

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE      MAILING ADDRESS:  
710 E STREET • SUITE 200      P. O. BOX 4908  
EUREKA, CA 95501-1865      EUREKA, CA 95502-4908  
VOICE (707) 445-7833  
FACSIMILE (707) 445-7877



## RECORD PACKET COPY

## W22a+W22b

DATE: Prepared September 27, 2002 (for October 9, 2002 hearing date)

TO: Coastal Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director  
Steve Scholl, Deputy Director  
Robert Merrill, North Coast District Manager

SUBJECT: **Commission Determination of Appeal Jurisdiction and  
Applicable Hearing and Notice Provisions for (1) Mendocino  
County Coastal Development Permit Application CDP 67-00  
and (2) Mendocino County Coastal Development Permit  
Amendment Request CDP 67-00(M)**

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SUMMARY

The Mendocino County Coastal Administrator granted Coastal Development Permit No. CDP 67-00 on May 24, 2001 to John and Nit Lemley to remodel and add to an existing residence, resulting in a two-story, 26.5 ft high, 3-bedroom, 4,851 sq. ft residence at 11050 Lansing Street, in the Town of Mendocino. The Mendocino Historical Review Board (MHRB) had previously granted approval of the project. A notice of final local action on the "remodel/addition" indicating the project was appealable was received in the California Coastal Commission North Coast District Office on June 11, 2001. The appeal period was opened after receipt by the Commission of the Notice of Final Local Action and no appeal was received. In 2002, the applicants applied to the County for MHRB approval and a coastal development permit amendment to modify development approved under CDP 67-00 to (1) rotate the main north-south axis of the house 27 degrees clockwise, (2) change the window configuration to reduce the glass area by approximately 50%, and (3) change the style of architecture from a "contemporary" to an "arts and crafts" design which includes the use of iron-spot brick wainscot, dark olive-brown cedar siding and shingles and charcoal-colored composition roof shingles. After the MHRB approved the project, the Mendocino County Planning Director approved an "immaterial" amendment for this modification of the original permit on March 14, 2002.

However, notice of final local action on the coastal development permit amendment meeting the requirements of Section 13571 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code was never submitted to the Commission's offices.

Within a few weeks after issuance of the "immaterial" amendment, the Commission staff received several phone calls from concerned citizens objecting to the County's issuance of the "immaterial" amendment and inquiring as to whether the County's action approving the "immaterial" amendment was appealable to the Commission. Commission staff reviewed the question of whether the County's action approving the "immaterial" amendment was appealable to the Commission with County staff. County Staff indicated that based on the certified Coastal Zoning Code, the County determined that the "immaterial" amendment was not appealable to the Commission and that no Notice of Final Local Action on the approval of the "immaterial" amendment need be filed with the Commission. After reviewing the applicable provisions of the Mendocino Town Zoning Code, the Commission staff informed the County staff by letter dated May 15, 2002 that (1) the Executive Director disputed the County's determination that the County's action was not appealable to the Commission, (2) a valid notice of final local action indicating the County's action is appealable must be submitted to the Commission, and (3) the permit amendment is not effective until a valid notice is received and the appeal process has been completed.

On June 6, 2002, the North Coast District Office of the Commission staff received an appeal of the "immaterial" amendment from Hillary Adams. (See Exhibit 8.) A separate appeal of the "immaterial" amendment was received from Joan Curry. (See Exhibit 9.) As no notice of final local action meeting the requirements of Section 13571 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code has ever been submitted by the County, no appeal period for the amendment has been opened and the appeals have not yet been deemed filed. However, the appeals raise a number of concerns, including objections to both the processing of the "immaterial" amendment and the County staff determination during processing of the "immaterial" amendment that the original permit approved for the project authorized complete demolition of the existing single-family residence even though the coastal development permit application, hearing and local action notices and staff report did not indicate the existing structure would be completely demolished, instead referring to "remodeling and addition to" the existing structure. The appellants indicate that as the hearing and action notices and staff reports did not reference the total demolition of the existing residence, they were denied an opportunity to comment to the County on the impacts of demolition and if complete demolition were to be approved, the possibilities of resiting the new residence to another location on the lot where impacts to coastal resources could be further reduced from those that would result from building on the same site as the existing residence. Commission staff notes that the authorization granted by the County in the "immaterial" amendment to rotate the orientation of the new structure by 27 degrees is dependent on demolition of the entire original structure. Commission staff has

reviewed the staff report for the original project and the notice of final local action that had been submitted for the approval of the original coastal development permit and has determined that neither document references the complete demolition of the existing structure. If the County did authorize the complete demolition of the existing structure in the original permit, the notice of final action did not describe this basic aspect of the approved development in a manner that would enable interested parties that would be concerned about the demolition of the entire structure or the potential to require relocation of the new residence to raise such issues on appeal. Section 13571 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code require that a notice of final local action must include a project description of the approved project to be sufficient.

Section 13572 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code state that a local government's decision on an application for appealable development is not effective if the notice of final local action does not meet the requirements of Section 13571 and Section 20.720.045 of the Mendocino Town Zoning Code. Based on the omission of reference to authorization for the complete demolition of the structure in the notice of final local action, the Executive Director has determined that the notice of final local action for the originally approved project submitted on June 11, 2001 was insufficient because it did not indicate that the County had approved a demolition. Commission staff has also indicated orally to County staff that consistent with Section 13572 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code, any County action approving a demolition is not effective until after the Commission receives a valid notice of final local action and the 10 working day appeal period to the Commission has expired. The County staff has disputed this interpretation and has indicated orally to Commission staff that they do not intend to submit a new notice of final action which identifies complete demolition as part of the development authorized by the County.

After certification of a Local Coastal Program (LCP), the Commission is authorized, under Section 13569 of the Commission's regulations as well as Section 20.720.030 of the Mendocino Town Zoning Code, to resolve disputes concerning a local government's processing of a development application for coastal development permits (i.e., to determine whether the development is categorically excluded, non-appealable, or appealable). Under the terms of Section 13569 as well as Section 20.720.030 of the Mendocino Town Zoning Code, when the local jurisdiction does not agree with the Executive Director's determination regarding the appropriate permitting status of a particular proposal, the Commission is required to hold a hearing and make a determination. The Commission meeting in Eureka on October 8-10 is the first meeting in the same geographic region of the State as the project since the County has informed Commission staff that they disagree with the Executive Director's determinations that (1) the County's action on the "immaterial" amendment is appealable to the Commission and requires submittal of a valid notice of final local action and (2) the notice of final local action which failed to reference the approval of a total demolition as part of the original

project in 2001 is invalid and any County action approving a complete demolition is not effective until after the Commission receives a valid notice of final local action and the 10 working day appeal period to the Commission has expired. Therefore, the Commission has scheduled dispute resolution hearings on each determination for the meeting of Wednesday, October 9, 2002 in Eureka.

As discussed in detail in the findings below, the Executive Director has determined that the Planning Director's approval of the "immaterial" amendment is an action on a coastal development permit appealable to the Commission pursuant to Section 30603(B) of the Coastal Act and Section 20.728.020(B) of the certified Coastal Zoning Ordinance. Staff recommends that the Commission concur with the Executive Director's determination that the County's action on the "immaterial" amendment is appealable and that before the County's action can become effective, a notice of final local action reflecting this status must be submitted and any appeals of the appealable development must be processed.

As also discussed in detail in the findings below, the Executive Director has determined that the notice of final local action submitted for any total demolition purportedly authorized by the originally approved coastal development permit is invalid pursuant to Section 13571 of the Commission's regulations and Section 20.720.720.045 of the Mendocino Town Zoning Code. Staff further recommends that the Commission concur with the Executive Director's determination that any County action authorizing total demolition is not effective until after the Commission receives a valid notice of final local action that includes appropriate reference to the complete demolition of the original structure and any appeal of such development to the Commission has been processed.

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1. **Executive Director's Recommendation**

The Executive Director recommends that the Commission adopt the attached findings and resolutions to determine that the Mendocino County Planning Director's approval of the "immaterial" amendment of permit CDP 67-00 (CDP Amendment 67-00(M)) is an action on a coastal development permit appealable to the Commission and that a valid notice of final local action reflecting this status must be submitted for the approved amendment so that a new appeal period can be opened consistent with the Commission's regulations and LCP requirements. The Executive Director further recommends that the Commission adopt the attached findings and resolutions to determine that the notice of final action submitted for any demolition purportedly authorized by the originally approved coastal development permit for the development (CDP 67-00) is insufficient under both the Commission's regulations and certified zoning requirements, and that a new notice of final local action that includes reference to the complete demolition of the original structure must be submitted so that a new appeal period can be opened.

**A. Motion, Staff Recommendation, Resolution 1-02-2-EDD**

**Motion.** I move that the Commission reject the Executive Director's determination that immaterial amendment CDP 67-00(M) approved by the Mendocino County Planning Director on March 14, 2002 to modify the development approved under Mendocino County CDP 67-00 is appealable to the Coastal Commission.

**Staff Recommendation.** Staff recommends a **NO** vote. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that the Planning Director's approval of immaterial amendment CDP 67-00(M) is an action on a coastal development permit approving development that is appealable to the Commission and that a valid notice of final local action reflecting that the immaterial amendment is appealable to the Commission must be submitted and an appeal period be opened for this appealable development, and (2) the adoption of the following resolutions and

findings. A majority of the Commissioners present is necessary to pass the motion.

**Resolution.** The Commission, by adoption of the attached findings, determines, pursuant to Section 30603 of the Coastal Act; Sections 20.720.030 and 20.728.020 of the Mendocino Town Zoning Code and Section 13569 of Title 14 of the California Code of Regulations, that immaterial amendment CDP 67-00(M) approved by the Mendocino County Planning Director on March 14, 2002 to modify the development approved under Mendocino County CDP 67-00 constitutes an action on a coastal development permit for appealable development and that a valid notice of final action for this action on the coastal development permit for appealable development must be submitted and an appeal period opened.

**B. Motion, Staff Recommendation, Resolution 1-02-1-EDD**

**Motion.** I move that the Commission reject the Executive Director's determination that the notice of final local action submitted by Mendocino County for any total demolition purportedly authorized by Coastal Development Permit No. 67-00 to remodel and add to an existing residence resulting in a two-story, 26.5 ft high, 3-bedroom, 4,851 sq. ft residence at 11050 Lansing Street, in the Town of Mendocino is invalid and that a new notice of final local action that includes reference to the complete demolition of the original structure must be submitted so that an appeal period can be opened for this appealable development.

**Staff Recommendation.** Staff recommends a **NO** vote. Failure of this motion will result in: (1) the Commission upholding the Executive Director's determination that the notice of final local action submitted for any total demolition purportedly authorized by CDP 67-00 is invalid and that a new notice of final local action that includes reference to the complete demolition of the original structure must be submitted so that an appeal period can be opened for this appealable development and (2) the adoption of the following resolution and findings. A majority of the Commissioners present is necessary to pass the motion.

**Resolution.** The Commission, by adoption of the attached findings, determines, pursuant to Section 30603 of the Coastal Act, Sections 20.720.030 and 20.728.020 of the Mendocino Town Zoning Code and Section 13569 of Title 14 of the California Code of Regulations, that the notice of final local action submitted by Mendocino County for any total demolition purportedly authorized by approval of Coastal Development Permit No. 67-00 is invalid and that a new notice of final action that includes reference to the complete demolition of the

original structure must be submitted so that an appeal period can be opened for this appealable development.

## **2. RECOMMENDED FINDINGS AND DECLARATIONS**

### **A. Project History and Local Government Actions**

The approximately half-acre (23,670 square feet) Lemley parcel (APN 119-060-26) is a blufftop parcel located at 11050 Lansing Street, approximately 300 feet north of its intersection with Heeser Drive, within the Town of Mendocino (see Exhibits 1 and 2). The parcel is zoned and designated Rural Residential. Until recently, the parcel had been developed with a single-story 2,486 square-foot single family residence located on the northern half of the parcel, approximately 14 feet back from the boundary of the parcel facing Lansing Street, and at its closest point approximately 17 feet back from the bluff edge. The house was demolished within the last several months. The parcel is not located within a designated "highly scenic area" but is located within the Town of Mendocino, designated a special community in the certified LCP. Some view of the ocean is afforded across the property from Lansing Street, but much of the view is blocked by existing trees on the site and development. There are no known rare or endangered plant or animal species located on the site and there are no environmentally sensitive habitat areas located within 100 feet of the proposed development.

In 2001, John and Nit Lemley applied for Mendocino Historical Review Board approval and a coastal development permit from Mendocino County to "remodel and add" to an existing residence resulting in a two-story, 26.5 ft high, 3-bedroom, 4,851 sq. ft residence. The Coastal Permit Administrator granted a Coastal Development Permit (CDP) on May 24, 2001 to John and Nit Lemley to "remodel and add" to the existing residence resulting in a two-story, 26.5 ft high, 3-bedroom, 4,851 sq. ft residence. The Mendocino Historical Review Board (MHRB) had previously granted approval of the project.

A notice of final local action on the "remodel and addition" indicating the project was appealable was received in the California Coastal Commission North Coast District Office on June 11, 2001. The appeal period was opened after receipt of the Notice of Final Local Action by the Commission and no appeal was received.

In 2002, the applicants applied to the County for MHRB approval and a coastal development permit amendment to modify development approved under CDP 67-00 to (1) rotate the main north-south axis of the house 27 degrees clockwise, (2) change the window configuration to reduce the glass area by approximately 50%, and (3) change the style of architecture from a "contemporary" to an "arts and crafts" design which includes the use of iron-spot brick wainscot, dark olive-brown cedar siding and shingles and

charcoal-colored composition roof shingles. After the MHRB approved the project in March of 2002, the County staff issued a public notice indicating that the Planning Director intended to approve an "immaterial" amendment, but that the matter would be subject to a hearing if objections were received. Commission staff subsequently learned from interested members of the public that despite the receipt of a number of letters objecting to the issuance of an "immaterial" amendment, the County did not hold a public hearing on the amendment and approved the immaterial amendment for this modification of the permit on March 14, 2002. Commission staff received no notice that the Planning Director had approved the immaterial amendment when that action was taken. In addition, no notice of final local action on the coastal development permit amendment meeting the requirements of Section 13571 of the Commission's regulations or 20.720.040(G) of the Mendocino Town Zoning Code has ever been submitted to the Commission's offices.

**B. Authority for Determination**

The authority for the Commission's determination stems from both the County's certified LCP and the Commission's regulations. California Code of Regulations, Title 14, Section 13569 (Determination of Applicable Notice and Hearing Procedures) states:

*The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:*

*(a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.*

*(b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the*



*local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;*

*(c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:*

*(d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request. (Emphasis added.)*

Section 20.720.030(A)(4) of the Mendocino Town Code states:

*(4) Where, after the Executive Director's investigation, the Executive Director's determination is not in accordance with the county determination, the Coastal Commission shall hold a hearing for the purpose of determining the appropriate designation at the next Commission meeting in the appropriate geographic region following the county's request.*

Accordingly, after the certification of a LCP, the Commission is authorized to determine the appropriate status of a development proposal (i.e., categorically excluded, non-appealable, or appealable) when requested to do so. The purpose of the regulation and companion LCP provision is to provide for an administrative process for the resolution of disputes over the status of a particular project. Such a process is important when two agencies, here the County of Mendocino and the Coastal Commission, both have jurisdiction over a given project. The Coastal Act was set up to give certified local governments the primary development review authority but identified certain developments over which the Commission would retain appellate review. Thus, the regulations anticipated that, from time to time, there may be disagreements regarding the status of a particular project and an administrative dispute resolution process would be preferable (and quicker) than the immediate alternative of litigation. If the Executive Director and the local government are in disagreement over the appropriate processing status, as is the situation here, the Commission is charged with making the final determination.

The Commission staff received several telephone inquiries, letters, and also two completed appeal forms from interested citizens inquiring whether the County's action on

the immaterial amendment is appealable to the Commission. After receiving the inquiries from the public about whether the County's action to approve the immaterial amendment is appealable, Commission staff wrote the County Planning Director in a letter dated May 15, 2002 (see Exhibit 3) indicating that staff had determined that as the project is within a geographic appeal area and as the County's approval of the amendment constituted "an action" on a coastal development permit pursuant to Section 30603(B) of the Coastal Act, the approval of the "immaterial" amendment is appealable to the Commission and a Notice of Final local action must be submitted to the Commission. The Commission staff letter also states that the County's action on the permit amendment remains ineffective.

