains unchanged from that submitted to the County.

#### **F. ANALYSIS OF LCP CONSISTENCY WITH VISUAL RESOURCES POLICIES**

As discussed below, the Commission denies the proposed amended development because it is inconsistent with certified LCP provisions that protect visual resources. These inconsistencies cannot be resolved by permit conditions.

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. Many appeals from Mendocino County raise issues of visual resource protection, and in acting on these appeals *de novo*, the Commission has denied proposed development inconsistent with the visual resource protection policies.

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 proposed development is within a designated highly scenic area and the primary visual issue raised by the proposed project is whether the development would be visually subordinate with its setting. The residence is visible from several major public viewing points along the Mendocino coast including the Town of Mendocino, Mendocino Headlands State Park, turnouts on Highway 1, and a portion of Van Damme State Park at Brewery Gulch. As noted above, the Coastal Development Permit Modification was submitted after the fact and a partially built structure is currently developed at the site. The development site is particularly prominent from major viewing areas, especially looking south across Mendocino Bay from the historic Town of Mendocino and the adjoining Mendocino Headlands State Park, which are major visitor destinations along the Mendocino coast. These viewing areas are visited by many thousands of visitors every year.

#### **Window Glazing**

A principal factor that affects how the proposed amended development conforms with the requirements of the LCP that development be visually compatible with the surrounding area and subordinate to the character of its setting is the amount and orientation of windows. Windows are a much more reflective surface than siding material and can reflect sunlight in a glaring

manner at certain times of the day, greatly increasing the prominence of the development against the landscape. Even at times of the day when glare is not a problem, the flat surface of the glass contrasts with the siding and roofing materials of a structure. The contrast in appearance draws attention to the structure, making it insubordinate to the character of its setting. The proposed amended development also would result in an increase in both the size and number of windows on the western elevation from the previously-approved 18 (plus a gable end window) to 28 (plus a gable end window). The window changes result in an approximate 100% increase in window glazing (from 426 ft<sup>2</sup> to 839 ft<sup>2</sup>) on the western elevation alone, which is the side of the house that is particularly prominent from major viewing areas. The windows greatly affect the visual prominence of the development. The partially-built structure is visible in the 2009 California Coastal Records Project images numbered 200903160 and 200903159, available at <http://www.californiacoastline.org>.

Commission staff visited the site on May 13, 2010, following the Commission's appeal of the project on April 10, 2010, and observed that the applicant has continued to construct the residence without the necessary coastal development permit (**Exhibit 16**). Because the windows have already been installed, the Commission is able to evaluate the project site several times from various vantage points, and in particular from Mendocino Headlands State Park. The views from Mendocino Headlands capture the backdrop of tree-lined hills against the coastal bluffs that drop into the brilliant blue waters of Mendocino Bay. California State Parks website<sup>2</sup> describes the "scenic wonder" of the Mendocino Headlands that "with its unique blend of gentle trails, rugged coastline, secluded beaches and timeless history surrounds the picturesque Village of Mendocino on three sides. Miles of trails wind along the cliffs, giving the casual explorer spectacular views of sea arches and hidden grottos..."

The Commission finds that the contrast and glare of the mass assemblage of windows can be particularly detracting from these picturesque views, especially at those times of the day when the weather is clear and the sun is bright. While the applicant has used "low-glare" windows (described by the applicant's agent as "low-emissivity" with a bronze coating), the windows do not eliminate all glare as evidenced in photos included in **Exhibit 16**, and the mass of windows provides a large surface area for potential reflectivity (approximately 839 sq. ft. on the western elevation alone). Even when there is no glare the windows contrast with the rest of the building and the surrounding landscape in a way that makes the development more prominent. The visual prominence of a mass of light-colored window dressings is visually insubordinate to the surrounding area, and owner-specific decisions on interior window dressings can vary over time.

In October 2011, the applicant's agent contacted Commission staff to highlight what she believed to be additional glazing that she believed was approved under the previous 2005-permit modification. The agent presented a floor plan (**Exhibit 11**) that shows the word "glass" between support posts along the previously-approved courtyard entry and asserts this alleged glass between each courtyard post demonstrates that additional glass was authorized by the 2005 CDPM. In their letter dated January 23, 2012, **Exhibit 15**) the applicant asserts their perspective that the design as proposed is more visually subordinate than the design approved by CDPM 98-01 (05). Their position is based in part on the opinion that more glazing was approved by CDPM 98-01 (05).

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<sup>2</sup> [http://www.parks.ca.gov/?page\\_id=442](http://www.parks.ca.gov/?page_id=442)

It appears from the local record that County planning staff both in 2006 and again in 2009 considered the deviations from the 2005 CDPM significantly different from what the County had previously approved. This is notable both in the December 21, 2006 County letter prepared during review of building permit application BF 2006-1024, and in the November 12, 2009 County letter that responded to applicant's project concerns. Nonetheless, to address the agent's assertions, the Commission staff reviewed both the plans from the local record and the County staff report and observed that there is a discrepancy in the exhibits included in the CDPM 98-2001(2005) County staff report that was prepared for the January 26, 2006 hearing. Exhibit B of the County staff report shows the most current grading plan, where the posts that would support the extra glass are \*not\* shown, but Exhibit C shows the "superseded" plan (without the word "superseded" on it), which \*does\* show the glass labeled between posts.

In addition, Commission staff obtained and reviewed a copy of the audio tape from the March 25, 2010 Coastal Permit Administrator (CPA) hearing for the subject project as reviewed by the County. During the hearing, CPA Frank Lynch made the following comments:

*I don't know if I was the one who approved this- I think I might have been, and Ed Powers was I think the owner at the time of the original permit. And I do remember site viewing this project. I remember walking it, I remember feeling very ill at ease about it because I think- and that was back in 2001 ...I had a great deal of trepidation in dealing with the project at that time and then looking at it as it has evolved over time it doesn't make me feel very good because I do think to a degree- and maybe I'm personalizing this- I got burned. In that what I hoped wouldn't happen, happened. And the trees were taken out, and the screening was taken out and the windows were made bigger, and it becomes much more of a dominant thing than I ever envisioned. And so in that sense, I'm not trying to be nasty about it, but I don't feel very good about what happened with this project.*

On April 19, 2012, Commission staff contacted Mendocino County staff to request their current position regarding what the County considers it approved under the 2005 building permit and whether the proposed design would result in a 100% increase in window glazing as described in the 2010 County staff report. In a letter received by the County dated June 6, 2012 (**Exhibit 13**), the County maintains that "based on the record, the revised plans with a revision date of 12/5/0[5]<sup>3</sup>, not the superseded plans, would be the plans of reference." The County further indicates the following: "In the 2009 modification staff analyzed the increase of windows from that which was approved with the 2005 modification, the analysis did not include the windows that were originally proposed in 2005, but rather the windows that were included in the revised and approved plans."

On July 27, 2012, the North Coast District office received a transmittal from the applicant's agent that included a letter from the architect who worked on the 2005 modification design indicating that there was no intent to remove the glazing from the western elevation of the plans (**Exhibit 11**). However, the Commission finds that the

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<sup>3</sup> The County letter here refers to "a revision date of 12/5/02" however this is a typographical error as evidenced not only by the fact that this set of plans was submitted in 2005, not 2002, but also earlier in the letter wherein County staff refers to the revision date of 12/5/05, which is the actual date of the revision.

evidence in the local record, the comments made by the Coastal Permit Administrator at the March 25, 2010 CPA hearing, and the June 6, 2012 letter from Mendocino County planning staff demonstrate that the extra glazing referenced by the applicant was not authorized.

Thus, the Commission finds the development as proposed to be amended results in a substantial increase in window glazing from that previously authorized in the 2005 permit. The large amount of window glazing included in the proposed amendment to the coastal development permit reflects sunlight in a glaring manner at certain times of the day that greatly increases the prominence of the development against the landscape. In addition, even at times of the day when glare is not a problem, the flat surface of the glass greatly contrasts with the siding and roofing materials of the structure. The contrast in appearance draws attention to the structure, causing the development as it is proposed to be amended to be insubordinate to the character of its setting, inconsistent with certified Mendocino County LCP policies regarding the protection of visual resources. Therefore the Commission finds the proposed project must be denied. As discussed below, feasible alternatives exist that are less visually intrusive and that could afford the applicant an economic use of their property, including but not limited to removing the unpermitted house construction at the subject parcel and constructing the house design approved by the County under CDPM 98-01 (2005).

### **Trim Colors**

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

As described above, the windows with their baked-on trim have already been installed in addition to the surrounding trim materials. Therefore, the project site can be viewed from various vantage points, and in particular from Mendocino Headlands State Park. The tall, vertical projection of yellowish-tan color interrupts the surrounding dark-green treeline. Combined with the mass of windows- all of which contain the same trim color, the bright yellowish-tan colored trim notably draws the eye to the development site. The prominence of the trim colors is further exacerbated by the greater-than-17-foot-tall portion of the western façade that projects westward beyond the rest of the structure, and that is dominated entirely by windows and yellowish-tan trim. While the applicant asserts that the color matches the color of the surrounding bluffs and parent soil material, the vertical projection of the yellowish-tan-trimmed structure creates an unnatural image against a backdrop of dark-green, tree-covered hills.

As part of the information requested for *de novo* review, Commission staff requested the applicant submit an analysis of the visual effects of various alternatives, including modifying trim colors to a darker color that blends in hue and brightness with the dominant darker colors of the surrounding landscape (such as the dark browns and greens of the conifer trees and associated areas of shadow).

The applicant has provided several responses to the request for alternate trim colors that challenge the requested information. The applicant asserts in part that the 2005 CDPM “was silent on the specific color of the trim, and as the trim matches the stone in color, the trim is in

conformance with what the County approved in CDPM #98-2001(05).” However, as part of the approved development that the agent describes, the County imposed Special Condition No. 5 which requires the following:

All exterior siding and trim finish colors shall match those specified in the coastal development permit application. All exterior lighting fixtures shall match those submitted with the permit application and be downcast and shielded. Any changes shall be subject to the review and approval by the CPA for the life of the project.  
(Emphasis added)

In its review of the 2005 application submitted by the applicant, Commission staff has determined that the application did not specify a proposal to use trim colors. However, as noted previously, the original permit was issued with conditions stating that changes in the building colors are subject to the review and approval by the CPA for the life of the project. The 2009 permit amendment proposal to now use a specific trim color constitutes a change from the original permit. This change was addressed in the County staff report findings for CDPM#98-2001(2009), where the County noted that the “Mendocino Blond” color of the trim and window frame “contrasts with the siding, and is a prominent feature visible from the Town of Mendocino and Headlands State Park,” and recommended to “require a darker trim and window frame color, such as a color that matches the hue and brightness of the siding...In addition the stone veneer would not be compatible on the western elevation, as the color is light and contrasts with the siding.”