In a letter of response, dated May 29, 2002, County staff stated that the County's own interpretation of the certified coastal zoning code is that no notice of final local action need be submitted for an approval by the Planning Director of an immaterial amendment and disputed the Commission staff's determination that the project is appealable. In subsequent telephone conversations, Commission staff also indicated to the County that the notice of final local action that had been submitted to the Commission for the total demolition purportedly authorized by original coastal development permit (CDP 67-00) was invalid because of the failure of the notice to describe the project as including complete demolition of the original structure. Staff indicated that before any County action approving the total demolition can become effective, a new notice of final local action meeting the requirements of Section 13571 of the Commission's regulations and Section 20.720.045(G) of the Mendocino Town Zoning Code must be submitted for the original project and so that an appeal period can be opened. County staff has indicated their disagreement with this determination and to date, has not submitted a notice of final local action for the immaterial amendment or the demolition.

As the County disagrees with the Executive Director's determinations that (1) the immaterial amendment is appealable to the Commission and (2) a valid notice must be submitted and an appeal period opened before any County action approving appealable development can become effective, a dispute/question clearly exists over the status of both the County's actions on appealable development. It is precisely this kind of situation that is properly addressed by the dispute resolution provision in Section 13569 of the Commission's regulations and Section 20.720.030(A)(4) of the County's town zoning code. If the process for administratively resolving these disputes is not followed, the only alternative remaining is time consuming and expensive litigation. Section 13569(d) of the Commission's Regulations and Section 20.720.030(A)(4) of the County town zoning code provide that if the executive director's determination as to whether a development is categorically excluded, non-appealable or appealable is not in accordance with the local government determination, the Commission shall hold a hearing for the purposes of determining the appropriate designation for the area. If a system for dispute resolution is to be effective, the process must be observed by both the Coastal Commission and the local government and participation is not optional. As the Executive Director has made a determination with regard to both the appealability of the

County's approval of the immaterial amendment and the need to open a new appeal period for the appealable demolition project, both matters will be heard by the Commission.

**C. Executive Director's Determination on CDP Modification 67-00(M) and Demolition Purportedly Authorized by CDP 67-00**

Modification

As noted above, the County sent no notice to the Commission at the time of the approval of the "immaterial" amendment. Within a few weeks after issuance of the "immaterial" amendment, the Commission staff received several phone calls from concerned citizens objecting to the County's issuance of the immaterial amendment and inquiring as to whether the "immaterial" amendment was appealable to the Commission. Commission staff reviewed the question of whether the "immaterial" amendment was appealable to the Commission with County staff. County Staff indicated that based on the certified coastal zoning code, the County determined that the "immaterial" amendment was not appealable to the Commission and that no Notice of Final Local Action on the approval of the immaterial amendment need be filed with the Commission. After reviewing the applicable provisions of the Town Zoning Code, the Executive Director disputed the County's determination that the Planning Director's action on the immaterial amendment was not appealable to the Commission and that no notice of final local action need be submitted to the Commission.

Commission staff wrote the County Planning Director in a letter dated May 15, 2002 (see Exhibit \_\_) indicating that since the approved development is within a geographic appeal area and as the County's approval of the amendment constituted "an action" on a coastal development permit application, pursuant to Section 30603(b) of the Coastal Act and Section 20.728.020(B) of the Mendocino Town Zoning Code, the approval of the "immaterial" amendment is appealable to the Commission and a valid Notice of Final local action must be submitted to the Commission. The Commission staff letter also states that the permit amendment will remain effective until after the Commission's appeal period has run. Moreover, the Commission staff letter informed the County of the procedures provided under Section 13569 of the commission's regulations and Section 20.720.030(A)(4) of the Mendocino Town Zoning Code for resolution of disputes between a local government and the Executive Director regarding whether a development is appealable, non-appealable, or categorically excluded.

In a letter of response, dated May 29, 2002, County staff stated that the County's own interpretation of the certified coastal zoning code is that no notice of final local action need be submitted for an approval by the Planning Director of an "immaterial" amendment, and that the Commission staff did not raise the issue in a timely manner. As noted above, Commission staff received no notice that the Planning Director had

approved the "immaterial" amendment when that action was taken. Staff first learned that the action was taken as a result of inquiries from the public received weeks after the action had purportedly been taken. Furthermore, pursuant to Section 13572 of the Commission's regulations and Section 20.720.045(G) of the County's zoning ordinance, no coastal development permit for appealable development can be considered effective until a valid notice of final local action has been received by the Commission and all necessary appeal periods have been exhausted. As no valid notice of final local action on the amendment had been received by the Commission and no appeal period has opened or concluded, the permit amendment remains ineffective.

### Demolition

On June 6, 2002, the North Coast District Office of the Commission staff received an appeal of the "immaterial" amendment from Hillary Adams. (See Exhibit 8.) A separate appeal of the "immaterial" amendment was received from Joan Curry. (See Exhibit 9.) As no notice of final local action meeting the requirements of Section 13571 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code has ever been submitted by the County, no appeal period for the amendment has been opened and the appeals have not yet been deemed filed. However, the appeals raise a number of concerns, including objections to both the processing of the "immaterial" amendment and the County staff determination during processing of the "immaterial" amendment that the original permit approved for the project authorized complete demolition of the existing single-family residence even though the coastal development permit application, hearing and local action notices and staff report did not indicate the existing structure would be completely demolished, instead referring to "remodeling and addition to" the existing structure. The appellants indicate that as the hearing and action notices and staff reports did not reference the total demolition of the existing residence, they were denied an opportunity to comment to the County on the impacts of demolition and if complete demolition were to be approved, the possibilities of resiting the new residence to another location on the lot where impacts to coastal resources could be further reduced from those that would result from building on the same site as the existing residence. Commission staff notes that the authorization granted by the County in the "immaterial" amendment to rotate the orientation of the new structure by 27 degrees is dependent on demolition of the entire original structure. Commission staff has reviewed the staff report for the original project and the notice of final local action that had been submitted for the approval of the original coastal development permit and has determined that neither document references the complete demolition of the existing structure. If the County did authorize the complete demolition of the existing structure in the original permit, the notice of final action did not describe this basic aspect of the approved development in a manner that would enable interested parties that would be concerned about the demolition of the entire structure or the potential to require relocation of the new residence to raise such issues on appeal. Section 13571 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code

require that a notice of final local action must include a project description of the approved project to be sufficient.

Section 13572 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code state that a local government's decision on an application for appealable development is not effective if the notice of final local action does not meet the requirements of Section 13571 and Section 20.720.045 of the Mendocino Town Zoning Code. Based on the omission of reference to authorization for the complete demolition of the structure in the notice of final local action, the Executive Director has determined that the notice of final local action for the originally approved project submitted on June 11, 2001 was insufficient because it did not indicate that the County had approved a demolition. Commission staff has also indicated orally to County staff that consistent with Section 13572 of the Commission's regulations and Section 20.720.045 of the Mendocino Town Zoning Code, any County action approving a demolition is not effective until after the Commission receives a valid notice of final local action and the 10 working day appeal period to the Commission has expired. The County staff has disputed this interpretation and has indicated orally to Commission staff that they do not intend to submit a new notice of final action which identifies complete demolition as part of the development authorized by the County.

#### **D. Coastal Commission Determination on CDP Modification 67-00(M)**

The Commission finds that the immaterial amendment approved by the County is an action on a coastal development permit application appealable to the Commission.

##### Local Action

The Planning Director purportedly approved an "immaterial" amendment. As discussed further below, appealable development may not be processed administratively under the Mendocino Town Zoning Code because at least "1" hearing must be held before approving appealable development. However, regardless of whether the Planning Director appropriately approved a material or immaterial amendment, such a local action is an action on a coastal development permit which is appealable to the Commission if the action authorized appealable development.

##### Appealable Development.

Section 30603(a) of the Coastal Act states in relevant part:

*(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the Commission for only the following types of developments:*

*(1) Developments approved by the local government 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 tideline of the sea where there is no beach, whichever is the greater distance.*

*(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

*(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*

*(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).*

*(5) Any development which constitutes a major public works project or a major energy facility. (Emphasis added.)*

Section 20.728.020(B) of the Mendocino Town Zoning Code states in relevant part:

*(B) An action taken on a coastal development permit may be appealed to the Coastal Commission for only the following types of developments:*

*(1) Developments approved between the sea and the first public road paralleling the sea or within three hundred (300) feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance;*

*(2) Developments approved not included within Paragraph (1) of this section that are located on tidelands, submerged lands, public trust lands, within one hundred (100) feet of any wetland, estuary, stream, or within three hundred (300) feet of the top of the seaward face of any coastal bluff;*

*(3) Any approved division of land;*

*(4) Any development approved that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500) of the Coastal Act;*

*(5) Any development which constitutes a major public works project or a major energy facility (Emphasis added.).*

The development as amended by the County in Permit Modification No. 67-00(M) is appealable to the Commission for at least four reasons. First, any residential development authorized by the approved amendment would be located within 300 feet of the mean high tide line of the sea. Accordingly, any such development approved by the County would be appealable to the Commission pursuant to Section 30603(a)(1) of the Coastal Act and Section 20.728.015(B)(1) of the Mendocino Town Zoning Code based on its location within 300 feet of the mean high tide line of the sea.

Second, the approved amendment is appealable to the Commission under Section 30603(a)(1) of the Coastal Act and Section 20.728.015(B)(1) of the Mendocino Town Zoning Code because any development approved by the County's action on the amendment would be located between the first public road and the sea. Therefore, any coastal development permit amendment that is approved by the County for development on the subject parcel is also appealable to the Commission based on its location between "the first public road and the sea."

Third, any residential development authorized by the approved amendment would be located within 300 feet of the top of the seaward face of the coastal bluff on the property. Accordingly, any such development approved by the County's action on the amendment would be appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act and Section 20.728.015(B)(2) of the Mendocino Town Zoning Code based on its location within 300 feet of the top of the seaward face of any coastal bluff.

Fourth, the County's action on the amendment application is appealable to the Commission under Section 30602(a)(3) of the Coastal Act because any development would be located in a sensitive coastal resource area. Land Use Plan (LUP) Policy 3.5-2 designates the Town of Mendocino as a special community. Section 20.308.110(6) of the Mendocino County Zoning Ordinance defines sensitive coastal resource areas as including special communities. Accordingly, any development approved by the County within the Town of Mendocino would be appealable to the Commission pursuant to Section 30603(a)(3) of the Coastal Act based on the Town of Mendocino having been designated a sensitive coastal resource area under the certified Mendocino County LCP.

#### Local Action Not Effective

As established above, the amendment approved by the Coastal Permit Administrator is an appealable development. As an appealable development, the application for the amendment is subject to certain requirements of the Mendocino Town Zoning Code and the Commission's regulations that a public hearing be held and that a valid notice of the County's action be provided to the Commission so an appeal period can be opened before the County's approval can be considered effective.

Section 20.720.015(A) of the Mendocino Town Zoning Code states in applicable part:

- (A) *Coastal Development Administrative Permit. The purpose of Coastal Development Administrative Permits is to provide for the administrative issuance of coastal development permits...Development projects which are appealable to the Coastal Commission including any division of land, shall not be processed as an administrative permit.* (Emphasis added.)

Section 20.720.045 of the Mendocino Town Zoning Code states in applicable part:

- (A) *Purpose. The purpose of this section is to provide for the issuance of coastal development permits for those types of development projects which are not administrative or emergency permits.*
- (B) *Hearing. The approving authority shall hold at least one public hearing on each coastal development permit application for an appealable development or for a non-appealable development which requires a public hearing pursuant to other provisions of this Division.....* (Emphasis added.)
- ...
- (G) *Effective Date. Decisions of the approving authority on an application for a development appealable to the Coastal Commission shall become final and effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. If the notice of final action is defective and does not contain information pursuant to Section 20.720.045(D) and Section 20.720.035(B)(1), if applicable, the permit decision will be stayed and will not become effective after expiration of the ten (10) working day appeal period...* (Emphasis added.)

Section 20.720.015(A) of the Mendocino Town Zoning Code mandates that development projects which are appealable to the Coastal Commission shall not be processed as an administrative permit. Therefore, Coastal Development Permit Modification No. 67-00(M) is subject to the procedural requirements that apply to applications that are not processed as administrative permits. Chief among these requirements are the provisions of Section 20.720.045 of the Mendocino Town Zoning Code. Section 20.720.045(B) requires that at least one public hearing be held on each coastal development permit application for an appealable development. This requirement mirrors the provision of Section 13566 of the Commission's regulations which states that "*at least one public hearing shall be held on each application for an appealable development, thereby affording any persons the opportunity to appear at the hearing and inform the local government of the nature of their concerns regarding the project.*" As discussed previously above, no public hearing was held on the amendment for the Lemley project (67-00(M)).

Section 13571 of the Commission's regulations requires that a notice of final local action that includes the conditions of approval, written findings, and the procedures for appeal of the local decision to the Coastal Commission be provided for all local decisions on an



application for appealable development. Section 20.720.045(G) of the Mendocino Town Zoning Code provides that the decisions of the approving authority on an application for a development appealable to the Coastal Commission shall become final and effective only after the appeal period to the Commission has expired and no appeal has been filed. In addition, Section 20.720.045(G) mirrors the requirements of Section 13572 of the Commission's regulations that if the notice of final action is defective and does not contain certain required information, the permit decision will be stayed and will not become effective after expiration of the appeal period. In this case, the County did not submit a notice of final local action on the Coastal permit Administrator's decision to approve appealable development. In the absence of the required notice of final action, notice is defective and pursuant to Section 20.720.045(G) of the Mendocino Town Zoning Code and Section 13572 of the Commission's regulations, the County's action to approve the permit amendment is stayed and did not become effective.

Mendocino Town Zoning Code Immaterial Amendment Procedures.

In its letter of May 29, 2002, County staff opines that immaterial amendments processed by the County pursuant to Section 20.720.025 of the Mendocino Town Zoning Code are not subject to appeal to the Commission, regardless of whether they are development qualifying under Section 30603(a) of the Coastal Act or Section 20.728.015(B) of the Mendocino Town Zoning Code.

Section 20.720.055(C) of the Mendocino Town Zoning Code states:

(C) *Amendment to Permits other than Administrative Permits.*

- (1) *The Director shall determine whether or not a proposed amendment is a material change to the approved permit. If the Director determines that the proposed amendment is immaterial, notice of such determination shall be posted at the project site. Notice of such determination also shall be given as provided in Section 20.720.040(D). If no written objection to the amendment is received within ten (1) working days of the notice, the determination of immateriality shall be conclusive and the amendment effective.*
- (2) *If the Director determines that the proposed amendment is a material change or if written objection is made to the determination of conditions that were required for the purpose of protecting a coastal resource or coastal access consistent with the findings required by Section 20.720.035, the application shall be referred to the approving authority having original jurisdiction over the coastal development permit. The material amendment shall be subject to the hearing and notice requirements of Section 20.720.045 (Ord. No. 3915 (part), adopted 1995) (Emphasis added.)*

The County's letter of May 29, 2002 highlights the provision of Section 20.720.055(C)(1) that states "if no written objection to the amendment is received within ten (10) working days of the notice, the determination of immateriality shall be conclusive and the amendment effective." The letter also highlights the provision of Section 20.720.055(C)(2) that indicates that when an objection is received, those objections "made to the determination of conditions that were required for the purpose of protecting a coastal resource or coastal access" shall be treated as a material amendment subject to the hearing and notice requirements of Section 20.720.045 of the code. The County acknowledges that it received letters of objection to the processing of the amendment as an immaterial amendment within the 10 day comment period, but indicates that in the opinion of the Planning Director, none of the letters fit the criteria for triggering the need to process the amendment as a material amendment. The County indicates that as the Planning Director determined that the amendment is immaterial, despite the receipt of letters of objection, the immaterial amendment became effective at the close of the 10 day notice period pursuant to Section 20.720.030(C)(1) and is not subject to appeal to the Commission.

The Commission finds that the relevant provisions of Section 20.720.030(C) state that an immaterial amendment shall be effective only if no written objection to the amendment is received within ten working days of the notice. The provision does not provide that an immaterial amendment shall be effective in situations where objections to the amendment are received and the objections involve conditions that were required for the purpose of protecting a coastal resource or coastal access. In this case the objections to the proposed issuance of the immaterial amendment do raise concerns that satisfy the criteria of Section 20.720.055(C)(2) and involve conditions that were required for the purpose of protecting a coastal resource. The letter submitted by Dr. Hillary Adams (see Exhibit 8, page 12) refers to the visual impacts of the new design of the house that the permit amendment would allow. The design plans are incorporated into the permit by a standard condition that provides that compliance with the application is mandatory unless an amendment is approved. Both the proposed rotation of the orientation of the structure by 27 degrees and the change in the design style of the house have at least the potential of having an impact on visual resources. Thus, the objections received by the Planning Director related to the conditions required to protect a coastal resource and the Planning Director was obligated to refer the amendment to the Planning Commission. Pursuant to Section 20.720.055(C)(2) of the Mendocino Town Zoning Code, the amendment should have been considered material and subject to a public hearing and the notice requirements of Section 20.720.045.

As noted previously, both Section 30603(a) of the Coastal Act and Section 20.728.015(B) state that "an action taken on a coastal development permit may be appealed to the Coastal Commission" for certain kinds of development, including developments such as the Lemley project that are located between the first public road and the sea, within 300

feet of the mean high tide line of the sea, within 300 feet of the seaward face of a coastal bluff, and within a sensitive coastal resource area. Such appealable development should not have been authorized administratively by the Planning Director. However, regardless of whether the amendment is appropriately characterized as immaterial, the approval of the amendment constitutes "an action taken on a coastal development permit" for a kind of appealable development identified in Section 30603(a) of the Coastal Act and Section 20.728.015(B) of the Mendocino Town Zoning Code and is therefore appealable to the Commission.

Timelines of Dispute Resolution Proceedings.

In discussions with Commission staff, County staff have suggested that Commission review of the appealability of the immaterial amendment is not timely, as the Planning Director approved the amendment over six months ago and development has commenced, including demolition of the previously existing structure on the site.

At the time the county staff was considering the immaterial amendment, Commission staff received a copy of the public notice indicating that the Planning Director was considering issuing an amendment, but that the matter would be subject to a hearing if objections were received. The County acknowledges that a number of written letters of objection to the processing of the immaterial amendment were received. Although staff received the preliminary notice, staff received no notice that the Planning Director had approved the "immaterial" amendment. Staff first learned that the Planning Director's action was taken as a result of inquiries from the public received weeks after the action had purportedly been taken.

Furthermore, pursuant to Section 13572 of the Commission's regulations, no coastal development permit for appealable development can be considered effective until a valid Notice of Final Local Action has been received by the Commission and all necessary appeal periods have been exhausted. As no notice of final local action on the appealable development meeting the requirements of Section 13571 or Section 20.720.045(D) and (G) of the County's zoning ordinance has ever been received, no appeal period has opened or concluded, and the permit amendment remains ineffective. The County and the applicants were notified in the Commission staff letter of May 14, 2002 that as the Commission's appeal period has not run, the permit amendment remains effective and no development should proceed until the coastal development permit appeal process has been completed. The fact that the applicant chose and the County allowed development to proceed does not change the status of the coastal development permit amendment as ineffective and does not eliminate the appeal process and the rights of the public to file an appeal with the Commission.

Moreover, a dispute clearly exists as to whether the permit amendment is appealable to the Commission. To resolve the dispute, as discussed in Finding B, "Authority for Determination," above, the Executive Director determined that it was appropriate to

apply the dispute resolutions provisions of Section 13569 of the Commission's regulations. Section 13569(d) provides that "the Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state ...)" The Commission meeting in Eureka on October 8-10, 2002 is the first meeting in the geographic region of the project since the County's letter of May 29, 2002 indicated that they did not agree with the Executive Director's determination that the immaterial amendment is appealable to the Commission.

Therefore, the Commission finds that its consideration of review of the appealability of the development is timely and is necessary to resolve the dispute over whether the development approved by the County is appealable to the Commission.

**E. Coastal Commission Determination on Demolition Purportedly Authorized by CDP 67-00**

The Commission finds that the notice of final local action for the complete demolition purportedly authorized by original permit approved by the County is invalid and the County's action purportedly authorizing such demolition is ineffective until after a new appeal period has run.

**Demolition Not Adequately Described in Original Hearing Process.**

In its letter of May 29, 2002, County staff indicates that the original permit for the development, CDP 67-00, authorized the complete demolition of the structure that existed on the site at that time. The inquiries, letters, and appeals that Commission staff received from the public with regard to the County's action on the amendment (CDP 67-00(M) raise concerns that the staff report prepared by Mendocino County and the deliberations at the local hearings on approval of the original coastal development permit for the development (CDP 67-00) did not adequately inform the public that the project included the complete demolition of the existing residence on the site (see Exhibits 5 and 8).

The public hearing notice published before the County acted on the permit (see Exhibit 6) describes the proposed development in the following way:

**"Remodel and add to an existing 3-bedroom 2,486+/- sq. ft. single story residence. The remodel includes a second story addition with a maximum height of approximately 26'6" feet above grade. The proposed addition would result in a 3-bedroom 4,851 +/- sq. ft. residence."** [Emphasis added]

The notice of final local action uses the same project description (see Exhibit 7). The County staff report for the May 24, 2001 hearing on the application (see Exhibit 7 pages 3 and 4) includes this same bullet description of the project at the beginning of the report.

This description does not state that the entire original structure would be demolished, and the use of the phrase "remodel and add to an existing" residence indicates that some portion of the existing structure would remain to be added on to.

The more detailed project description contained in the report beginning at the bottom of page 1 reads in applicable part:

"The applicant proposes to remodel and add to an existing residence on a blufftop parcel in the Town of Mendocino. The existing single-story 2,486+/- sq. ft. single family residence would be remodeled and added onto to create a two-story 4,851+/- sq. ft. residence with a maximum height not to exceed 26'6" above grade. Some demolition of the existing residence would be required to accomplish the proposed project. The proposed addition includes (but is not limited to) the following: enlarge the existing attached garage, add a master bedroom and bathroom upstairs over an existing bedroom, add a new study/library on the main floor, enlarge an existing two car attached garage, remove and add new wood decking, relocate and remodel the kitchen, add pantry/storeroom and 1/2 bathroom, relocate an existing water tank and add propane tank behind lattice screen, relocate hot tub, install shielded and down-cast exterior lighting, connect all roof drains and yard drains to existing closed pipe to bottom of fluff. The exterior colors and materials are to be as follows: cedar shingle siding with clear cedar trim, finished with gray driftwood stain, charcoal gray composition shingles roofing and dark bronze anodized aluminum dual pane clear non-reflective glass windows."

This description makes reference to demolition, but qualifies it by stating that only "some" demolition of the existing residence would be required. The sentence implies that while some demolition would occur, portions of the existing structure would remain. The description does not state that the existing residence would be completely demolished. Furthermore, by using such terms as "adding onto" and "proposed addition," the description creates the impression that some portion of the existing structure would remain to be added on to.

As stated above, the Notice of Final Local Action makes no reference to demolition. By not even conveying that the entire original structure would be demolished in the staff report findings, the County did not give the public an opportunity during the coastal development permit approval process to raise concerns about the impacts of complete demolition of the structure, and if complete demolition were to be approved, the possibilities of siting the new residence in another location on the lot where impacts to coastal resources could be further reduced from those that would result from building on the same site as the existing residence.

Appealable Development.

The Commission finds that any development authorized under Coastal Development Permit No. 67-00 is appealable to the Commission. As discussed in Finding D, above, the project site is located in a geographic area where any action by the County on a coastal development permit is appealable to the Commission.

Original Notice of Final Local Action for Approval of Demolition is Invalid.

Section 13571 of the Commission's regulations requires that after a local government has completed its review of an application for a coastal development permit, the local government shall notify the Commission of its action on the permit application. The notice must include the conditions and written findings for approval, as well as the procedures for appeal of the local decision to the Commission. Section 13572 of the Commission's Regulations and Section 20.720.045(G) of the County's Town Zoning Code provide that after receipt of a Notice of Final Action, a local government's decision on a coastal development permit application shall become effective unless an appeal is filed within the Commission's ten working day appeal period or the Notice of Final Local Action does not meet the requirements of Section 13571 of the Commission's Regulations and Sections 20.720.045(D) and (G) of the County's Town Code.

As discussed above, the notice of final local action submitted after the County approved CDP 67-00 for the remodel and addition does not indicate that the entire existing structure on the site would be demolished. Thus, when the Commission's appeal period ran on the approval of the original project, interested persons were not informed that the complete demolition of the structure was subject to appeal to the Commission or even approved by the County. As a result, the interested persons were denied the opportunity to comment on the impacts of complete demolition of the structure or to comment on the possibility of siting the new structure in a different location on the lot where impacts to coastal resources could be reduced. Instead, the staff report for the approval indicated that portions of the existing structure would remain, and relocation was not a feasible option as the remodeling of the old structure would necessarily tie the location of the development to where the existing home to be remodeled was located. Therefore, the Commission finds that the notice of the County's final local action to approve demolition of the entire previously existing structure on the site is invalid as the submitted notice does not describe complete demolition.

Local Action on Demolition Not Effective.

Section 20.720.045(G) of the Mendocino Town Zoning Code provides that the decisions of the approving authority on an application for a development appealable to the Coastal Commission shall become final and effective only after the appeal period to the Commission has expired and no appeal has been filed. In addition, Section 20.720.045(G) mirrors the requirements of Section 13572 of the Commission's

regulations that if the notice of final action is defective and does not contain certain required information, the permit decision will be stayed and will not become effective after expiration of the appeal period. In the case of the County's approval of the original permit for the development, the County did not submit a valid notice of final local action on the Coastal Permit Administrator's decision that described the complete demolition of the structure that the County now indicates it authorized through its approval of Coastal Development Permit No. 67-00. Therefore, pursuant to Section 20.720.045(G), as the notice of final local action was defective with respect to the County's approval of the complete demolition of the original structure, the County's action to approve a permit authorizing such appealable development did not become effective.

#### **F. Appeal Periods Necessary**

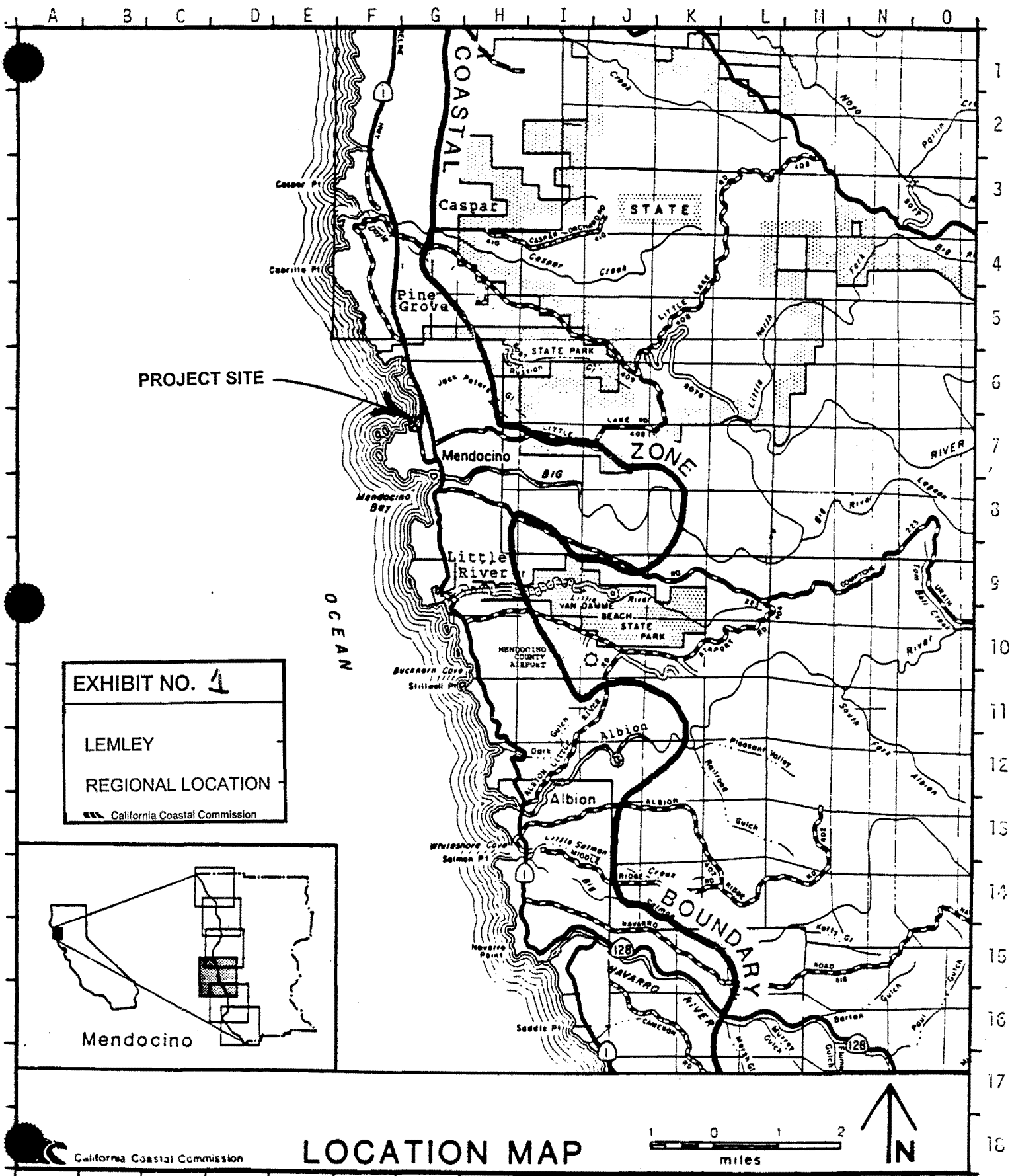
To allow for the County's approvals of both the total demolition purportedly authorized by the original permit and the permit amendment to become effective, a Commission appeal period for the County's action on the original permit (CDP No. 00-67) and a Commission appeal period for the County's action on the amendment (CDP Modification No. 00-67(M)) must be run and any appeals received must be processed by the Commission. To enable the appeal periods to be opened, the County must submit a notice of final local action on the original permit that includes a description of the complete demolition of the previously existing structure on the site, and a notice of final local action on the development authorized by the permit amendment.