The County has been clear in its intent to use dark-colored earth-tone materials for the subject site, as evidenced in the conditionally-approved CDP 98-01 wherein the applicant had proposed as part of the project design to include a concrete chimney with a surface “made with aggregate from the former on-site rock quarry (tannish brown).” In its project approval, the county required as Special Condition No. 2 that the applicant submit a revised color for the chimney for the review and approval of the Coastal Permit Administrator (CPA) “to minimize contrast and to be visually compatible with the surroundings (i.e. dark browns or dark greens).”

Despite the applicant’s assertion that the trim color was “approved,” which it was not, the applicant’s agent acknowledges in her letter of August 4, 2010 that the applicant “recognizes that the existing, approved trim color increases the visibility of the residence from public vantage points. Therefore, she is willing to darken the window trim on the western façade.” However, the applicant clarifies later that the proposal to darken trim color would only apply to the wood trim surrounding the window on the outside, and not the interior or exterior trim of the window itself, because the agent states “The paint on the window frames is baked on in a factory setting and cannot be repainted successfully in the field. Any paint applied to the window frames will crack and peel, which would result in revealing the underlying light color in a short period of time.” Although the applicant has indicated a willingness to consider changing the color of the exterior wood trim surrounding the windows, the proposed amendment to the coastal development permit does not propose such a change.

Other methods to rectify trim colors exist that include but are not limited to replacement of windows with non-baked coating windows, and replacement of windows with dark brown or green baked-window frames. In addition, windows could be removed from the project design to reduce the prominence of both glazing and associated trim.

The Commission finds that as: (1) the amended development as proposed contains windows with a light trim color that is partially baked on the window frames and exhibited by the surrounding wood trim; (2) the window trim color strongly contrasts with the dark-stained shingle siding; (3) the window trim color is prominently visible from public vantage points; and (4) feasible alternatives are available to darken the trim and subordinate the structure, the trim colors associated with the proposed amendment to the coastal development permit draw attention to the structure, causing the development as it is proposed to be amended to be insubordinate to the character of its setting, inconsistent with the visual resource protection policies of the LCP. Therefore, the project as proposed is inconsistent with the visual resource protection policies and must be denied.

### **Vegetative Screening**

In its approval of CDPM 98-01 (2009), the County adopted final conditions requiring planting of vegetation to screen the structure with a requirement that a minimum of 50% of all required landscaping be planted, staked and fenced for protection prior to a building inspection. While vegetative screening may eventually aid in buffering the view of the approved amended development, no screening vegetation has been planted to date to visually buffer the development, and many more trees have been removed from the site since the original approval of CDP 98-01. Potential success of vegetation planting at the site for the purpose of screening development is limited by several site constraints. Due to the location within 150 feet of the top of the seaward face of the coastal bluff, strong winds and salt spray may inhibit or delay the successful growth of vegetation. The rocky soils and mostly sloping topography at the site may further compromise vigorous and rapid growth of vegetation that would be necessary to screen the proposed development. If successful at all, planted vegetation will take several years to a decade or more to fully achieve a height that functions as screening. Therefore, even if vegetation is planted immediately, the screening vegetation will not fully mitigate the visual impacts that continue to occur, and if the vegetation is unsuccessful, the development as proposed to be amended will remain inconsistent with LUP Policy 3.5-1 and CZC Section 20504.015.

The permit history and activity that has occurred at the site since the time between the originally-approved permit action in October 2002 (CDP 98-01) and the present development at the site demonstrates the vulnerability of reliance upon vegetation to screen the development. CDP 98-01 authorized in part the removal of two (2) bishop pine trees from the development area, and included Special Condition No. 1 that required in part that: (a) any other screen trees that remain and are damaged during construction shall be replaced at a ratio of 3:1; (b) no less than seven evergreen trees (such as Bishop pine or shore pine) be planted in a location specified in the permit to provide maximum screening of the northern and western façade as viewed from Mendocino Village; and (c) the required final landscape plan shall be implemented and planted prior to the final building inspection or occupancy, whichever comes first. In its findings for CDP 98-01, the County indicated that “The retention of all other trees on the parcel, which provide screening of the residence from public view areas, is critical...” In its subsequent approval of permit modification CDPM 98-01(2005) the County authorized removal of 12-14 trees over 12 inches in diameter from the proposed building footprint. To protect visual resources, Special Condition No. 4 required all landscaping to be installed prior to final clearance of the building permits for the residence, or occupancy of the residence, whichever occurs first. The condition further required that any tree that became diseased or died should be replaced on a

3:1 ratio, and that “any future tree removal on the site shall require prior authorization from the Planning Division or, if it constitutes “major vegetation removal,” shall require a coastal development permit amendment.”

The County staff report for the subject development indicates an additional 14 trees were removed that were not authorized by CDPM 98-01 (05). Thus, tree removal at the site has increased from two trees originally approved by CDP 98-01 up to as many as 28 trees. These trees not only afforded screening of the subject site from public views, but additionally cast shadows on the site that could darken and further subordinate development at the site.

The Commission finds that vegetation screening cannot be relied upon as the only method to visually subordinate development at the site because the potential success of vegetation growth at the site is compromised by rocky soils, topography, and the intensive coastal winds and salt spray from Mendocino Bay and because if successful at all, planted vegetation will take several years to a decade or more to fully achieve a height that functions as screening.

### **Feasible Project Alternatives**

As discussed above, the Commission is denying the proposed development as it is inconsistent with certified LCP provisions intended to protect visual resources. Denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicant’s property or unreasonably limit the owner’s reasonable investment backed expectations of the subject property. Denial of this application to develop the project site to the extent and manner proposed by the applicant would still leave the applicant feasible alternatives to use the property in a manner that is both economically beneficial as well as consistent with the certified LCP.

The Commission’s evaluation of alternatives does not consider those actions that have been conducted to date without the benefit of a permit, or the costs associated with removing the alleged violations, but rather whether there exist feasible alternatives to the house design approved by the County under CDPM 98-2001(2009) that could further subordinate the proposed house design to the same level as the previous coastal development permit amendment issued as County CDPM 98-01 (05).

### ***Construct House Design Authorized by CDPM 98-01 (05)***

A known feasible alternative to the proposed project would be to build the project previously authorized under CDPM 98-01 (2005). The originally approved coastal development as amended through 2006 included requirements for darker window trim colors and included only approximately half of the amount of window glazing along the visually prominent western elevation of the building. As a result, the County was able to find that the amended development as approved was subordinate to the character of its setting as required by the LCP visual resource policies. In addition, other designs for modifying the previously approved development that similarly limit window glazing and rely on the use of less contrasting colors schemes could be considered. Because there exists a previously-authorized building design that has been found to be consistent with the LCP visual resource policies, denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicant’s property or unreasonably limit the owner’s reasonable investment backed expectations of the subject property.



### ***Modify Window Glazing and Trim***

It is feasible to modify the trim color by replacing the windows with non-baked coating windows, and replacing windows with dark brown or green baked-window frames. In addition, windows could be removed from the project design to reduce the prominence of both glazing and associated trim.

Feasible design alternatives from the currently-proposed project include a reduction in size, number, and placement of windows to a level consistent with the 2005 County-approved CDP (CDPM 98-2001(2005)). The current proposed design includes the placement of 76 windows total, of which 28 (plus a gable end window) exist on the western elevation. Rather than placement of windows on the most visually prominent portion of the house as viewed from public viewing areas, feasible alternatives exist to place additional windows on other elevations of the home, and/or to utilize skylights in the design. Feasible alternatives also exist to reduce the windows in different portions of the western and northern elevations so that window placement is less visually obtrusive than the current proposal. These options could be pursued as an amendment (i.e., modification) to the existing CDPM 98-01 (2005).

### ***Modify House Configuration and Design***

The applicant could submit an application for a modification to the existing CDPM 98-01 (2005) for construction of an alternate, more visually-subordinate house design from that approved under CDPM 98-01 (2005). For example, the applicant could propose many of the more visually-subordinate design features of the current unpermitted development such as the attachment of the guest cottage to the house, but eliminate those portions of the current proposed design that are visually insubordinate, such as the increase in windows on the western façade and the bright-colored trim.

### **Conclusion**

As discussed above, the Commission is denying the proposed development because it is inconsistent with certified LCP provisions intended to protect views to and along the coast including but not limited to LUP Policies 3.5-1, 3.5-3, and 3.5-5, and CZC Sections 20.504.015(C) and 20.504.020(D), because: (1) visual contrast and glare presented by the large amount of proposed windows and the appearance of the trim color cause the development to be insubordinate to the character of its setting; (2) the proposed window trim color is prominently visible from public vantage points; and (3) vegetative screening that could be planted at the site may not be successful at establishing and growing a sufficient size, and will take years to a decade or more to fully screen development.

The applicant has an existing authorized use of the property via the previously-approved County permit CDPM 98-01(2005). Furthermore, feasible alternatives to the proposed project exist for the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the policies of the certified LCP. The Commission finds that there are no conditions that could be applied that could make the proposed project consistent with the LCP policies and standards as discussed above. Therefore, the Commission finds that the permit application must be denied.

### **G. ALLEGED VIOLATION**

Prior to applying for this coastal development permit, the development on the site occurred without the required coastal development permit or CDP amendment. The 2006-approved CDPM (CDP # 98-2001 (2005)) allowed construction of a 2,900 square-foot single-family

residence with an attached 689-square-foot garage and a maximum average height of 18 feet above natural grade, plus a 640-square-foot detached guest cottage with a maximum height of 18 feet above natural grade, for a total of 4,229 square feet. An after-the-fact application for unpermitted development was submitted to Mendocino County as CDPM #98-2001(2009) to alter the 2006-approved building footprint by attaching the guest cottage to the residence (creating a guest bedroom and hallway), enclosing a portion of the previously-approved patio into living space, enclosing the previously-approved open breezeway; installing 36 additional windows to all elevations of the residence, modifying house and roof materials, and adding trim colors not previously reviewed under the 2006 modification. The 2009 application also requested after-the-fact authorization for temporary occupancy of a travel trailer during construction.