#### **G. Exhibits**

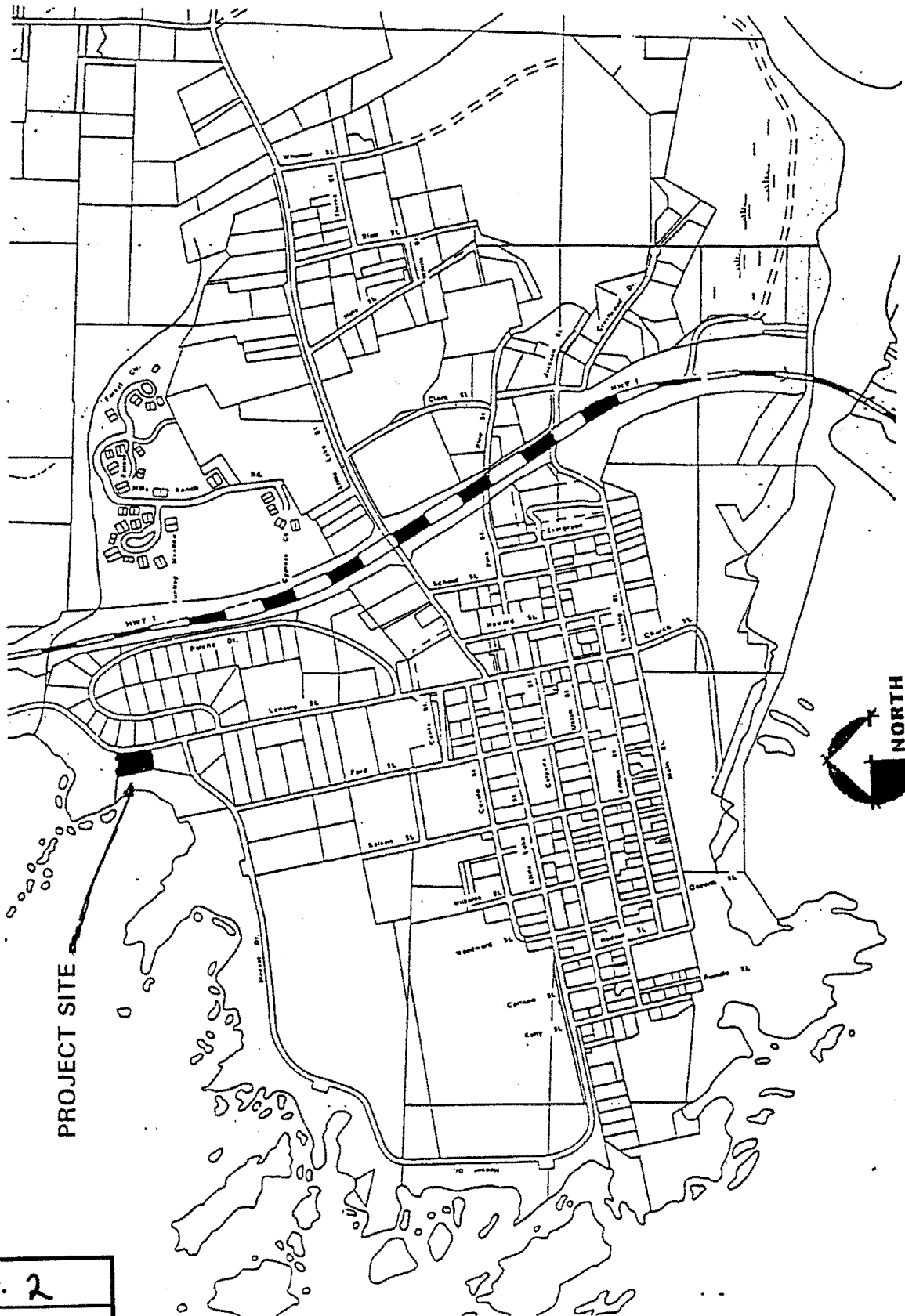
1. Regional Location Map
2. Vicinity Map
3. Commission Staff Letter of May 15, 2002 to County Staff
4. Mendocino County Staff Letter of May 29, 2002 to Commission Staff
5. Letter From Dr. Hillary Adams of July 5, 2002
6. County Public Hearing Notice for CDP No. 67-00
7. Notice of Final Local Action for CDP No. 67-00
8. Appeal by Dr. Hillary Adams
9. Appeal by Joan Curry







# Town of Mendocino



PROJECT SITE

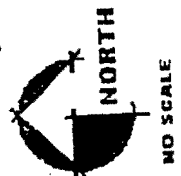


EXHIBIT NO. 2

1  
— LEMLEY  
— VICINITY MAP

California Coastal Commission

Location Map

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET • SUITE 200

EUREKA, CA 95501-1865

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

MAILING ADDRESS:

P. O. BOX 4908

EUREKA, CA 95502-4908



May 15, 2002

<b>EXHIBIT NO. 3</b>	
LEMLEY	
STAFF LETTER TO COUNTY (1 of 4)	
California Coastal Commission	

Ray Hall  
Planning Director  
Mendocino County  
Dept. of Planning & Building Services  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

**SUBJECT: Immaterial Amendment to Mendocino Coastal Development Permit  
No. CDP 67-00; John and Nit Lemley**

Dear Ray:

We have received inquiries from members of the public as to whether the County's action to approve an immaterial amendment to the above-referenced permit for the development of a single-family residence at 11050 Lansing Street in the Town of Mendocino is appealable to the Commission. The original permit approved by the Coastal Permit Administrator in May of last year authorized development that would result in a 3-bedroom, 26.5-foot-high, 4,851-square-foot residence. We understand that the immaterial amendment approved changes to the architectural design of the structure without appreciably increasing the size and height of the structure. As I have discussed with Doug Zanini, we have concluded that the County's action to approve the amendment is appealable to the Commission, and therefore the local permit amendment is not effective until after the Commission's appeal period has run. Furthermore, we have determined that we need to receive from the County a valid Notice of Final Action on the permit amendment approved by the County in order to begin the Commission's appeal period.

Appeal Jurisdiction

Section 30603(a) of the Coastal Act and Section 20.544.020 of the County's certified Coastal Zoning Ordinance 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 one hundred feet of a wetland or stream or three hundred feet of the mean high tide line of the sea or inland extent of any beach or top of the seaward face of a 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 County's action on the amendment application is appealable to the Commission for at least four reasons. First, any residential development authorized by the approved amendment would be located within 300 feet of the mean high tide line of the sea. Accordingly, any such development approved by the County would be appealable to the Commission pursuant to Section 30603(a)(1) of the Coastal Act based on its location within 300 feet of the mean high tide line of the sea.

Second, the approved amendment is appealable to the Commission under Section 30603(a)(1) of the Coastal Act because any development approved by the County's action on the amendment would be located between the first public road and the sea. Therefore, any coastal development permit amendment that is approved by the County for development on the subject parcel is also appealable to the Commission based on its location between "the first public road and the sea."

Third, any residential development authorized by the approved amendment would be located within 300 feet of the top of the seaward face of the coastal bluff on the property. Accordingly, any such development approved by the County's action on the amendment would be appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act based on its location within 300 feet of the top of the seaward face of any coastal bluff.

Fourth, the County's action on the amendment application is appealable to the Commission under Section 30602(a)(3) of the Coastal Act because any development would be located in a sensitive coastal resource area. Land Use Plan (LUP) Policy 3.5-2 designates the Town of Mendocino as a special community. Section 20.308.110(6) of the Mendocino County Zoning Ordinance defines sensitive coastal resource areas as including special communities. Accordingly, any development approved by the County within the Town of Mendocino would be appealable to the Commission pursuant to Section 30603(a)(3) of the Coastal Act based on the Town of Mendocino having been designated a sensitive coastal resource area under the certified Mendocino County LCP.

We note that the County sent a Notice of Final Action after approving the original coastal development permit for the single-family residential development in 2001, indicating that the project was appealable to the Commission.

#### Notice of Final Action

Section 13571 of the Commission's Regulations requires that after a local government has completed its review of an application for a coastal development permit, the local

government shall notify the Commission of its action on the permit application. The notice must include the conditions and written findings for approval, as well as the procedures for appeal of the local decision to the Commission. Section 13572 of the Commission's Regulations provides that after receipt of a Notice of Final Action, a local government's decision on a coastal development permit application shall become effective unless an appeal is filed within the Commission's ten working day appeal period or the Notice of Final Local Action does not meet the requirements of section 13571 of the Commission's Regulations. With regards to this permit amendment, the Commission has not received the required Notice of Final Action. Therefore, the permit cannot yet be considered effective.

We note that in this case after the County acted on the permit amendment, we did not receive the customary Notice of Final Action that the County usually sends after the City takes final action on a coastal development permit application. The Notice of Final Action the County usually sends after acting on coastal development permit consists of (1) a document headed "NOTICE OF FINAL ACTION," and its attachments. The document includes the date the County acted on the project, a brief description of the project, information about the applicant, the file number, what the County action was, and whether or not the project is appealable to the Commission and if it is appealable, information about the 10 working day appeal period of the Commission and how one can go about appealing the decision to the Commission. Attached to the document is usually a staff report containing a set of findings and conditions, as well as a memo indicating whether any changes to the conditions and findings were made by the Coastal Permit Administrator or Planning Commission at the hearing when action was taken on the project.

We need to receive from the County a Notice of Final Action. Once we receive a Notice of Final Action that meets the requirements of Section 13571, the ten working day appeal period will start. By copy of this letter, the applicant is notified that no development should proceed until the coastal development permit appeal process has been completed.

We also note that by submitting the Notice of Final Action and enabling us to commence the Commission's appeal period, the County may help avoid a scenario of a third party successfully appealing the project to the Commission at a much later date, perhaps even after construction has commenced on the project if the applicant were to proceed despite our determination that the permit is not yet valid.

#### Dispute Resolution Process

If the County believes our determination that the County's action on the permit is appealable is inaccurate, we note that the Commission's regulations provide a review process for resolving such disputes. In cases where the local government's determination of whether a project is appealable differs from the determination of the Executive Director of the Commission, Section 13569 of the Commission's regulations provides

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the local government, the applicant, or any interested person may request the Commission hold a hearing on whether a project is within an appealable area.

If the County chooses to follow this dispute resolution process, the County may nonetheless submit the Notice of Final Action as soon as possible. If through the dispute resolution process the Commission were to determine that the project is appealable, then the appeal period would already have run by the time the determination is made and County/Commission review of the coastal development permit application would be that much closer to being completed. On the other hand, if the Commission were to determine that the project is not appealable, any appeal that might have been submitted would have no effect and County/Commission review of the coastal development permit application would be complete at that point.

Whether the County chooses to avail itself of the dispute resolution process described above or not, we will endeavor to process this matter as quickly as possible. If you have any questions, please don't hesitate to call.

Sincerely,



ROBERT S. MERRILL  
North Coast District Manager

cc: Doug Zanini, Mendocino County Planning and Building Division Fort Bragg  
John and Nit Lemley  
Joe Rosenthall, Rosenthall Construction



RECEIVED

MAY 31 2002

CALIFORNIA  
COASTAL COMMISSION

TELEPHONE  
(707) 964-5379

LYMOND HALL  
DIRECTOR

COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS:  
790 SO. FRANKLIN  
FORT BRAGG, CA 95437

EXHIBIT NO. 4

LEMLEY

COUNTY RESPONSE  
TO STAFF (1 of 6)

May 29, 2002

Mr. Robert Merrill  
North Coast District Manager  
P.O. Box 4908  
Eureka, CA 95502

Subject: Immaterial Amendment to Mendocino Coastal Development Permit No. CDP 67-00; John and Nit Lemley

Dear Bob:

We have received your letter dated May 15, 2002 contesting the County's process for the Lemley Immaterial Amendment. After reviewing the sections of the California Commission Administrative Regulations, the LCP code sections and the Coastal Act sections referenced in your letter the County has concluded that its procedures, which have been in place for over 10 years without challenge, are correct and appropriate for immaterial amendments to approved CDP's.

To date, the Lemleys have obtained three approvals through the MHRB. All of the MHRB approvals included a 10-day appeal period to the Board of Supervisors. The approval of the original permit (CDP 67-00), which authorized the remodeling of and addition to the existing residence to a 4,851 square foot, 26'6" tall residence, with 25 foot minimum setback from the edge of the bluff did not result in either a local appeal or appeal to or by the Coastal Commission. No aspects of the original CDP's project analysis, findings, or conditions were altered as a result of the immaterial modification.

Before your letter of May 15th was received, the Lemleys were issued a demolition permit and a building permit as authorized by the immaterial amendment. Demolition and site preparation were begun prior to receipt of your May 15<sup>th</sup> letter and as of the writing of this letter the demolition of the residence has been completed. Based on the discussions below, the County will continue to honor its approvals granted to the Lemleys for this site. The County will not revoke the permits or delay the work authorized by these approvals.

Section 30603 of the Coastal Act limits the basis on which appeals are judged to have merit and sets time limits for filing those appeals. It states:

*(b) (1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division. (Emphasis added.)*

*(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time.*

Coastal Commission staff was sent a notice that the Coastal Permit Administrator had taken an action to approve the modifications as an immaterial amendment on February 27, 2002. The notice states:

*It has been determined that the proposed amendment is IMMATERIAL and the permit will be modified accordingly unless a written objection is received within 10 working days of the date of this notice. The amendment has been determined to be immaterial for the following reasons:*

*The revisions do not modify any of the conditions of approval or change the grounds upon which the application was approved.*

The notice for the Lemley modification was also sent to all public agencies, neighbors and concerned parties. The project site was also posted during the ten-day comment period to give the general public notice. Coastal Commission staff, along with any public agencies and members of the public had until March 14, 2002 to submit a letter of opposition addressing LCP consistency, coastal resource issues or coastal access issues to the Coastal Permit Administrator.

Mr. Bob Merrill

May 29, 2002

Page 4

#### *Application for Permit Amendment.*

*Any person holding a coastal development permit may apply for a permit amendment by complying with Section 20.720.025 (Application and Fee). For the purposes of this section, the amendment of a coastal development permit may include amendment of the terms of the permit itself or the waiver or alteration of conditions imposed pursuant to Section 20.720.030.*

#### *(C) Amendment to Permits other than Administrative Permits.*

- (1) The Director shall determine whether or not a proposed amendment is a material change to the approved permit. If the Director determines that the proposed amendment is immaterial, notice of such determination shall be posted at the project site. Notice of such determination also shall be given as provided in Section 20.720.040 (D). If no written objection to the amendment is received within ten (10) working days of the notice, the determination of immateriality shall be conclusive and the amendment effective. (Emphasis added.)*
- (2) If the Director determines that the proposed amendment is a material change or if written objection is made to the determination of conditions that were required for the purpose of protecting a coastal resource or coastal access consistent with the findings required by Section 20.720.035, the application shall be referred to the approving authority having original jurisdiction over the coastal development permit. The material amendment shall be subject to the hearing and notice requirements of Section 20.720.045. (Ord. No. 3915 (part), adopted 1995) (Emphasis added.)*

Since the original project's impacts on coastal resource issues, conformity with the Certified LCP, or with coastal access issues did not change resulting from the action of approving the immaterial amendment, the Coastal Permit Administrator found that the determination of immateriality was not sufficiently challenged. It is the County's contention that while a modification may be in an appealable area, the type of modification determines what is appealable and what is not appealable, not necessarily its location. Suppose an applicant, after obtaining CDP approval finds that the window treatment has to change or proposed structure has to be re-located one inch away from the location in which it was originally approved (assuming that no geological or other required setbacks are violated), does this trigger an immaterial amendment? A material amendment? A new CDP? Should this change be appealable? Of course not.



considered the issues in the letters of opposition raised by Ms. Curry, Dr. Adams and others and determined that they did not relate to the impacts of the modification nor to coastal access or coastal resource issues as required by Section 20.720.005 of the Town of Mendocino Zoning Code. All of the letters received addressed opposition to the elements and impacts of the original permit and not the modification. If any letters received raised valid coastal resource or coastal access issues that arose from the project modification the Director would have determined that the requested modification was material and the development would be subject to noticing, hearing and appeal requirements of the Sections 20.720.055 and 20.728.020 of the Town of Mendocino Zoning Code. The County contends that these sections relate to approval of CDP's, material amendments, but not to immaterial amendments, excluded developments and exempt developments.

Your letter states that a notice of final action "usually" and "customarily" declares, "NOTICE OF FINAL ACTION" on the top of the document and because the notices provided on immaterial amendments do not contain this format, they are invalid. I cannot find anywhere in the Coastal Act, the CCC Administrative Regulations or the LCP that requires that the notices of final action for immaterial amendments (or for other types of NOFA's, for that matter) contain this specific wording on top of the notice to the Commission. Furthermore, in the last 10 years that the County has had a certified LCP, no such wording or format has been used with respect to immaterial amendments. Immaterial amendments under the County's Certified LCP have always been processed under a type of hybrid notification process. The referral notice that was sent to all neighbors within 300 feet, Coastal Commission staff and any concerned individuals (including Ms. Curry), contained all of the required informational items pursuant to Section 15571 of the Commission's Administrative Regulations.

The County believes that it provided adequate notice through its immaterial amendment process and that the public was given ample opportunity to provide input to the approving authority that approved the original permit. The original permit was found to be properly noticed and all appeal periods, including the Coastal Commission appeal period, had expired. Therefore, it is the County's position that the original permit cannot be challenged.

The Coastal Commission staff interpretation has far reaching ramifications not only to all future immaterial modifications but also to all modifications that have been approved by the County since 1992. If the Commission is permitted to stop or revoke permits after all appeals have expired and permits have been issued then all of the immaterial amendments approved since 1992 would become open to challenges.

The immaterial amendment process per the Certified Local Coastal Plan has worked very well over the past 10 years. The County views the immaterial amendment process as a simplified, expedited method of dealing with negligible and inconsequential minor modifications to projects. Unlike the Coastal Commission, the County does not have the ability to grant waivers for minor projects. The Coastal Commission routinely grants waivers for minor projects without any public review whatsoever. The County's immaterial amendment process not only allows for the public's scrutiny and review by other agencies, but allows for scrutiny by Coastal Commission staff as well.

All the staff here at the County are conscientious, care about the conforming to coastal regulations and also care about the quality of environment in the coastal zone. The Coastal planning staff strives to provide a level playing field for all parties involved in development within the Coastal Zone. We try to maintain an element of common sense and reasonableness both in the policies that we adopt and in how we deal with applicants and the public. It is not reasonable to request that the County adopt a new process, revoke approvals, or delay a project that was lawfully granted approval over two months ago under a process that has been in place, unchallenged, for 10 years.

If the Coastal Commission feels that the County has been abusing its authority for the past 10 years with regard to immaterial amendments, or if it feels that immaterial amendments that have been granted in the

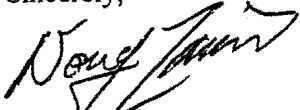
5 of 6

past have resulted in material changes to a project's impact on coastal resources or coastal access, it seems as though the proper avenue to address these concerns is through the LCP update process. We should not hold a citizen hostage while the Commission and the County work on resolving this matter. Not only is this process not equitable to the Lemleys, but also I would guess that it is not lawful either.

The County, in its LCP update, will not be recommending tightening the regulations on immaterial amendments as we view that it usurps the County's local authority to deal with minor changes which raise no issues of statewide importance. The full hearing and Coastal Commission appeal process would be proper if there was an issue of statewide importance at stake. In the Lemley case, there simply isn't. The modification did not increase the size, its visibility, and by all measure the modified project is an improvement over the originally approved project. Where is the issue of statewide importance in that? There isn't any.

I hope that this response to your letter gives you a better view of the big picture and persuades you to re-evaluate the Coastal Commission's position regarding its authority on the Lemley project and immaterial amendments in general in Mendocino County. Please feel free to call me if you have any questions.

Sincerely,



Doug Zanini  
Supervising Planner

Cc: Ray Hall, Mendocino County Planning Director

Mr. and Mrs. Lemley

Joe Rosenthal Construction, Contractor

Mr. Peter Douglas, Coastal Commissioner Executive Director ✓

Mr. Frank Zotter, Chief Assistant County Counsel

Mr. John Diamond, Architect

Address file/CDP 67-00(m) file

6 of 6

RECEIVED

JUL 0 8 2002

CALIFORNIA  
COASTAL COMMISSION

Dr. Hillary Adams  
P. O. Box 1936  
Mendocino, California 95460

EXHIBIT NO. 5

LEMLEY

LETTER FROM  
DR. ADAMS (1 of 2)

Ms. Sara Wan, Chairperson  
California Coastal Commission  
22340 Carbon Mesa Road  
Malibu, CA 90265

Re: CDP 67-00 Lemley  
URGENT- Petition to resolve  
dispute of right to appeal

Dear Commissioner Wan:

Mendocino is proud of its historic district, including the modest houses of the 1950's and '60's. 1950's homes are now considered historic by the State Office of Historic Preservation. Recently, the Mendocino Historic Review Board (MHRB) was tricked into voting for a project which included the complete demolition of a 1950's house in the historic district. The original Lemley project (CDP 67-00) was approved as a "remodel" in October of 2000. In January of 2002, the project was resubmitted, still as a "remodel," but including the entire demolition of the existing structure. The new project had an entirely different architectural style, a height above that allowed by the original permit, was placed in a different position on the lot, and had extensive exterior lighting which did not comply either with the certified Local Coastal Program or with the permit (light not to extend beyond the property; fixtures to be shielded and downcast).

When the MHRB objected to the proposed demolition of the 1950's house, the Board was told, both by the Lemley's architect and County staff, that they had "unknowingly" voted for demolition of the existing structure when they approved the first remodel. Their argument hinged on a geotechnical report, which the MHRB had never seen, and which did not require, or even suggest, that the house had to be demolished in order to set the new pier foundations. Because the MHRB was misled on the issue of previously approving demolition of the house, the new project was approved on a 3-2 vote. Later, one of the Board members tried to rescind his vote, but was told by County Council, Peter Klein, that it was "the last day of the ten-day appeal period," and therefore too late to reconvene the Board.

To make matters worse, the County decided to process the permit for the new project as an "immaterial amendment" to the old CDP, still listing it as a "remodel." There was no mention of the demolition of the existing structure (CDP 67-00 (M)). Many of the changes were not stated in the "immaterial" amendment, including the intrusive exterior lighting fixtures, and the fact that the new "lighthouse cupola" scales 29 feet high on the plan, higher than the 26' 6" total height "from any place on the lot" required by the original permit. Staff did not point the change in height out to the MHRB. Nor did the MHRB see the choice of lighting fixtures. Those fixtures were only submitted to the Coastal Administrator under the aegis of "immaterial" amendment to the CDP.

Was this an "immaterial" amendment? The code states: "When in the opinion of the Director, a major revision constituting substantial alteration in the

permit is requested, an amendment shall not be processed and a new coastal development permit application must be made." (CZC 20.536.020 and Mendocino Town Plan Zoning Code 20.720.055. Emphasis added). In spite of the major changes to the project, the Coastal Administrator decided to process an "immaterial" amendment.

Eight persons challenged the "immaterial" amendment in a timely manner, including Supt. Greg Picard of the California Department of Parks and Recreation. Parks objected to the impact on their adjacent State Park and coastal trails. In opposition to its own LCP, the County decided to disregard all of the letters, arguing that some arrived too early, and others (including mine) did not address coastal resources. There is no instruction regarding coastal resources in the Zoning Code. The code simply states: "(C)...If no written objection to the amendment is received within ten (10) working days of the notice, the determination of immateriality shall be conclusive and the amendment effective." The County even disregarded the letter from Parks, which does address impacts on coastal resources. The County did not inform any of the protestants of their decision to disregard the letters and to issue the immaterial amendment. Nor did they send a Final Notice to the North Coast office of the Coastal Commission. In the County's opinion, "immaterial" amendments cannot be appealed to the Coastal Commission.

Several persons, including those who spoke at the hearings, continue to disagree with the County, both concerning the judgment of "immaterial," and the inability of the public to appeal this amendment to the Coastal Commission. Robert Merrill, of the North Coastal office, agreed with our position on the appeal, arguing Section 30603(a) of the Coastal Act and Section 20.544.020 of the CZC. He telephoned County staff to advise them of his position, and eventually wrote a letter to follow up on that telephone conversation. In a letter dated May 29, 2002 and signed by Doug Zanini, the County maintained its position. They stated that Mr. Merrill's letter had reached them too late. The County had already issued the permit, which included demolition of the building.

The new project continues to be out of compliance with the LCP and, indeed with the permit as issued. We wish our right to appeal to be determined by the Coastal Commission, as allowed under Section 13569 of the Coastal Commission's Regulations. As an interested party, I petition you to resolve this dispute.

I hope to be able to present this argument to you in person on July 11, 2002 at Huntington Beach. However, if I am not able to attend, this letter is to act as my petition to the Commission. PLEASE ACT! The Lemley project sets a precedent of replacing modest village houses with estate houses uncharacteristic of the historic district. The Lemley project has a visual impact on State Parks and coastal trails and is out of character with its surrounding neighborhood.

✓  
cc Douglas; Merrill

Sincerely,

*Hillary Adams*  
Dr. Hillary Adams

2062



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RAYMOND HALL  
DIRECTORTELEPHONE  
(707) 964-5379

## COUNTY OF MENDOCINO

## DEPARTMENT OF PLANNING AND BUILDING SERVICES

May 11, 2001

MAILING ADDRESS:  
790 SO. FRANKLIN  
FORT BRAGG, CA 95437PUBLIC NOTICE OF PENDING ACTION  
STANDARD COASTAL DEVELOPMENT PERMIT

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held May 24, 2001 in the Department of Planning & 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 following project that is located in the Coastal Zone.

**CASE #:** CDP #67-00  
**DATE FILED:** 8/7/00  
**OWNER:** John and Nit Lemely  
**AGENT:** Bud Kamb  
**REQUEST:** Remodel and add to an existing 3-bedroom 2,486 ± sq. ft. single story residence. The remodel includes a second story addition with a maximum height of approximately 26'6" for a bluff grade. The proposed addition would result in a 3-bedroom, 4,851 ± sq. ft. residence.  
**LOCATION:** In the Town of Mendocino, on the W side of Highway One, on the W side of Lansing Street (CR# 500) approx. 300 ft. N of its intersection with Heeser Drive (CR# 407ff), on a blufftop parcel at 11050 Lansing Street (AP# 119-060-26).  
**PROJECT COORDINATOR:** Rick Miller

RECEIVED  
MAY 15 2001  
CALIFORNIA  
COASTAL COMMISSION

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. Owners, if your property is within 100 feet of the project site, please immediately forward a copy of this notice to any tenants residing on your property. 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 reference 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 this case or a copy of the staff report, which presents the staff recommendation and conditions of approval, may be obtained by calling the Department of Planning & Building Services at 707-964-5379.

Raymond Hall, Coastal Permit Administrator

EXHIBIT NO. 6

LEMLEY

HEARING NOTICE  
MENDOCINO COUNTY  
CDP No. 67-00



RAYMOND HALL  
DIRECTOR

TELEPHONE  
(707) 964-5379

COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS:  
790 SO. FRANKLIN  
FORT BRAGG, CA 95437

RECEIVED  
JUN 11 2001

June 4, 2001

CALIFORNIA  
COASTAL COMMISSION

**NOTICE OF FINAL ACTION**

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

**CASE#:** CDP #67-00  
**OWNER:** John & Nit Lemley  
**AGENT:** Bud Kamb  
**REQUEST:** Remodel and add to an existing 3-bedroom 2,486  $\pm$  sq. ft. single story residence. The remodel includes a second story addition with a maximum height of approximately 26'6" feet above grade. The proposed addition would result in a 3-bedroom, 4,851  $\pm$  sq. ft. residence.  
**LOCATION:** In the Town of Mendocino, on the W side of Highway One, on the W side of Lansing Street (CR# 500) approx. 300 ft. N of its intersection with Heeser Drive (CR# 407ff), on a blufftop parcel at 11050 Lansing Street (AP# 119-060-26).  
**PROJECT COORDINATOR:** Rick Miller

**HEARING DATE:** May 24, 2001

**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.

EXHIBIT NO. 7	
LEMLEY	_____
NOTICE OF FINAL	_____
LOCAL ACTION	_____
CDP 67-00 (1 of 16)	

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 67-00 HEARING DATE: 5/24/01

OWNER: LEMLEY

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

Alan R. Jellin

Signed: Coastal Permit Administrator

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STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 67-00  
May 24, 2001  
CPA-1

OWNER: John & Nit Lemely  
7020 S Monica Cove  
Salt Lake City, UT 84121

AGENT: Bud Kamb  
PO Box 616  
Littler River, CA 95456

REQUEST: Remodel and add to an existing 3-bedroom 2,486± sq. ft. single story residence. The remodel includes a second story addition with a maximum height of approximately 26'6" feet above grade. The proposed addition would result in a 3-bedroom, 4,851± sq. ft. residence.

LOCATION: In the Town of Mendocino, on the W side of Highway One, on the W side of Lansing Street (CR #500) approx. 300 ft. N of its intersection with Heeser Drive (CR #407ff), on a blufftop parcel at 11050 Lansing Street (AP #119-060-26).

APPEALABLE AREA: Yes (blufftop parcel & west of first public road).

PERMIT TYPE: Standard

TOTAL ACREAGE: 23,670 ± sq. ft.

ZONING: Mendocino Rural Residential (MRR)

GENERAL PLAN: Rural Residential (RR)

EXISTING USES: Residential

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically exempt, Class 1 (e) (1)

**OTHER RELATED APPLICATIONS:** On October 2, 2000, the applicant received approval (3-1 vote) from the Mendocino Historical Review Board for the addition and remodel (including the second story addition) of the residence under MHRB #00-35. On April 2, 2001 the applicant received approval (5-0 vote) to modify the original approval with a few "small" changes under MHRB #10-10. The changes approved under #10-10 included enlarging the proposed kitchen by 144 sq. ft. and adding all the necessary plumbing vents. The proposed addition and remodel requested in this application represent the final design approval from the Mendocino Historical Review Board.

**PROJECT DESCRIPTION:** The applicant proposes to remodel and add to an existing residence on a blufftop parcel in the Town of Mendocino. The existing single-story 2,486± sq. ft. single family residence would be remodeled and added onto to create a two-story 4,851± sq. ft. residence with a maximum height

30916



STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 67-00  
May 24, 2001  
CPA-2

not to exceed 26'6" above grade. Some demolition of the existing residence would be required to accomplish the proposed project. The proposed addition includes (but is not limited to) the following: enlarge the existing attached garage, add a master bedroom and bathroom upstairs over an existing bedroom, add a new study/library on the main floor, enlarge an existing two car attached garage, remove and add new wood decking, relocate and remodel the kitchen, add pantry/storeroom and ½ bathroom, relocate an existing water tank and add propane tank behind lattice screen, relocate hot tub, install shielded and down-cast exterior lighting, connect all roof drains and yard drains to existing closed pipe to bottom of bluff. The exterior colors and materials are to be as follows: cedar shingle siding with clear cedar trim, finished with gray driftwood stain, charcoal gray composition shingles roofing and dark bronze anodized aluminum dual pane clear non-reflective glass windows.

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

Land Use. The proposed addition and remodel to an existing single family residence is consistent with the principal permitted uses for the Mendocino Rural Residential zoning district per Section 20.644.010 of MCC. There is a minimum side yard setback of 6 feet and a minimum front and rear yard setback of 20 feet per Sections 20.644.030 & 20.644.035 of MCC. The maximum building height is limited to 2 stories and at no point shall the building height exceed 28 feet. The maximum lot coverage permitted for parcels less than 2 acres in size is 20% per Section 20.644.050 of MCC. The proposed remodeled residence would be located 9 feet from the north (side yard) and more than 100 feet from the south (side yard) parcel boundary. In the rear, the remodeled residence (including decks and hot tub) would be 25 feet from the bluff edge. The maximum height of the proposed second story addition would not exceed 26'6" at any point above grade. The total lot coverage would be 4,518 sq. ft. which is less than the total permitted lot coverage of 20% (4,734 sq. ft.).

Public Access. The project site is a blufftop parcel and is located within the Town of Mendocino and is currently developed with a residence. The proposed project would not have any significant impacts to coastal access. The LUP map shows a designated coastal access trail along Lansing Street to Heeser Drive through the Mendocino Headlands State Park. Staff does not anticipate any adverse impacts to existing or proposed coastal access.

Hazards. The project site is located within an area assigned a moderate fire hazard severity classification by the California Department of Forestry and Fire Protection (CDF). Because the project being proposed is for an addition and remodel to an existing residence, the applicant is exempt from the requirement to apply for a State Fire Safety Regulations application procedure administered by CDF. However, fire safety issues are addressed as part of the building permit process.

The project site is a blufftop parcel that is subject to natural coastal erosion and bluff retreat. BACE Geotechnical has prepared a geotechnical investigation for the subject parcel and the applicant has submitted a report dated January 23, 2001. The report concluded that the site was suitable for the proposed residential remodel and additions. More specifically, the report states:

*"...We estimate that a relatively conservative bluff retreat rate of four inches per year should be used for setback determination. Based upon a period of 75 years, considered by the California Coastal Commission to be the economic lifespan of a house, this retreat rate would result in a setback of 25 feet. This setback is contingent upon an additional safety factor being provided by a drilled pier foundation."*

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STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 67-00  
May 24, 2001  
CPA-3

Using the recommendation from BACE Geotechnical, the applicant has situated the proposed residence (including decks and hot tub) 25 feet east of the blufftop edge. The setback proposed by the applicant is consistent with the recommendations from BACE and should be sufficient to protect the structure from bluff retreat for 75 years. Special Condition #1 is added to ensure that all other recommendations from the geological report are incorporated into the final building plans and construction activities.

Based on the Coastal Commission's practice, the County applies a deed restriction for all development within 100 feet from the edge of the coastal bluff prohibiting the construction of seawalls in perpetuity with the requirement that the structures be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development that might fall onto a beach or into the ocean. It is anticipated that the Coastal Commission will continue to apply this deed restriction for any blufftop development. Therefore, Special Condition #2 is recommended to address this issue.