Although certain development has allegedly taken place at the project site inconsistent with the special condition requirements of the approved coastal development permit (County CDP # 98-2001 (2005)), and without the benefit of a coastal development permit amendment, consideration of the application by the Commission has been based solely upon the amended development's conformance with the Mendocino County certified Local Coastal Program. Denial of this permit amendment does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit or permit amendment.

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects.** [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

**Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication.** ...*(b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

***CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved.** (a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposals. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Accordingly, the Commission's denial of this proposed amended development represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

## **Appendix A**

### **List of Substantive File Documents**

McBride, Gordon. July 2, 2001. Botanical Survey as Required for Proposed Single Family Dwelling on a +/- One Acre Parcel at 9490 North Highway One, Mendocino (AP#119-320-04, Powers).

Mendocino County CDP No. 98-2001.

Mendocino County CDPR No. 98-01 (04).

Mendocino County CDPM No. 98-2001 (2005).

Mendocino County CDPM No. 98-2001 (2009).

Mendocino County Coastal Permit Administrator Hearing. March 25, 2010. Audio recording of hearing held in Fort Bragg, CA.

Mendocino County Local Coastal Program

**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:

- (a) Transmittal prepared by Amy Wynn, agent, and dated May 12, 2010;
- (b) Transmittal prepared by Ms. Wynn dated August 4, 2010 regarding “response to Substantial Issue Staff Report;”
- (c) Transmittal prepared by Ms. Wynn dated March 28, 2011 regarding “response to February 1, 2011 letter;”
- (d) Transmittal prepared by Barbara Bethel dated January 23, 2012 regarding “response to August 9, 2011 letter;”
- (e) Transmittal prepared by Ms. Wynn dated January 24, 2012 regarding “Matrix to accompany Bethel 1/23/12 response to 8.9.2011 letter;”
- (f) Transmittal prepared by Ms. Wynn dated July 24, 2012 regarding “Entry Courtyard Glazing approved in CDPM #98-01(05)”

## Appendix C 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.*

...

- *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision...*

*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) *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision...*

(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.*





EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-10-015

BETHEL & HUPP

VICINITY MAP

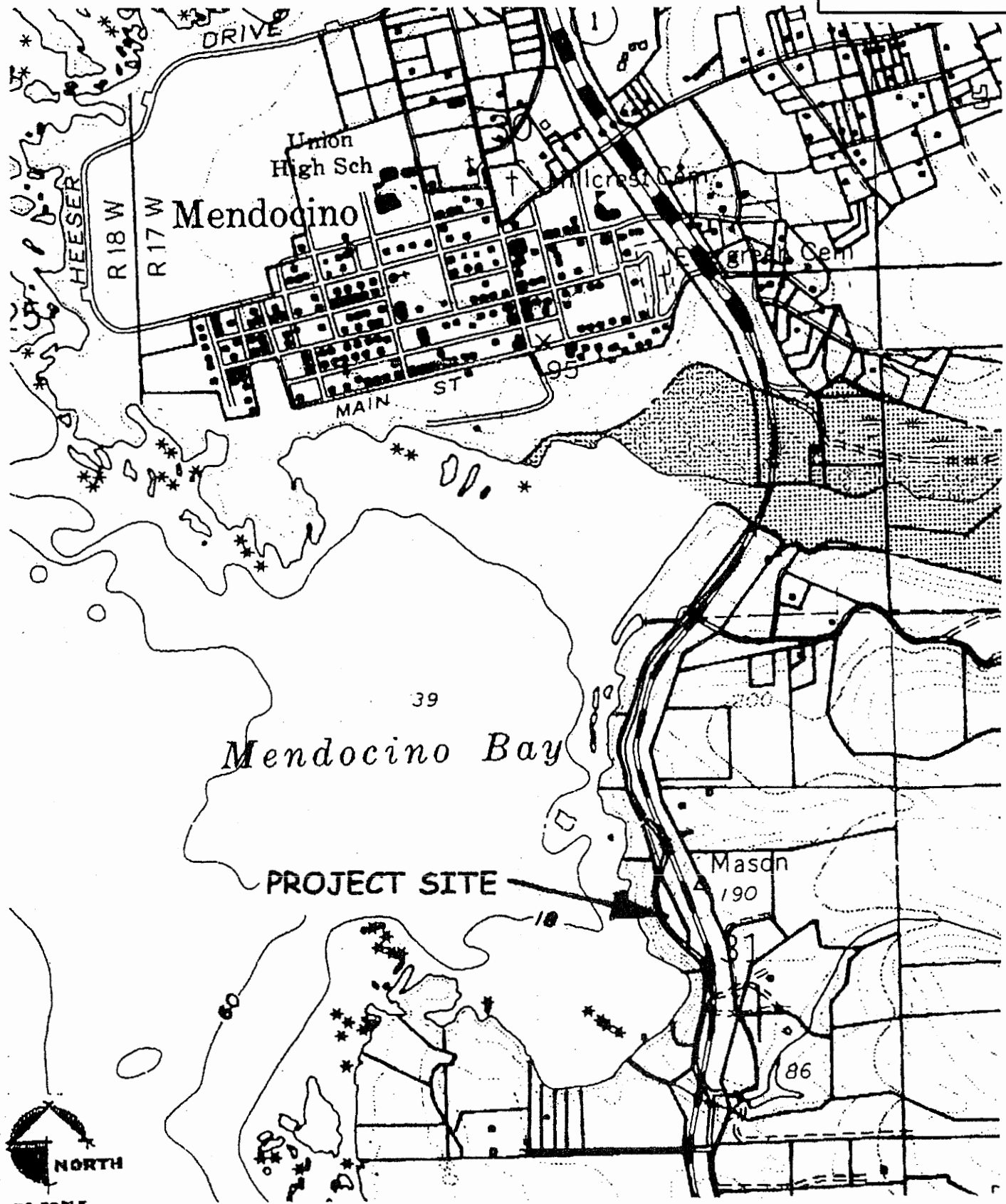
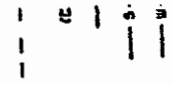


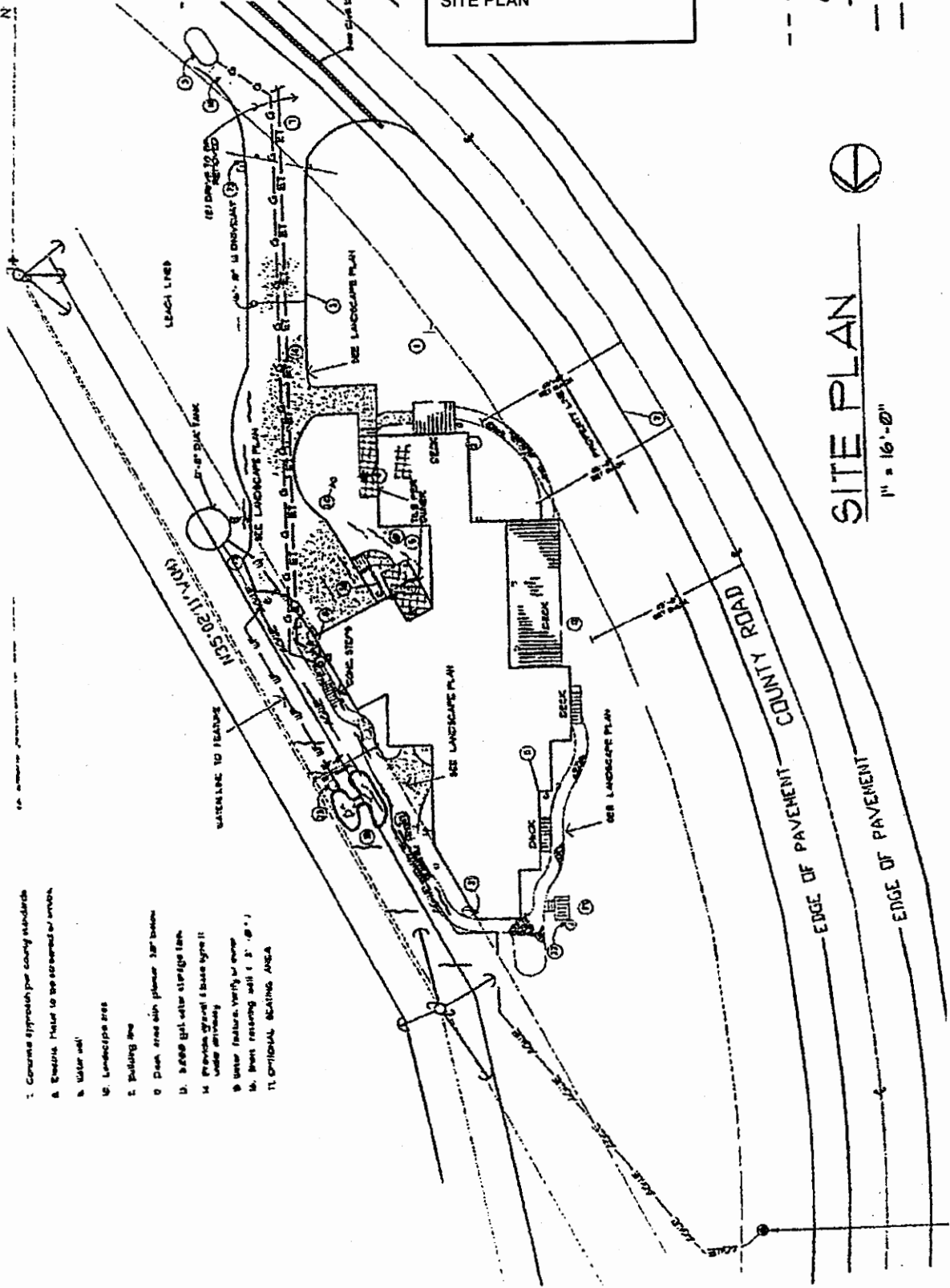
EXHIBIT NO. 3  
 APPLICATION NO.  
 A-1-MEN-10-015  
 BETHEL & HUPP  
 SITE PLAN