Visual Resources. The subject parcel is not located within a designated "highly scenic area" but is located within the Town of Mendocino a designated "special community." Further, the Town of Mendocino is the only recognized "special community" in the Local Coastal Plan. Policy 3.5-2 of the Coastal Element states development in the Mendocino Town shall maintain and enhance community character, as defined in the Mendocino Town Plan. The subject residence is situated between two non-historic homes. The residence to the north is a two-story structure while the residence to the south is a single-story structure. However, as viewed from the Headlands State Park looking east, there are more two-story residences than single-story residences in the field of view. Section 20.652.045 of MCC states: "Structures shall be limited to two stories and at no point on a parcel shall the building height exceed 28 feet." The proposed project would comply with the height requirement for the Mendocino Rural Residential zoning district.

The applicant proposes to add a second story addition onto the existing residence. The maximum height of the proposed house would not exceed 26'6" above grade. The two-story portion would be partially shielded by existing trees along the eastern property boundary. The applicant has proposed additional landscaping. The submitted landscape plan dated April 25, 2001 would provide more trees and shrubs in the northeastern area of the parcel. This should help to shield the two-story portion of the proposed residence as viewed from Lansing Street looking west. The landscape plan notes a seaside perennial garden in the open southern portion of the parcel to keep views towards the ocean open as viewed from Lansing Street. The combination of the proposed landscaping and the existing landscaping should help to mitigate any visual impact from the project. Special Condition #3 is added to require that the submitted landscape plan be installed prior to occupancy or receiving a final building inspection.

The Town of Mendocino is designated as an urban area. In urban areas, buildings tend to dominate the landscape because of smaller parcel sizes. In the urban areas it is more critical that new structures are in character with surrounding structures more than being subordinate to the natural surroundings.

In addition to landscaping, the exterior colors and materials selected should blend in with the natural environment and help the residence be subordinate to its setting. The colors and materials are to be as follows: cedar shingle siding with clear cedar trim, finished with gray driftwood stain, charcoal gray composition shingles roofing and dark bronze anodized aluminum dual pane clear non-reflective glass windows. Special Condition #4 ensures that the colors/materials are not changed without further review.

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STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 67-00  
May 24, 2001  
CPA-4

Natural Resources. The subject parcel is currently developed with a residence. There are no known rare or endangered plant or animal species located on or in close proximity to the project site. There are no environmentally sensitive habitat areas located within 100' of the proposed development.

Archaeological/Cultural Resources. The site is currently developed with a residence and other improvements. Standard Condition #8 advises the applicant of the County's "discovery clause" which establishes procedures to follow in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Groundwater Resources. The site is located within an area mapped as Critical Water resources area and is located within the Mendocino City Community Services District (MCCSD). MCCSD has stated the applicant would be exempt from the Ground Water Extraction Permit because the residence will remain a three-bedroom house after the remodel and addition. There are no special requirements from MCCSD for the proposed project.

Transportation/Circulation. The project site is already developed with a single family residence and staff does not anticipate any adverse impacts to traffic volumes on local and regional roadways.

Zoning Requirements. The project complies with the zoning requirements for the Mendocino Rural Residential District set forth in Section 20.644, et. seq., and with all other zoning requirements of Division III of Title 20 of the Mendocino County Code.

**PROJECT FINDINGS AND CONDITIONS:** Pursuant to the provisions of Chapter 20.720 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve the proposed project, and adopt 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; and

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STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 67-00  
May 24, 2001  
CPA-5

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 (10) 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.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

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. That this permit 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 (1) or more of the following:
  - a. That such permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which such permit was granted have been violated.
  - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.

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STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 67-00  
May 24, 2001  
CPA-6

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. All recommendations from the geological report prepared by BACE Geotechnical dated January 23, 2001, shall be incorporated into the design and construction of the residential remodel and additions. Prior to construction, BACE shall review the final grading, drainage and building plans for conformance with their recommendations. During construction, BACE shall observe the structure foundation excavations and drilled pier installations while the applicable operations are being performed.
2. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
  - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazards and the landowner assumes the risk from such hazards;
  - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
  - c) The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
  - d) The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
  - e) The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements

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STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 67-00  
May 24, 2001  
CPA-7

associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

- f) The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
3. The applicant shall install the landscape plan dated April 25, 2001 prior to occupancy or receiving the final building inspection, whichever comes first. All required landscaping shall be irrigated, staked, maintained, and replaced, as necessary, to ensure that a vegetative screen is established and maintained in perpetuity. 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.
4. All exterior building materials and finishes shall match those specified in the coastal development permit application. Windows shall be made of non-reflective glass. 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.

Staff Report Prepared By:

MAY 11, 2001

Date

*Rick Miller*

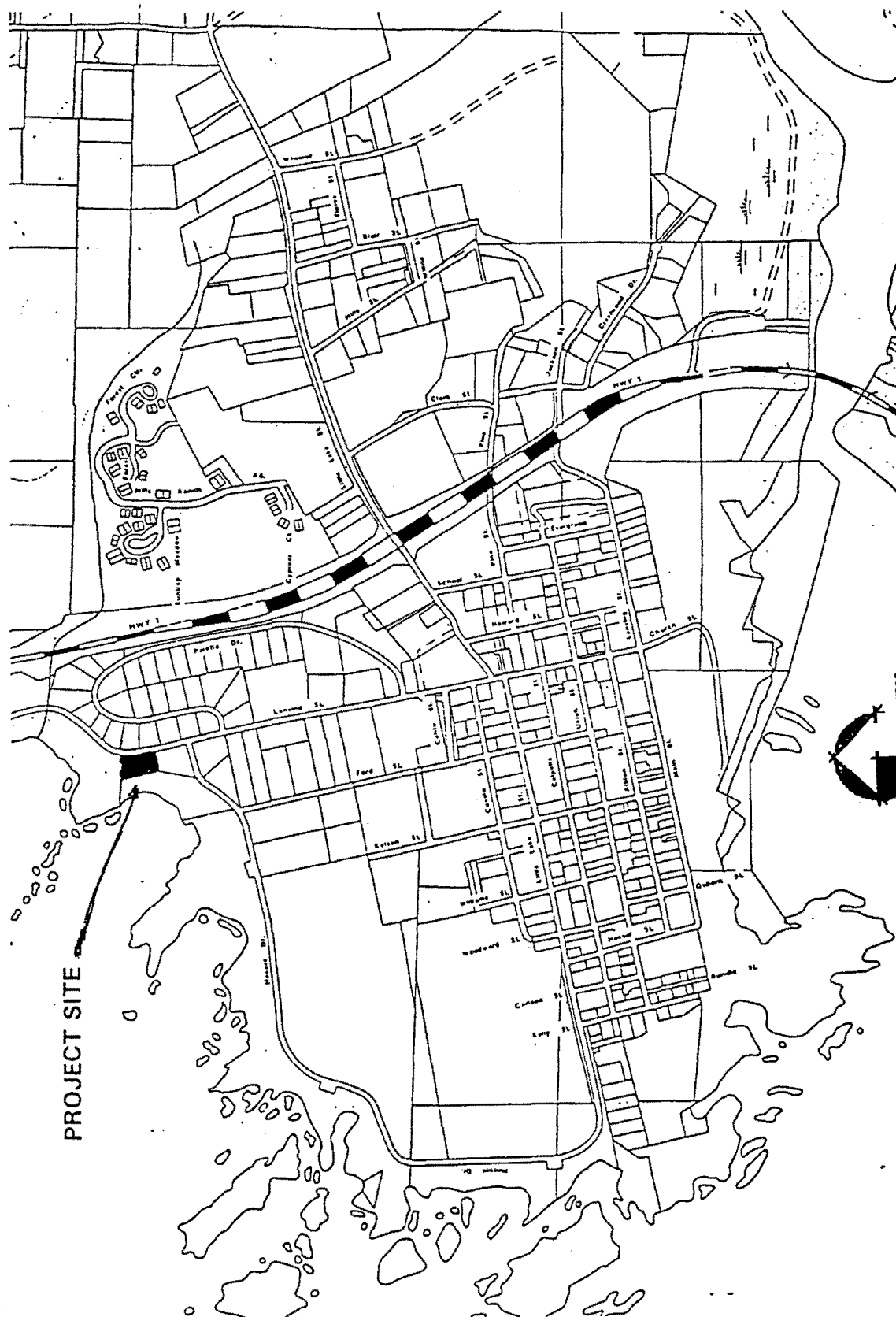
Rick Miller  
Coastal Planner

Attachments: Exhibit A- Location Map  
Exhibit B- Site Plan  
Exhibit C- Floor Plan  
Exhibit D- Floor Plan  
Exhibit E- Elevation  
Exhibit F- Elevation  
Exhibit G- Elevation

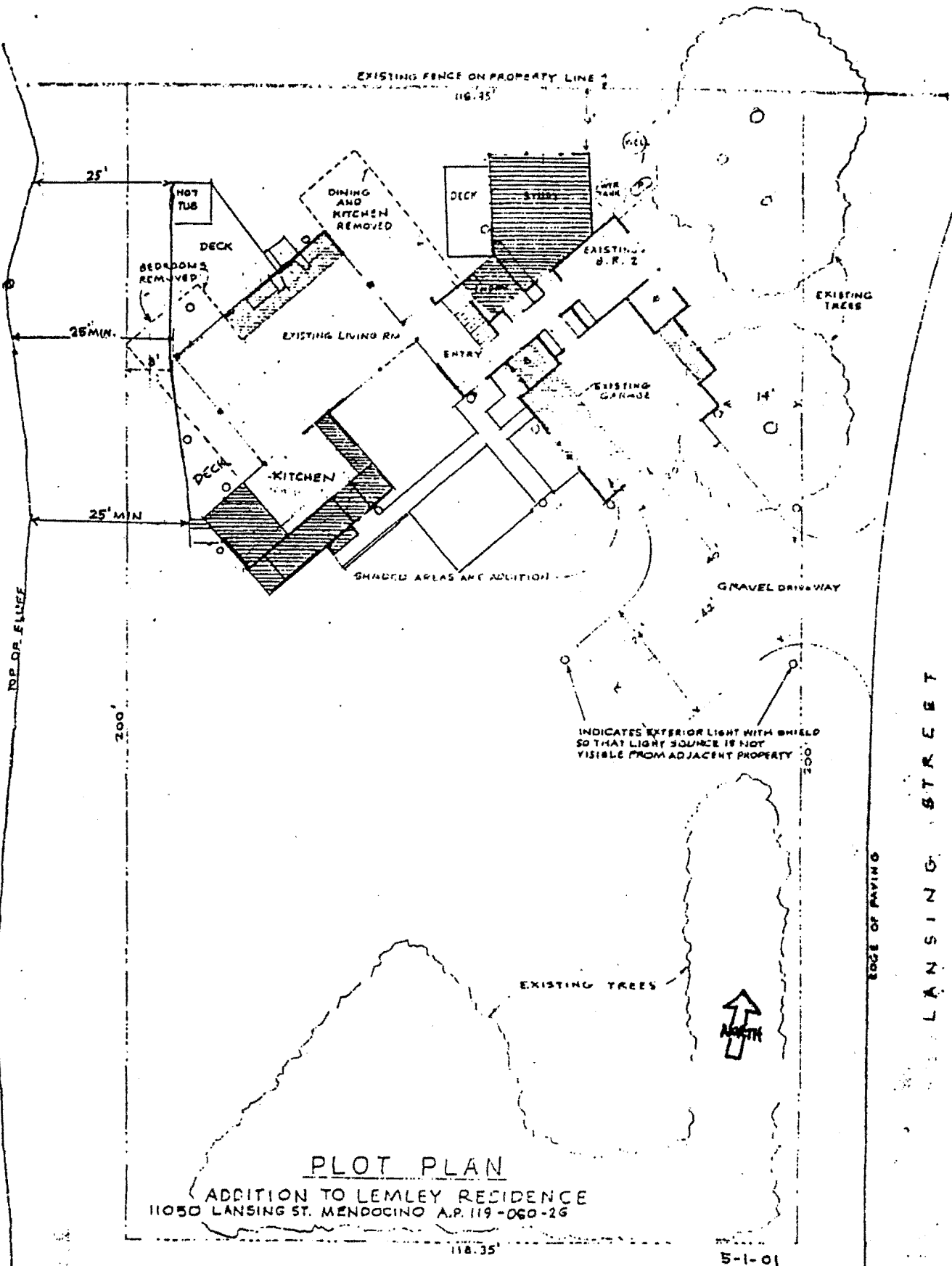
Appeal Period: 10 days  
Appeal Fee: \$555

9 of 16

Town of Mendocino



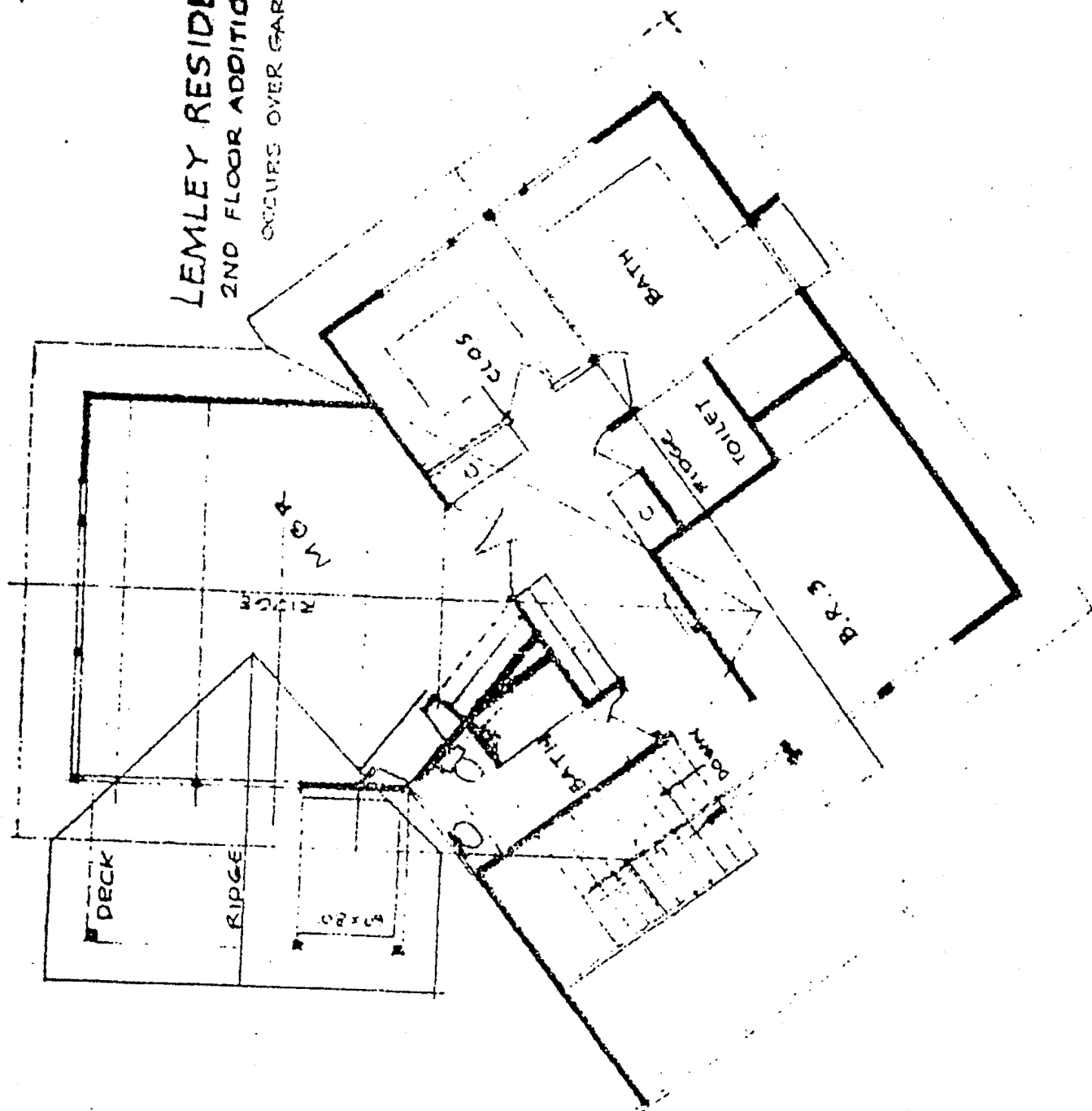
10 of 16

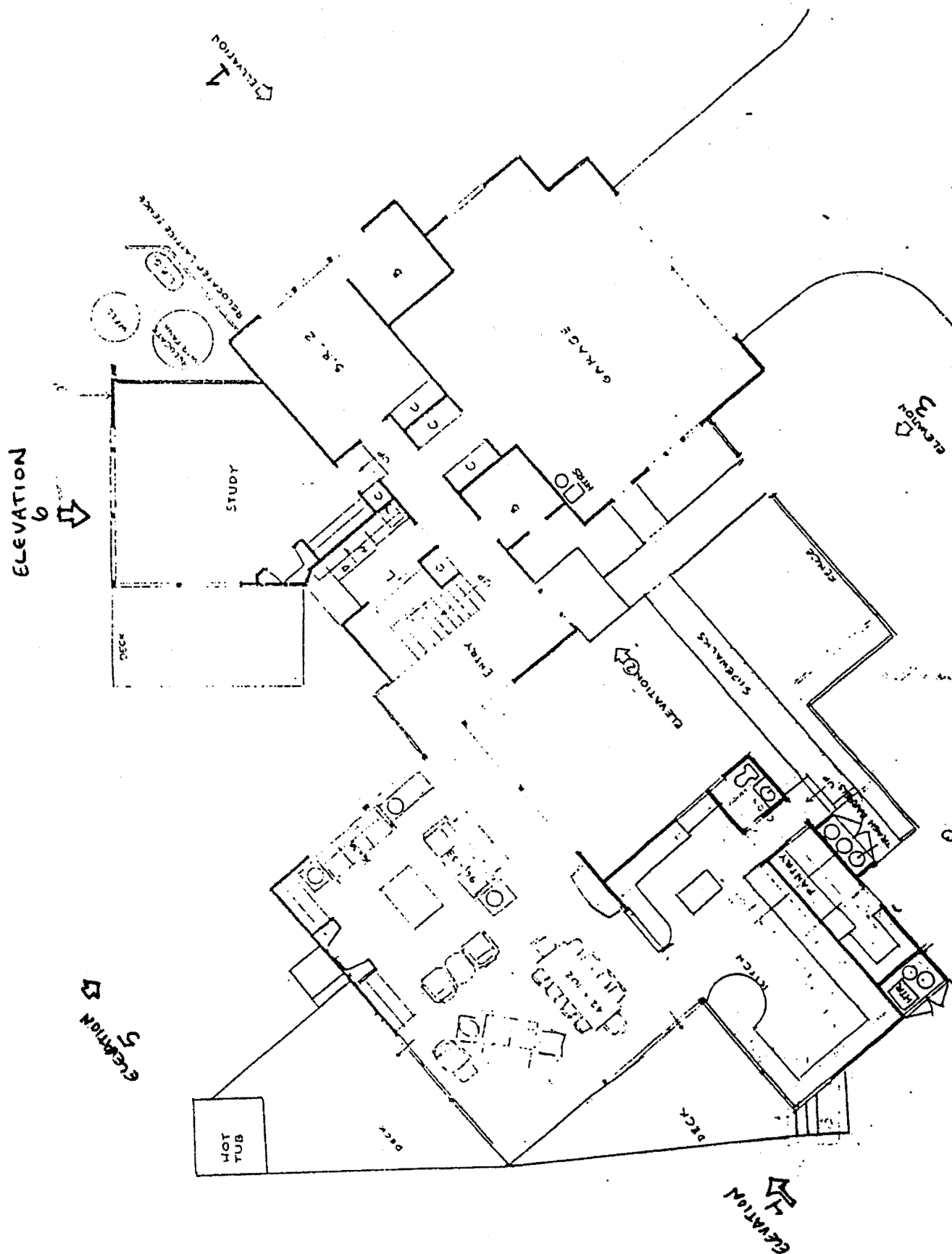


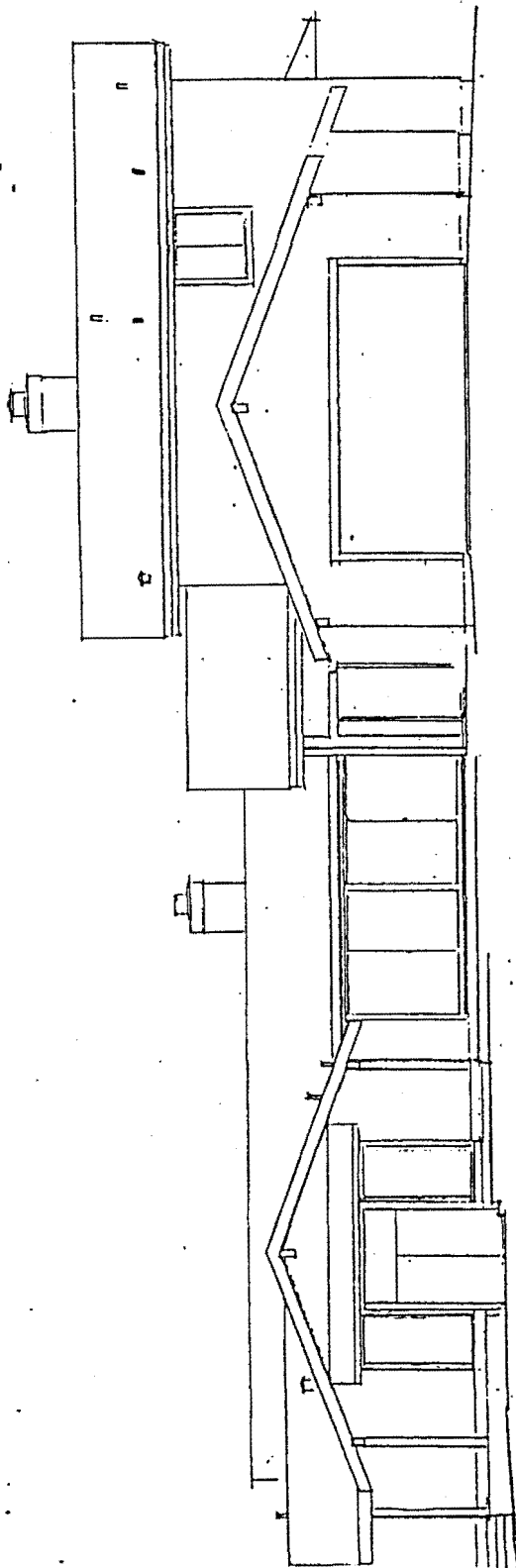


LEMLEY RESIDENCE  
2ND FLOOR ADDITION

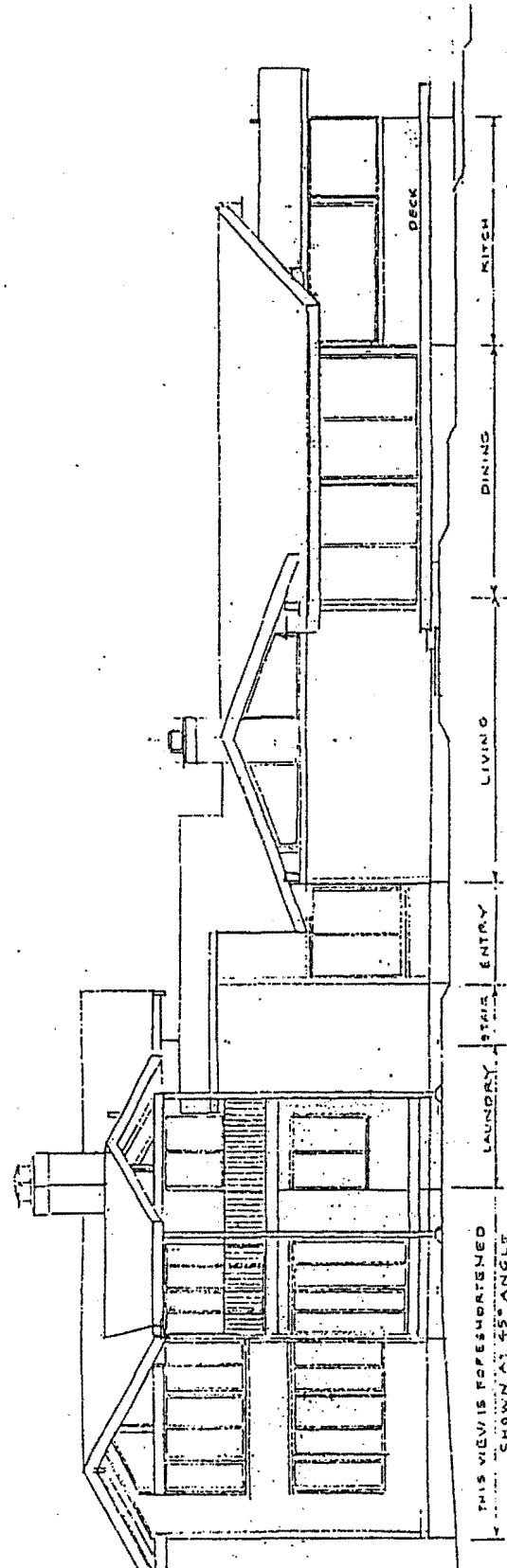
OCCURS OVER GARAGE; B.R.2; STUDY



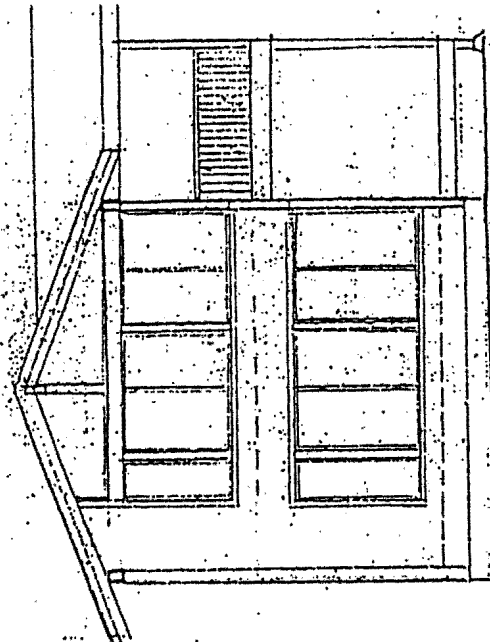
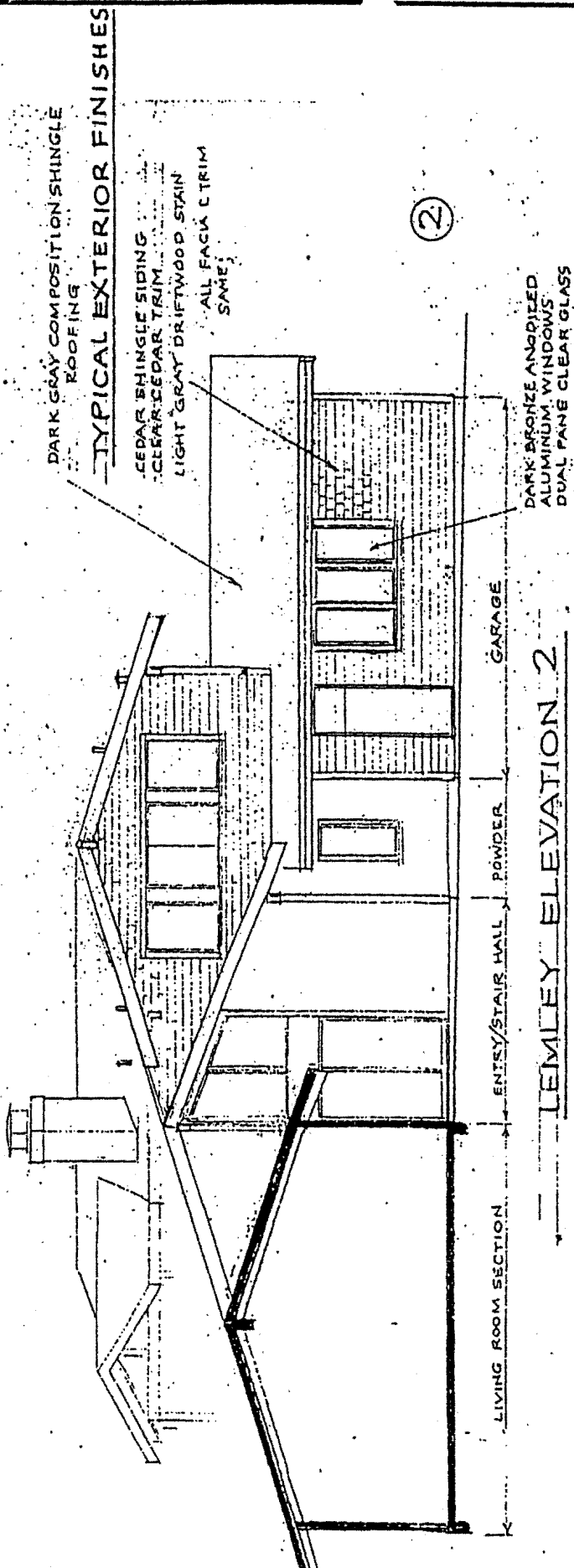


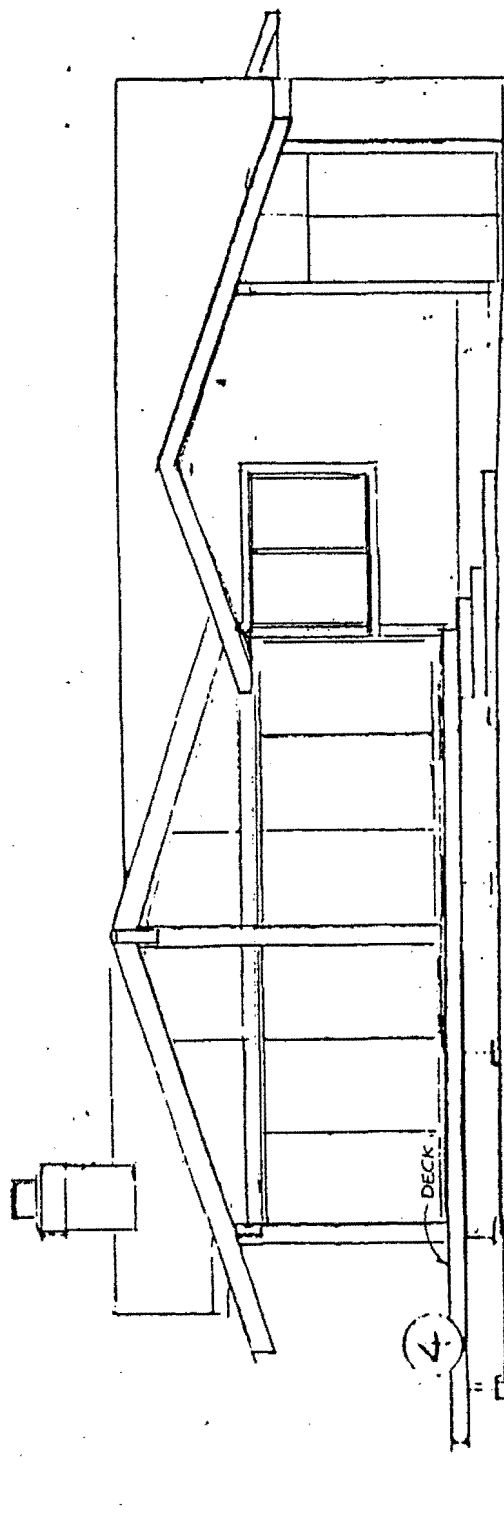


LEMLEY ELEVATION 3

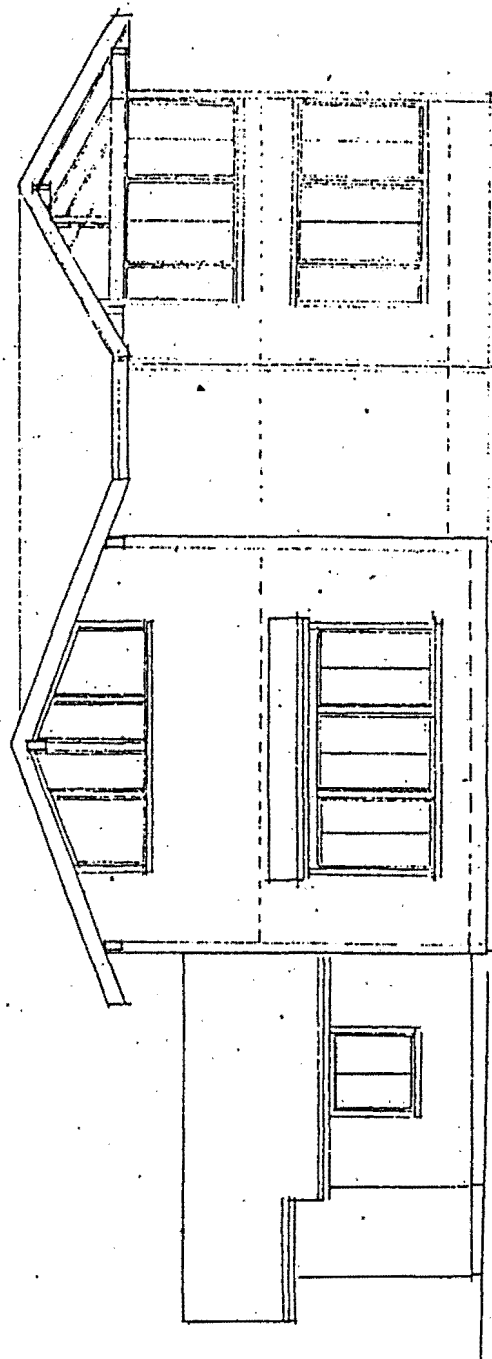


LEMLEY ELEVATION 5





ELEVATION 4



ELEVATION 1

THIS VIEW IS FORESHORTENED  
SEEN AT 45° ANGLE

LEMLEY ELEVATIONS

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET • SUITE 200  
EUREKA, CA 95501-1865  
VOICE (707) 445-7833  
FACSIMILE (707) 445-7877