Exhibit C



SITE PLAN

1" = 16'-0"



- 1. Concrete approach per county standards
- 2. Electric Meter to be secured or removed
- 3. Water well
- 4. Landscaping area
- 5. Parking lot
- 6. Deck area with planter 30" below
- 7. 3,000 gal. water storage tank
- 8. Provision of well (base type II) under driveway
- 9. Water feature, verify w/ owner
- 10. Short retaining wall (3' x 8")
- 11. OPTIONAL SEATING AREA

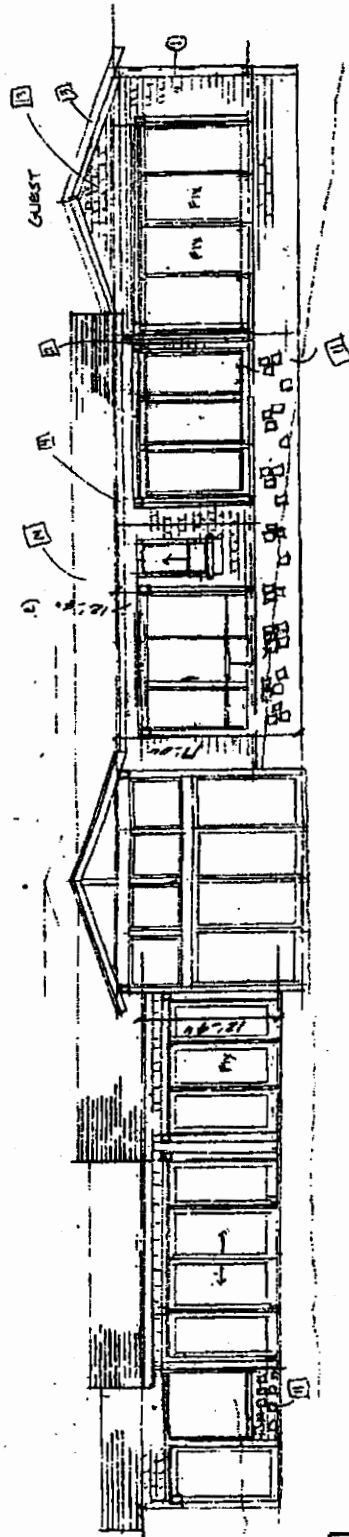
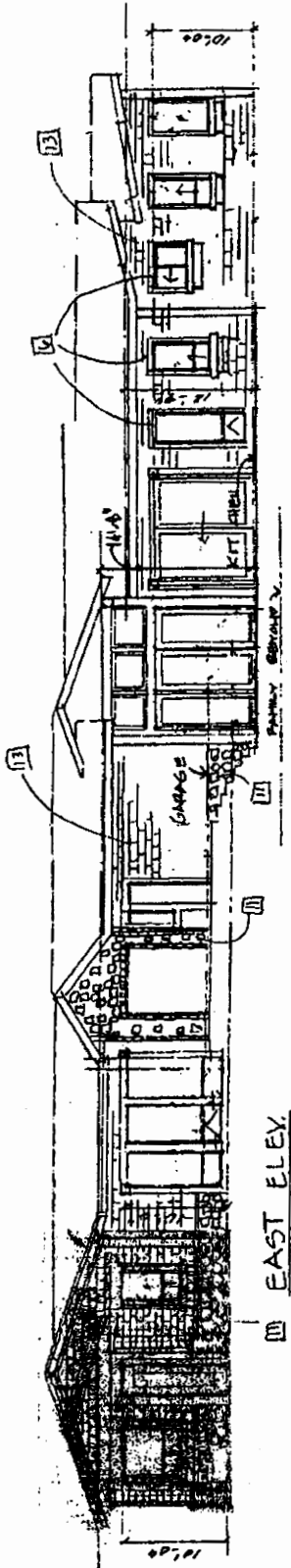
Site Plan



CDDM# 98-2001(2009)  
 March 25, 2010  
 CPA-21

STAFF REPORT FOR COASTAL DEVELOPMENT  
 STANDARD PERMIT





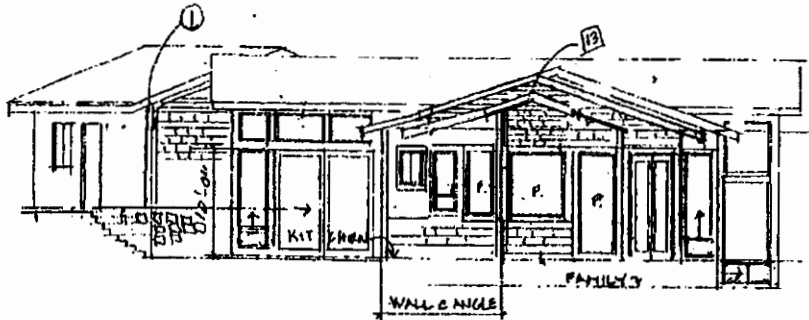
WEST ELEVATION

1/24/10

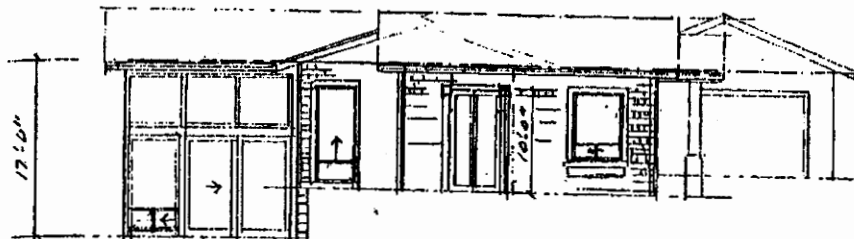
CDPM# 98-2001(2009)  
March 25, 2010  
CPA-23

MIT  
FOR COASTAL DEVELOPMENT

EXHIBIT NO. 5
APPLICATION NO.
A-1-MEN-10-015
BETHEL & HUPP
ELEVATION (1 of 2)



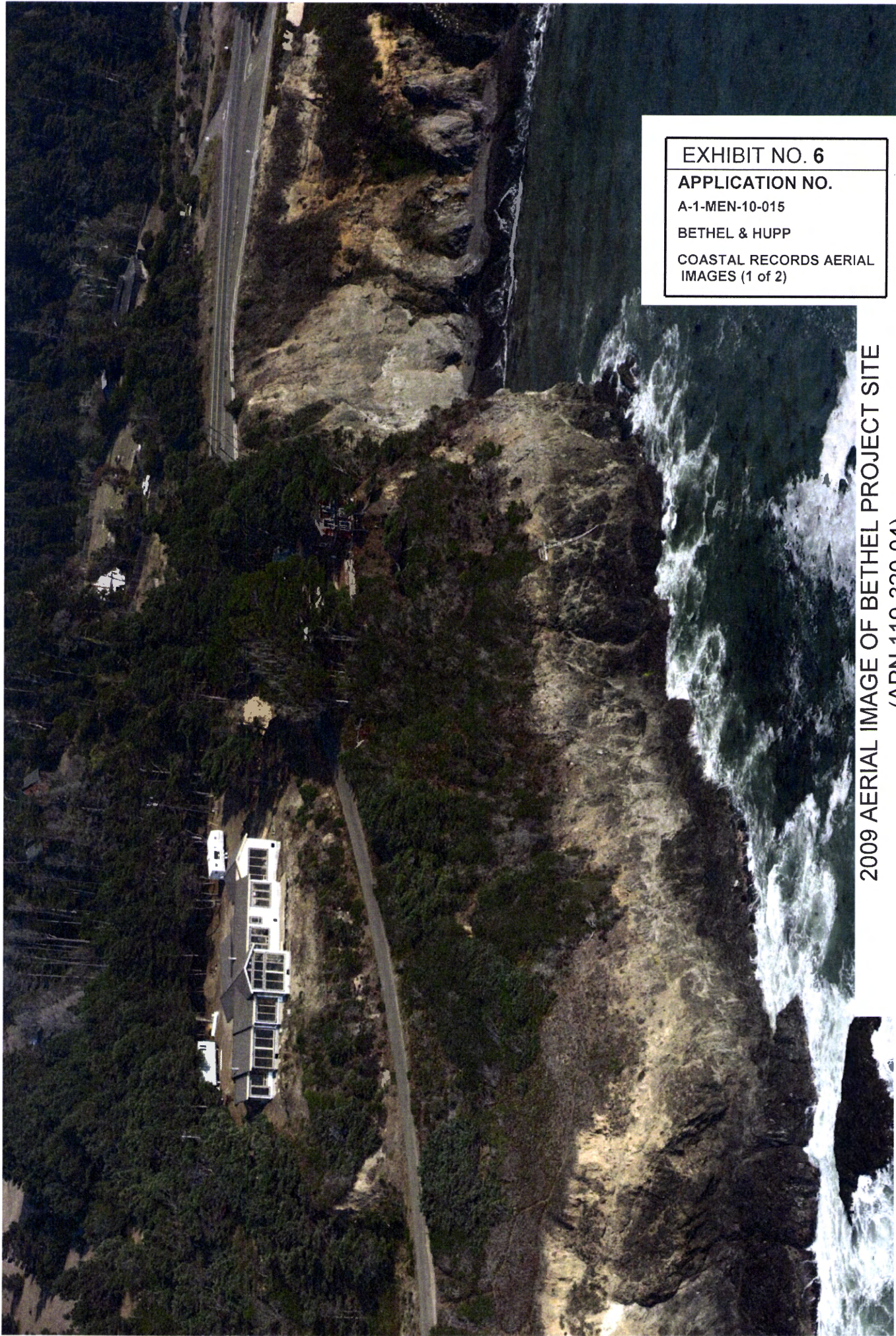
NORTH ELEV.



SOUTH ELEV

2012





**EXHIBIT NO. 6**

**APPLICATION NO.**

A-1-MEN-10-015

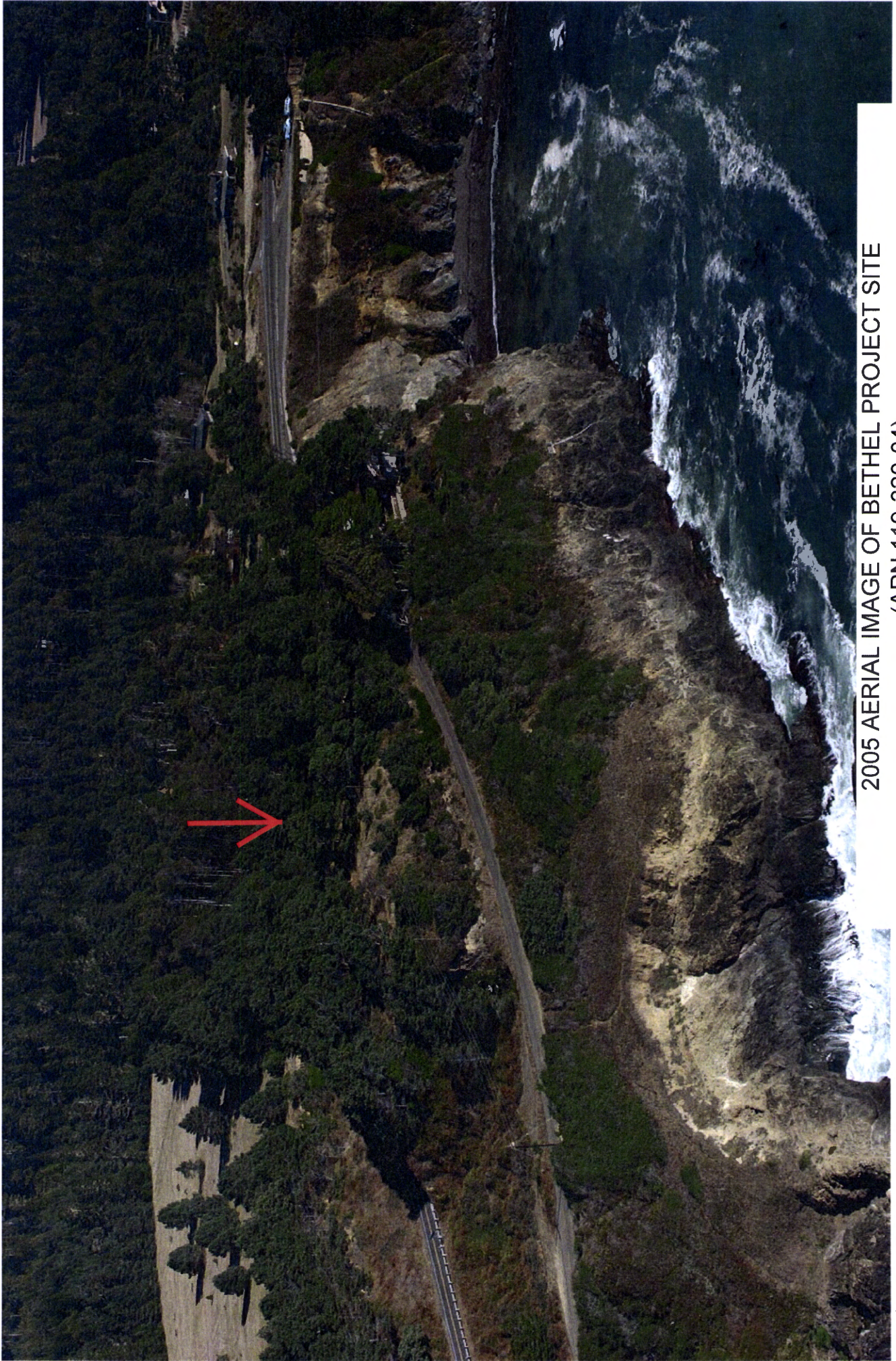
BETHEL & HUPP

COASTAL RECORDS AERIAL  
IMAGES (1 of 2)

**2009 AERIAL IMAGE OF BETHEL PROJECT SITE  
(APN 119-320-04)**

Image source: California Coastal Records Project, Image 200903160





2005 AERIAL IMAGE OF BETHEL PROJECT SITE  
(APN 119-320-04)

Image source: California Coastal Records Project, Image 200503468

2012





**CALIFORNIA COASTAL COMMISSION**

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

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

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

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

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

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

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

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

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

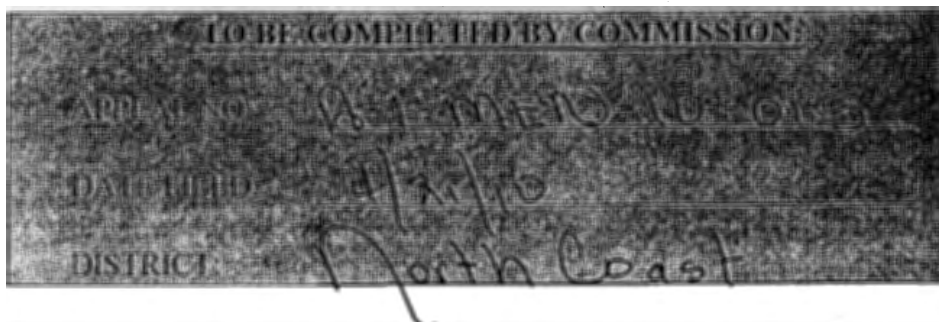
- Approval; no special conditions  
 Approval with special conditions:  
 Denial

**RECEIVED**

APR 21 2010

CALIFORNIA  
 COASTAL COMMISSION

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



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

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

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

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

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

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

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

a. Name and mailing address of permit applicant:

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

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

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

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

(3)

(4)

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

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

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

See Attachment B.



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

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

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

SECTION V. Certification

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

Signer  
Appel Signature on File ? Signature on File

Date: April 21, 2010

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

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

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



ATTACHMENT A

SECTION I. Appellant(s)

1. Mary K. Shallenberger  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

(415) 904-5200

2. Richard Bloom  
City of Santa Monica  
P. O. Box 2200  
Santa Monica, CA 90407-2200

(415) 904-5200

## ATTACHMENT B

### APPEALABLE PROJECT:

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

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

### BACKGROUND:

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

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



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

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

### **REASONS FOR APPEAL:**

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

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

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

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

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

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

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

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

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

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

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

...

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

LUP Policy 3.5-5 states as follows:

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

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

...

**(C) Development Criteria.**

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

*(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*

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

...

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

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

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

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

...

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

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

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

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

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

...

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

**Discussion:**

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

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

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

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

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

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

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

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


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

## IFORNIA COASTAL COMMISSION

1 COAST DISTRICT OFFICE  
STREET, SUITE 200  
KA, CA 95501  
445-7833 FAX (707) 445-7877  
.coastal.ca.gov



## NOTIFICATION OF APPEAL PERIOD

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

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

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

Applicant(s): Barbara Bethel; John Hupp

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

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

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

Our office will notify you if an appeal is filed.

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

cc: Barbara Bethel  
John Hupp

## EXHIBIT NO. 9

## APPEAL NO.

A-1-MEN-10-015


BETHEL &amp; HUPP

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

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INTEROFFICE MEMORANDUM

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

---

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

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

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COASTAL COMMISSION



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

790 SOUTH FRANKLIN STREET · FORT BRAGG · CALIFORNIA · 95437

IGNACIO GONZALEZ, DIRECTOR

Telephone 707-964-5379

FAX 707-961-2427

www.co.mendocino.ca.us/planning

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APR. 07 2010

CALIFORNIA  
COASTAL COMMISSION

April 5, 2010

### NOTICE OF FINAL ACTION

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

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

**OWNER:** John Hupp

**APPLICANT:** Barbara Bethel

**AGENT:** Amy Wynn

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

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

**PROJECT COORDINATOR:** Abbey Stockwell

**HEARING DATE:** March 25, 2010

**APPROVING AUTHORITY:** Coastal Permit Administrator

**ACTION:** Approved with Conditions.

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

The project was not appealed at the local level.

The project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603.

An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.



COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDPM 98-2001(2009)\_\_\_\_\_ HEARING DATE: \_March 25, 2010\_

OWNER: \_\_\_Hupp AGENT: \_Bethel\_

ENVIRONMENTAL CONSIDERATIONS:

Categorically Exempt

\_\_\_\_\_ Negative Declaration

\_\_\_\_\_ EIR

FINDINGS:

Per staff report

\_\_\_\_\_ Modifications and/or additions

ACTION:

Approved

\_\_\_\_\_ Denied

\_\_\_\_\_ Continued \_\_\_\_\_

CONDITIONS:

\_\_\_\_\_ Per staff report

Modifications and/or additions

Special Condition 3: DELETED

Special Condition 7: To state:

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

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

Special Condition 8: DELETED

Special Condition 9 to state:

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

(see attached for signature)

Signed: Coastal Permit Administrator

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

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

**A. Determination of Noticing.**

**B. Public Hearing Items.**

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

**PROJECT COORDINATOR:** Abbey Stockwell

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MAR 15 2010  
CALIFORNIA  
COASTAL COMMISSION

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

**D. Adjournment.**

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



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

790 SOUTH FRANKLIN STREET · FORT BRAGG · CALIFORNIA · 95437

notice hupp bethel cdpm 98 2001 2009

IGNACIO GONZALEZ, DIRECTOR

Telephone 707-964-5379

FAX 707-961-2427

www.co.mendocino.ca.us/planning

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MAR 15 2010

CALIFORNIA COASTAL COMMISSION

March 12, 2010

PUBLIC NOTICE OF PENDING ACTION  
STANDARD COASTAL DEVELOPMENT PERMIT

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

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

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

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

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

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

*Staff reports for agenda items may be accessed and printed from the County website. Go to [www.co.mendocino.ca.us/planning](http://www.co.mendocino.ca.us/planning) Click on the Boards and Commissions link, click on Coastal Permit Administrator, click on the hearing date*

Frank Lynch, Coastal Permit Administrator

STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD PERMIT

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

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

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

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

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

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

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

**PERMIT TYPE:** Standard

**TOTAL ACREAGE:** ~1.06 acre

**GENERAL PLAN:** RR-5

**ZONING:** RR:L-5

**EXISTING USES:** Residential

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

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

**SUPERVISORIAL DISTRICT:** 5

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

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

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

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

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

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

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

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

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

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

#### Land Use

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

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

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

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

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

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

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

#### Public Access

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

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

### Hazards

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

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

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

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

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

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

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

### Grading, Erosion and Runoff

Regarding grading, Section 20.492.010 of the MCCZC states:

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

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



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

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

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

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

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

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

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

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

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

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

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

Visual Resources

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

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

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

Policy 3.5-3 of the Coastal Element states:

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

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

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

*In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*

Section 20.504.015(C)(3) also requires:

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

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

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

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

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

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

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

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

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

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

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

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

Table 1. Proposed exterior materials and colors.

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

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

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

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

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

### Natural Resources

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

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

#### Archaeological/Cultural Resources

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

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

#### Groundwater Resources

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

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

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

#### Transportation/Circulation

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

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

#### Zoning Requirements

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

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

#### **FINDINGS:**

1. The proposed development is in conformity with the certified Local Coastal Program; and

2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

**STANDARD CONDITIONS:**

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. The permit was obtained or extended by fraud.

- b. One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

**SPECIAL CONDITIONS:**

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



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

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

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

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



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

STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD PERMIT

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

Staff Report Prepared By:

3.12.10

Date

Abbey Stockwell

Abbey Stockwell  
Planner I

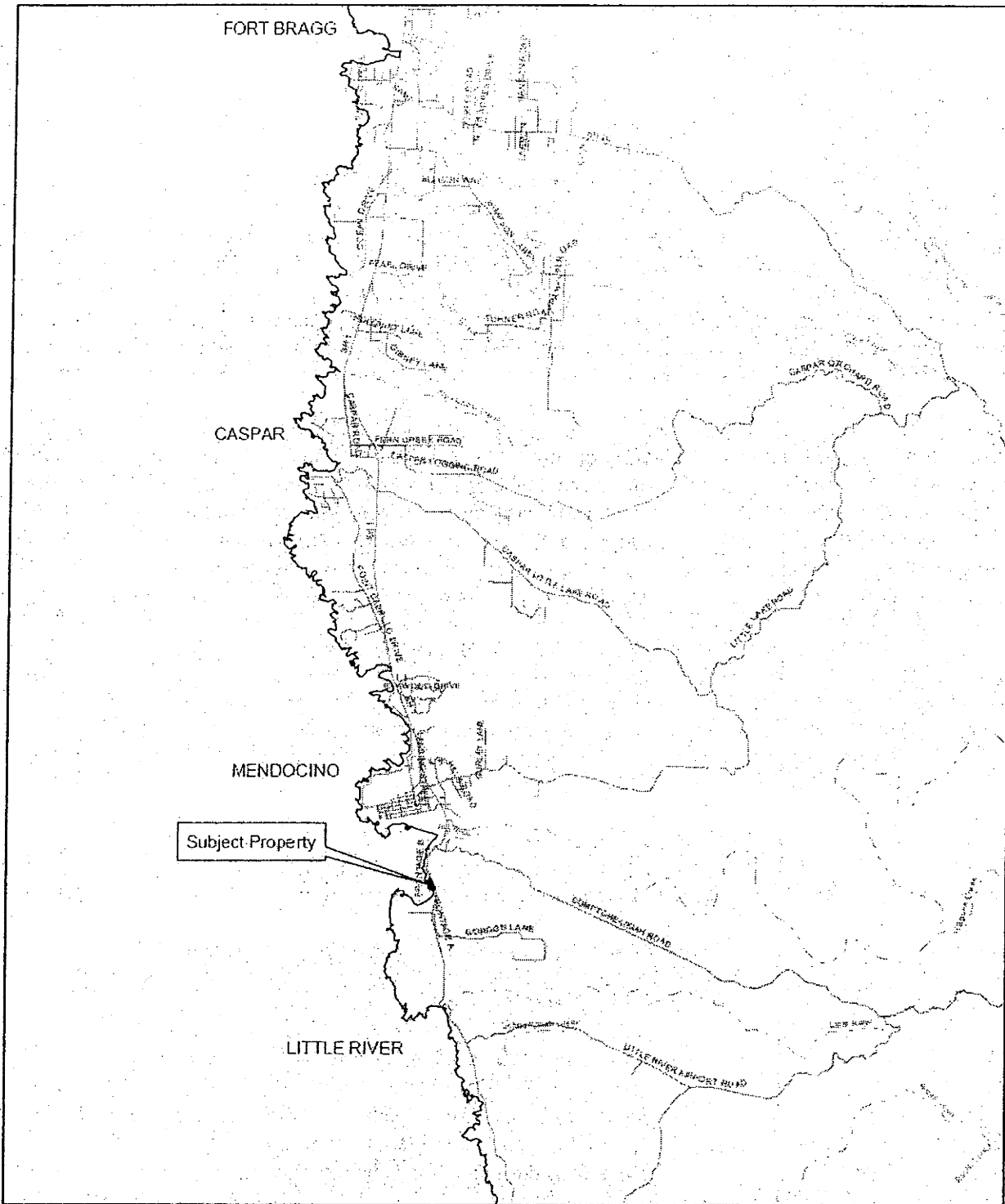
Attachments:	Exhibit A	Location Map
	Exhibit B	Coastal Records Photo 2009
	Exhibit C	Zoning Map
	Exhibit D	Orthophoto
	Exhibit E	Groundwater Resources Map
	Exhibit F	Rarefind Map
	Exhibit G	Site Plan
	Exhibit H	Floor Plan
	Exhibit I	Elevations
	Exhibit J	Elevations

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

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

**SUMMARY OF REFERRAL AGENCY COMMENTS:**

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

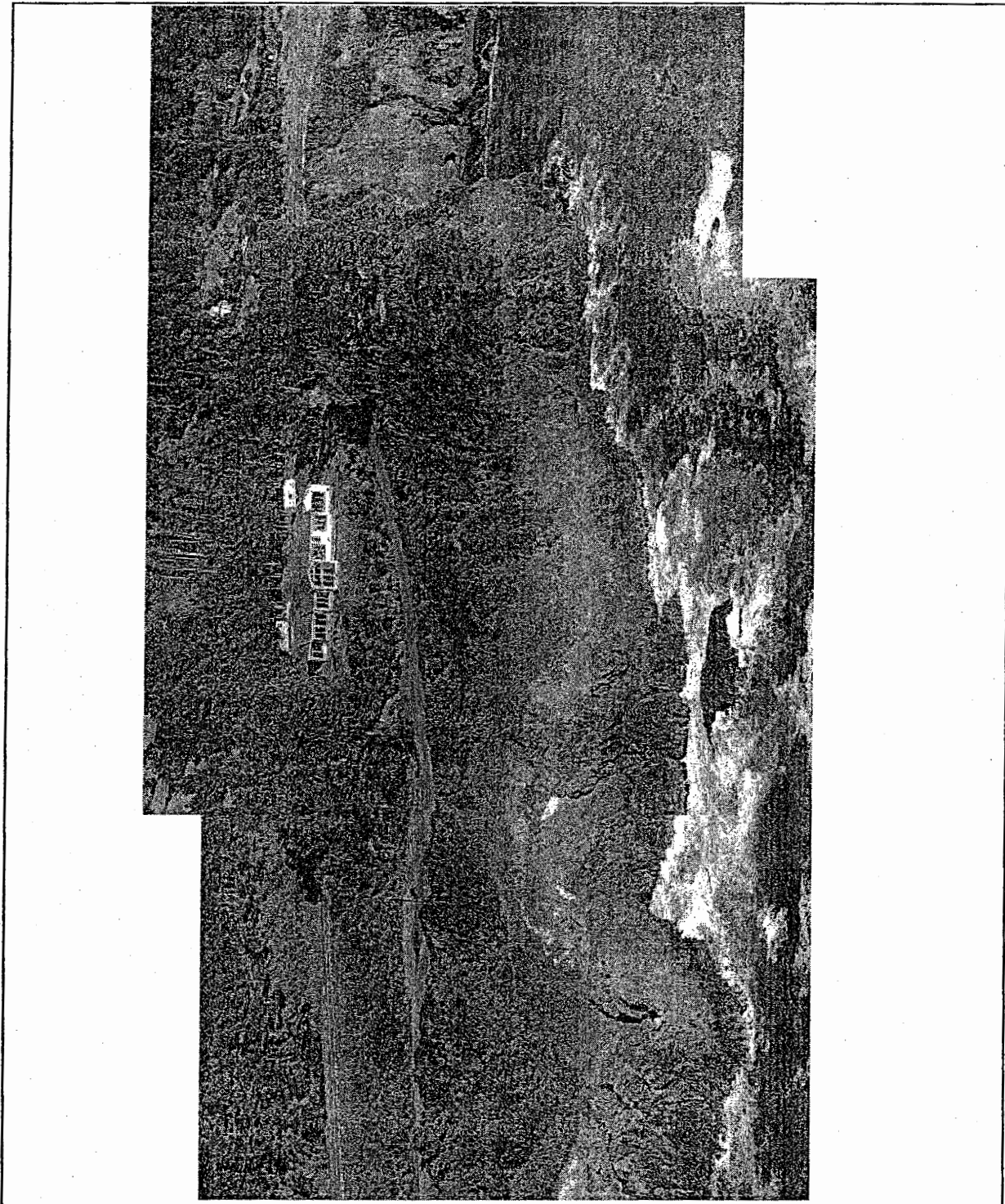


OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

LOCATION MAP

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



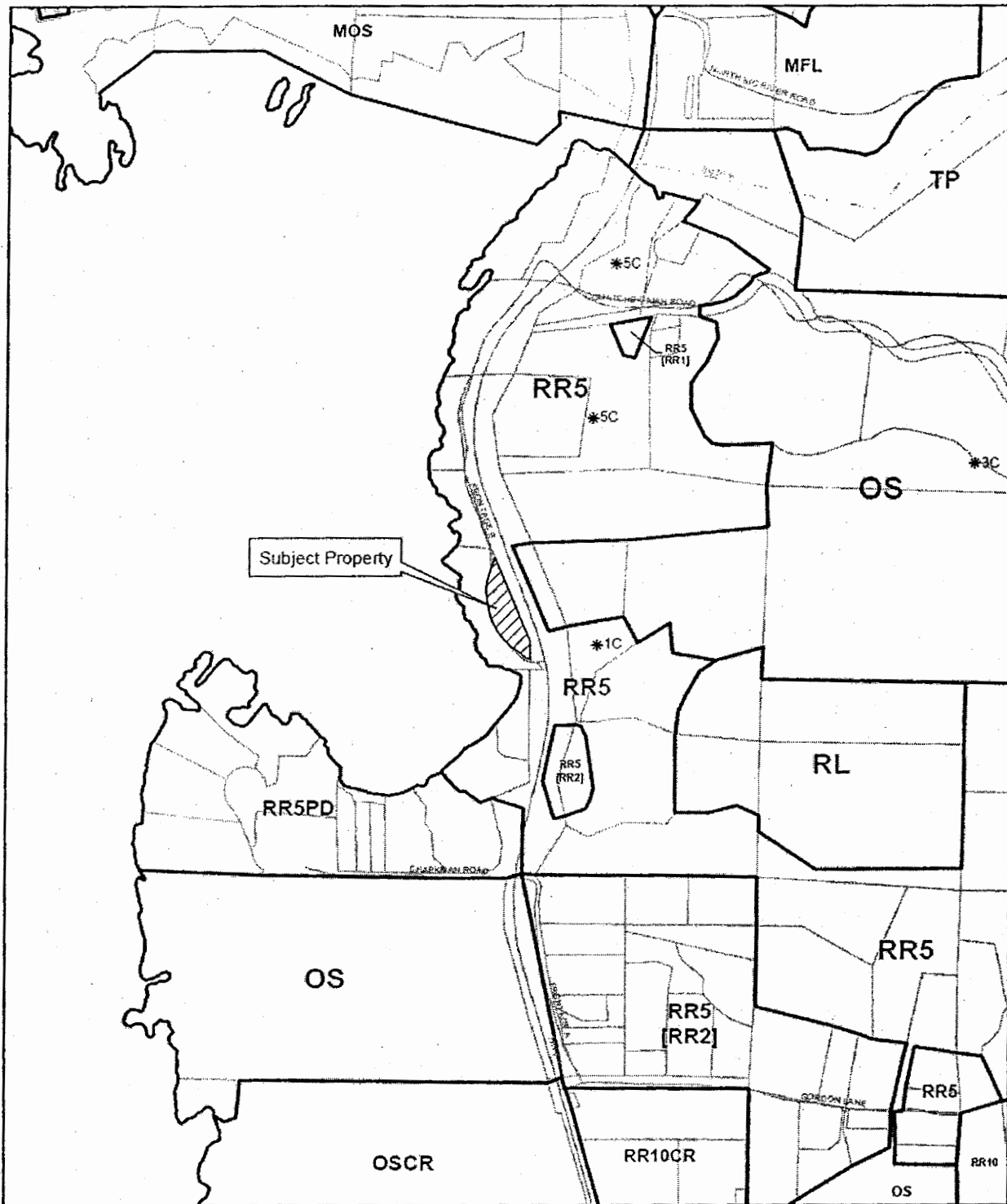


OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

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

Not To Scale



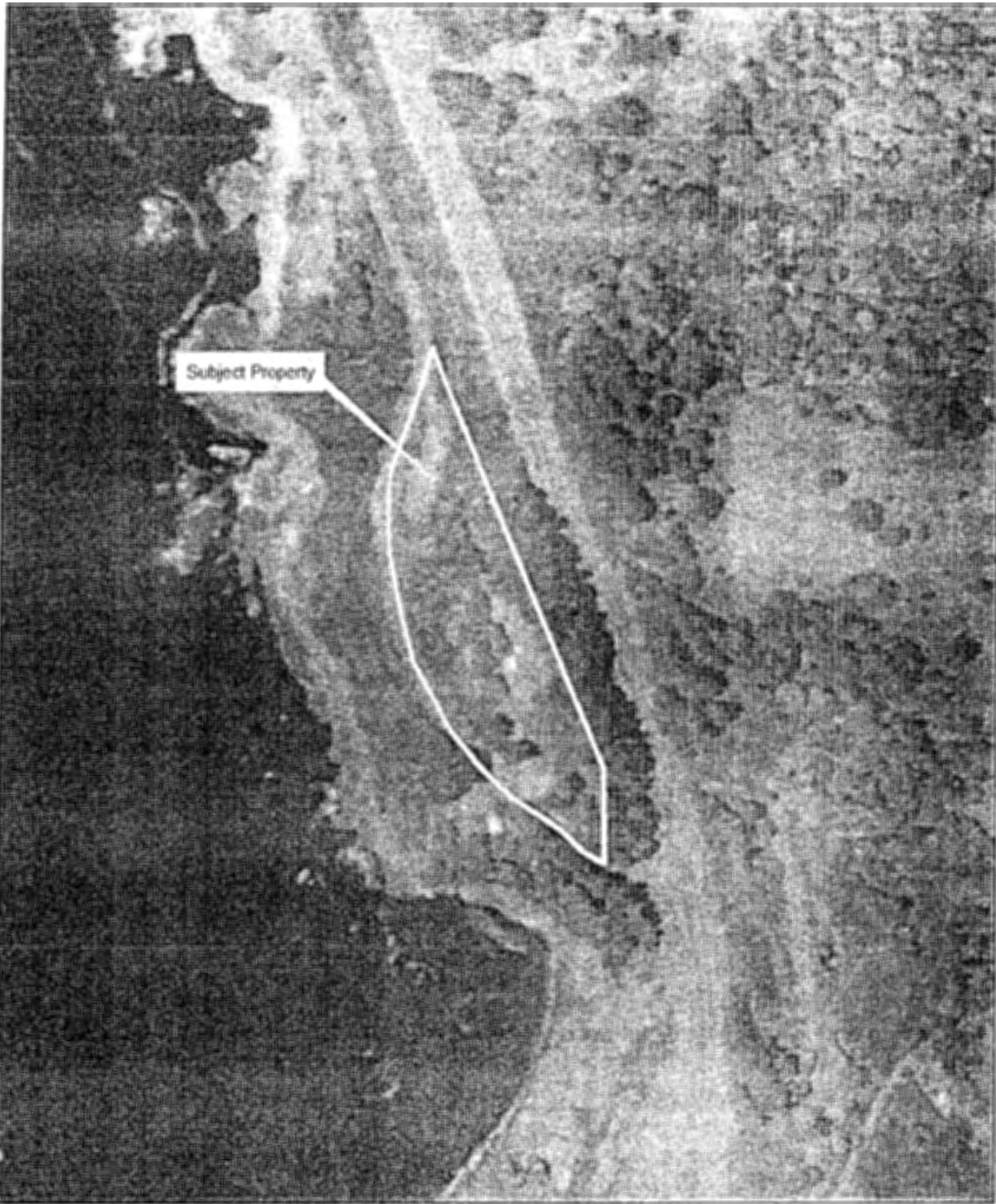


OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

ZONING DISPLAY MAP

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OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
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ORTHOPHOTO - June 2009

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

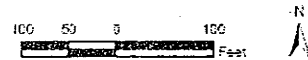
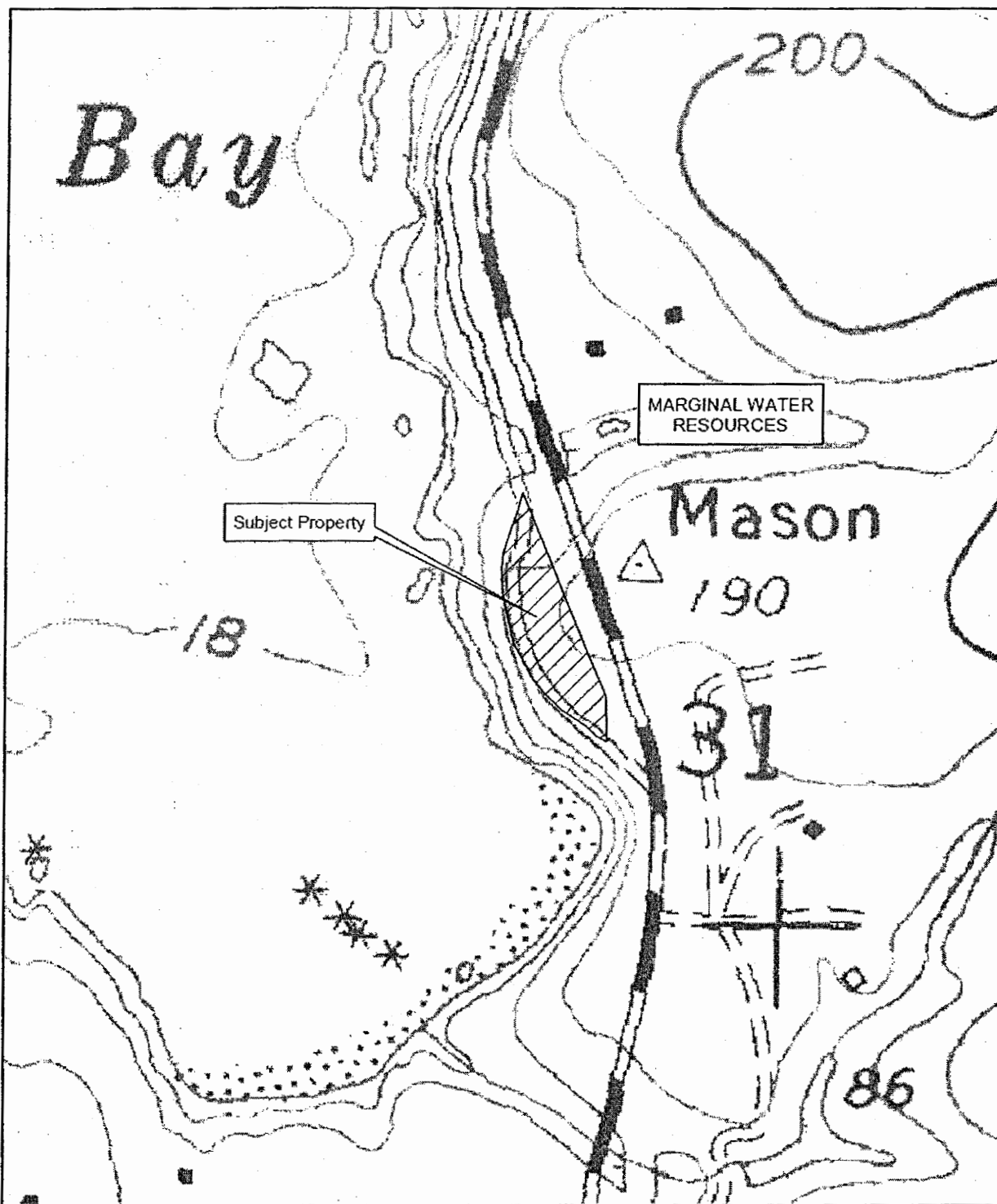


Exhibit D



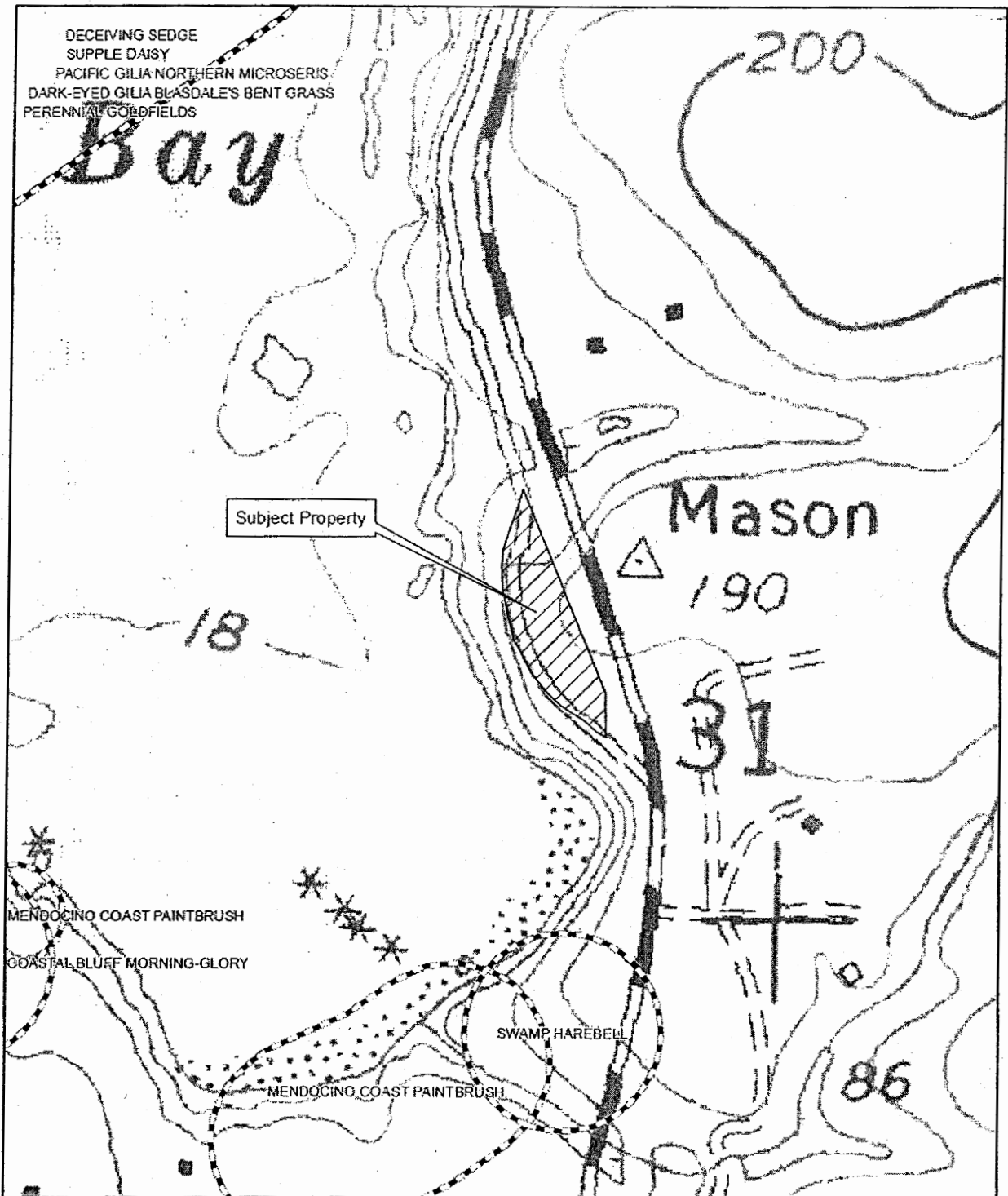
OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001/2009  
APNs: 119-320-04

COASTAL GROUND WATER RESOURCES

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

Exhibit E





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

CALIFORNIA NATURAL DIVERSITY  
DATABASE RAREFIND (Jan 2010)

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

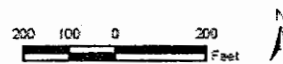
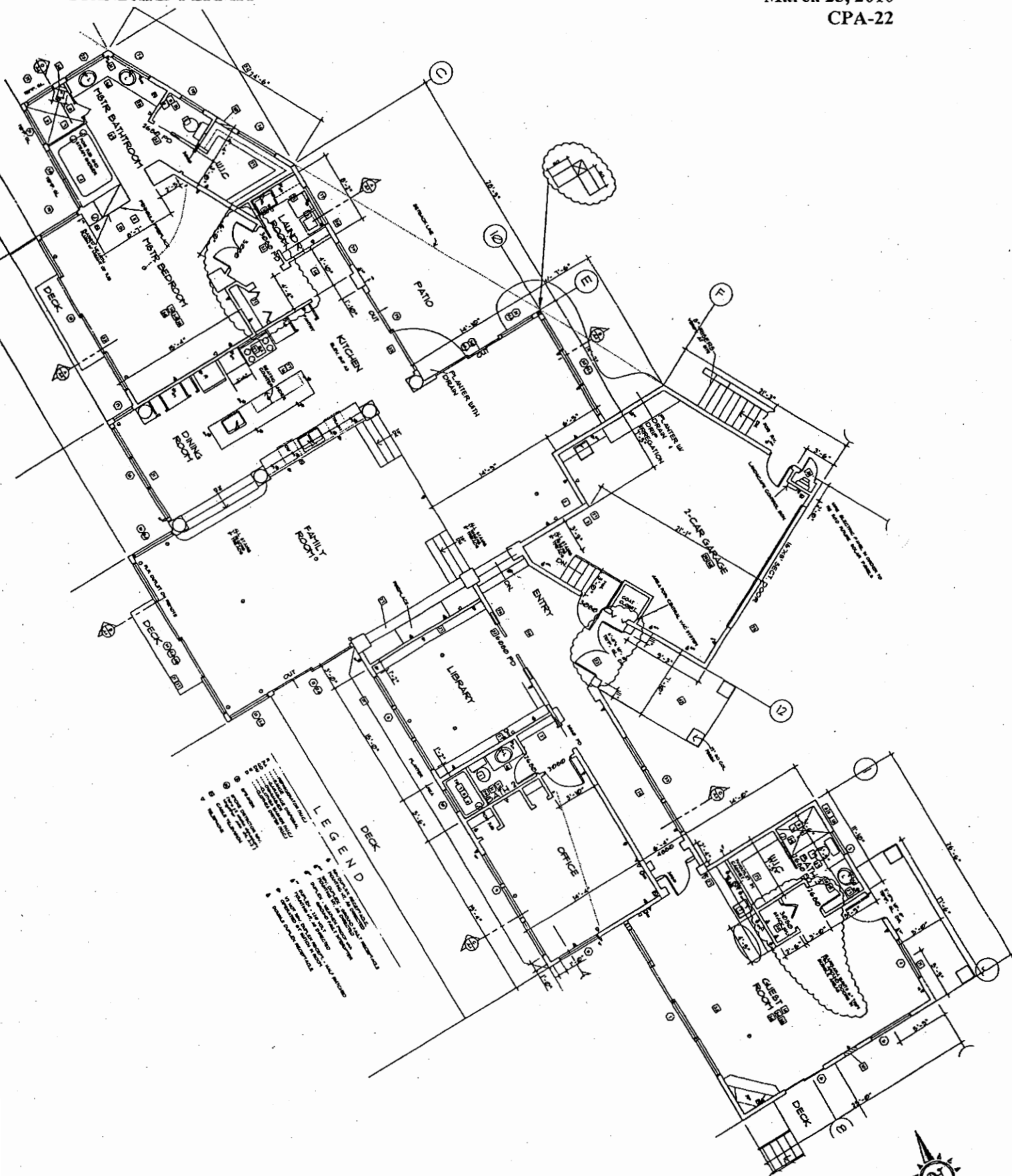


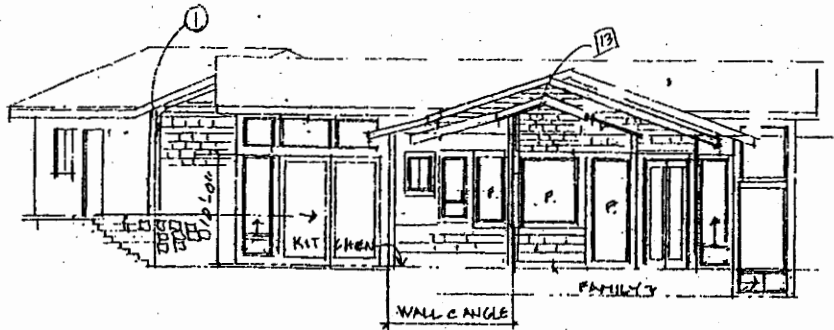
Exhibit F



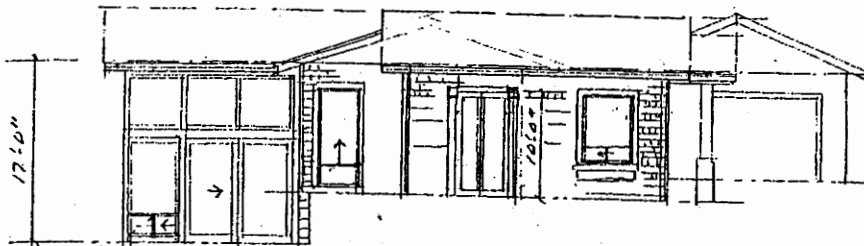








NORTH ELEV.



SOUTH ELEV