MAILING ADDRESS:  
P. O. BOX 4908  
EUREKA, CA 95502-4908



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

RECEIVED

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

JUN 06 2002

CALIFORNIA  
COASTAL COMMISSION

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Dr. Hillary Adams

P.O. Box 19036

Mendocino, CA. 95460

Zip

(707) 877-3527

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Mendocino County

2. Brief description of development being appealed: Remodel and add to an existing 2,486 sq. ft.

one story, single family residence with attached garage

resulting in a 4,851 sq. ft., two-story, single family residence with attached

3. Development's location (street address, assessor's parcel no., cross street, etc.): 11050 Lansing Street

APN 119-060-26; in the village of Mendocino, west of Hwy 1

garage, deck, hot tub, + wellhead.

4. Description of decision being appealed:

a. Approval; no special conditions:

b. Approval with special conditions: X "immaterial modification" permit amendment CDP 67-00(M)

c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

H5: 4/88

EXHIBIT NO. <u>8</u>
LEMLEY
APPEAL FROM
DR. ADAMS
(1 of 13)
California Coastal Commission

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

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

- a. ☐ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☐ City Council/Board of Supervisors      d. ☒ Other Coastal Administrator + MHRB

6. Date of local government's decision: Feb. 27, 2002 + March 14, 2002

7. Local government's file number (if any): CDP 67-00 (M)  
see also: MHRB #'s 00-35 + 01-10 + CDP 67-00.

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:

John + Nit Lemley (201) 944-0982  
7020 South Monica Cove  
Salt Lake City, Utah 84121

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) <u>Supt. Greg Picard, Mendocino District</u><br><u>Calif. Dept. of Parks and Recreation</u><br><u>P.O. Box 440, Mendocino, CA, 95460</u> | 7) <u>Bob Kerstein</u><br><u>P.O. Box</u><br><u>Mendocino, CA 95460</u>  |
| (2) <u>Ms. Joan Curry (former MHRB member)</u><br><u>P.O. Box 457</u><br><u>Mendocino, CA 95460</u><br><u>8 years</u>                        | 8) <u>Chet Anderson</u><br><u>P.O. Box</u><br><u>Mendocino, CA 95460</u> |
| (3) <u>Ms. Margo Farrar (former MHRB member)</u><br><u>P.O. Box 741</u><br><u>Mendocino, CA 95460</u>  |  |
| (4) <u>Sam + Betty Shelton</u><br><u>10951 Palero Drive</u><br><u>Mendocino, CA 95460</u>  |  |
| (5) <u>Ms. Linda Perkins, P.O. Box 467, Albion, CA, 95410</u>  |  |
| (6) <u>Ms Dorothy Tobkin, 159 Jewett, Fort Bragg, CA, 95437</u>  |  |

SECTION IV. Reasons Supporting This Appeal

(and others with letters on file objecting to the amendment as "immaterial" + the new project.)

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, which continues on the next page.

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

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.)

(1) Not in character with the neighborhood (surrounding structures)

[Coastal Act 30118; LCP 3.5 et seq., especially 3.5-1, 3, 4.

CZC 504.015 (1) (a) + (3). CZC 20.504.016. MTP

2) Visual impact to and along the ocean & on state park and public trails. Coastal Act: 30240(b); 30251; CZC 20.504.026 (d)

3) Lot coverage appears greater than 20% allowed. (MTP ZC: 120,614,02

4) Height greater than 26'6" allowed in permit (LDP 67-00)

5) Extensive material changes to project: not "immaterial" amendments (CZC 20.536.020 (f) (5) to 1

6) Hazard. Not the same house addressed by 1999 geotechnical report.

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.

(CZC 20.500, 020) + (20,532, 070).

Supplementary material sent under separate cover: letter, portions of file; "blueprints," photographs

SECTION V. Certification

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

Hillary Adams  
Signature of Appellant(s) or  
Authorized Agent

Date May 31, 2002

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

3413



Dr. Hillary Adams  
P. O. Box 1936  
Mendocino, California 95460

RECEIVED

May 29, 2002

Mr. Robert Merrill  
California Coastal Commission  
Northcoast District Office  
P. O. Box 4908  
Eureka, California 95502-4908

JUN 6 2002

CALIFORNIA  
COASTAL COMMISSION

Re: CDP 67-00(M) [Lemley]

Dear Mr. Merrill:

I am appealing CDP 67-00 (M) [Lemley] at 11050 Lansing Street, village of Mendocino. Since my last letter, May 8, 2002, in which I stated my intent to appeal the project, the Lemley's have bulldozed the existing house. However, I believe there is still substantial issue for an appeal concerning the new structure. I urge you to act rapidly on the appeal in order to protect coastal resources, decrease geologic hazard, protect the character of a neighborhood, and reduce visual impact on the adjacent State Park [Coastal Act 30118 (special district); 30240 B (impacts on parks); LCP 3.5-1, 3, 4, 5 (visual impacts); Coastal Zoning Code: 20.504.015 et. seq, especially (C)(3)]

The entirely new Lemley project [i.e., different footprint, different facades, different room arrangement, different roofs (including a "lighthouse" cupola), different materials, different colors, different lighting plan and units, different orientation on the lot; different driveway type and position) was approved by the Coastal Administrator on March 14, 2004, through an "immaterial change" amendment. I was never notified of the March 14th decision. I had written a letter in a timely fashion-- within 10 days after the initial decision of February 27--to object to the immaterial amendment [CZC 20.536.020 (A) (C) (1 and 2)]. I am on the County's mailing list for all coastal developments in Mendocino County [Notice: CZC 20.536.010 (2)]. That, and my letter, constitute request for notification of final action, in my opinion.

There was a note in the file from Joan Curry requesting notification of the CDP decision. It is my understanding that she was not notified of the final decision. Other letters in the file objecting to the decision apparently were also ignored. The public should not be expected to know that they must request notification of the final decision, or that they must go to a site every day to see if there is a notice posted there. The Coastal Act is intended to be friendly to the public. The action of the County in this case, in my opinion, is unfriendly.

Moreover, there is no document in the Lemley CDP file stating that the Coastal Commission, Northcoast District Office, had been advised of the final decision, so that an appeal time could be set. It is my contention that this is an

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appealable decision under the Coastal Act. The following discussion supplements my initial appeal form:

A) Need for a new CDP for the new project

The original house has been bulldozed completely away. Since the house is gone and CDP 67-00 was a permit to "remodel and add to an existing structure" the project requires a new CDP. CDP 67-00 (M) does not mention the demolition of the then existing structure. The CDP 67-00 makes it very clear which portions of the house were to be demolished (kitchen, bedroom, deck) and where the additions were to be made (see site plans: new kitchen, new decking, expanded garage, new two-story study and bedroom wing).

2) The Geotechnical Report (<sup>2001 Brunsing</sup> ~~1999~~) is specific to the original plan and orientation. Both the site plan and the opening sentence, which discuss the remodel of and additions to an existing structure, make that clear. The Lemley's architect claimed, in a letter dated January 22, 2002, that the MHRB had voted for demolition of the entire structure twice (MHRB 00-35 and 01-10. Apparently he claimed in the MHRB meeting of January, 2002, that the Board voted for demolition by default, since they knew the foundation required by the Geotechnical Report would necessitate demolition of the entire existing house.

At no point does the geotechnical report state that the then existing house would need to be entirely demolished in order to set the piers for the new foundation. It would be unreasonable to expect the members of the Mendocino Historical Review Board, who are not engineers, to make assumptions about the geotechnical report which the report itself does not make clear. In addition, it is my understanding, that the MHRB never saw the geotechnical report; that the report was only presented at the Coastal Administrator's hearing for CDP 67-00.

The new house appears to be a much heavier building with a large use of brick, including facade areas on all sides and three huge exterior brick fireplaces (see blueprint elevations). The new house is oriented differently on the lot. The cliff is in a high hazard area, with active erosion by landslides. The cliff edge is a very problematic location for so large and heavy a house. Most of the bluff face on the Lemley property has active landslides. What is presented in CDP 67-00(M) is a different house from that of CDP 67-00. Therefore a new geotechnical report is required (Hazard: CZC 20,500.020 and 20,532.070).

3) The new driveway (changed from asphalt to gravel) has been moved 36 feet to the south. It is no longer an "existing driveway." Therefore it is no longer exempt under the California Department of Forestry regulations and fees as was the original driveway.

\* in October hearing for MHRB 00-35, (2000).  
The report is dated January, 2001.  
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*A number of other changes in the new project relate specifically to the character of the surrounding neighborhood, and visual impacts on public roads, coastal trails and the adjacent State Park. Many of these concerns were omitted from the CDP amendment list of "immaterial" changes. Following is a list of changes which I saw in the plans and descriptions. An asterisk marks the changes mentioned in CDP "immaterial" amendment 67-00(M):*

1) Demolition of the entire existing house rather than partial demolition of the kitchen, a bedroom, and the deck. The change from partial to complete demolition is not mentioned as one of the changes in CDP 67-00 (M).

2) Complete change of architectural style:\*

3) Significant changes in the footprint and the design of the interior rooms.

4) Change in the orientation of the house and attached garage.\* The change in orientation creates a greater visual impact on the coastal trails, on major view areas within the State Park, and on Heeser Drive. The only visual concern in the reports seems to be the impact on Lansing Street. Lansing Street is a main entrance into the town by automobile, but very few people walk there. On the other hand, the trails along Heeser Drive, the headlands and the coastal cliffs, including the path down to the beach at the rest area, are used by hundreds and thousands of visitors every year. Yet the western side of the project was given the least visual protection. The change in angle of house position was not mentioned in the MHRB permit No. 01-62. Who authorized it, and when?

5) Change of material: from cedar shingle to a combination of lap siding, shingle and brick. Much of the lower wall of the house (called a "wainscot") and at least three huge exterior fireplace chimneys are made of a red brick in the new project. The reduced plans filed with the CDP amendment do not indicate the position of the brickwork, the lap siding or the shingles. The blueprints show only the brickwork. The west and south facades, which are the sides most visible to the public from the coastal trails, Heeser drive and the State Park, are predominantly glass and brick. There is no significant landscape to mitigate the impact to west and south, because the building is placed immediately against the 25 foot setback required by the geotechnical report.

5) Change of color for siding, trim and roof: the plans say "cedar with stain," but fail to give the stain color. The MHRB permit No. 01-62 and CDP 67-00 (M) give the following color descriptions: "cedar shingles, siding finished with medium dark driftwood stain with olive tinge;" and "cedar trim to be finished lighter or darker to (sic) the body for contrast." (What color will the trim be? What color will the siding be? Where are the color samples? ) Both color descriptions represent major changes from MHRB permit No. 00-35 which states: "siding finished with the dark gray driftwood stain over cedar shingles for exterior walls and trim." The roof color has

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also apparently been changed from "charcoal gray" to "balsam forest." In other words, the sides and roof of the new project are apparently greenish in color, contrasting with a red brick. The brick covers a large portion of the exterior walls and chimneys. The trellises, according to the plan, are "cedar w/ opaque finish." The trellises would introduce yet another contrast in color and hue. Without color samples it is difficult to know if any of the colors will blend with the surroundings. Certainly they are not in character with the neighborhood.

6) Addition of a long walkway, from driveway to front door, covered by a large trellis: Neither the walkway nor the trellis is shown on the elevations submitted with the CDP report or on the large blueprints.

7) Changed deck design. The deck in the new project is a rectangle placed on northwest end of the house, with a hot tub in the NW corner, instead of two triangles. Will the new deck will be covered with a large trellis? If so, the deck with its hot tub and trellis, are not shown either on the blueprint elevation or on the CDP reductions.

8) Changed lighting plan and fixtures. The Mission-style lanterns do not present shielded and downcast lighting. The site plan states that the lights will not be visible "from adjacent properties." The requirement is that the lights shall not be visible "outside property boundaries." There appear to be 15 lights shown on the site plan (the number is not mentioned in the staff report): 2 on the piers of the entrance gate; 4 around the driveway; 3 on the garage; 8 (?) along the entrance sidewalk/trellis. No other house in this neighborhood has a high driveway gate, much less one with piers and lanterns. The plan introduces an entirely alien and unfriendly element into the historic neighborhood.

9) Changed landscaping plan. The plan shows additional planting areas, but they only address Lansing Street on the east, not the far more important public views to the west and south, from Heeser Drive and the coastal trails within the State Park.

10) Addition of a fence along the south side of the house, apparently connecting to the garage. The fence is only shown on the blueprints. The fence is not described in the staff report. What is the material? How high is it? What is the color? The new site plan indicates an existing low fence running north/south within the 25' geological setback area, and an existing high fence along Lansing Street. Will these existing fences be removed? If so, will new fences replace them? What will they look like.

*Note: The font used by the architect on the plans is small and difficult to read. The long distances that must be traveled here on the coast to reach the Mendocino County Planning and Building office in Fort Bragg or in Ukiah in order to review the blueprints creates a hardship on the public. The Ukiah office does not allow copying of the plans. Therefore, the reductions in the staff report must be legible.*

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Following is further discussion of the changes and additions listed above with reference to the certified Local Coastal Program, the Mendocino Town Plan and the Mendocino Zoning Code.

Conflicts with the Mendocino Town Plan and the certified LCP:

1) Out of character with neighborhood (RR-1) (surrounding structures): Coastal Act: 30118(special district) ; 30240 (b) (impacts on parks and recreation areas); LCP 3.5-1; 3.5-3 (one story) 3.5-4 (rural neighborhood;) Mendocino Town Plan Zoning Code 20.644 "...lesser heights may be required where it is found that building height would have an adverse impact to community character, historic structures, open space, or public views."

a) A letter in the file (MHRB 00-35) from Sam and Betty Shelton dated October 2, 2000\* points out that even the past project (MHRB Nos. 00-35, and 01-10; CDP 67-00) was out of character with the surrounding neighborhood. ~~They~~ Others (Kirstein) substantiate their information with an aerial view of the visual neighborhood to which the Lemley development belongs, and a chart showing square footage. The Sheltons are correct. The neighborhood which surrounds the Lemley project is predominantly one-story houses, most of them modest in size and dark-brown in color. I have driven Lansing Street and Heeser Street on innumerable occasions in the thirteen years we have lived here, and have always been impressed by the shingled, one-story houses that form a unique neighborhood of their own to the north of the older Victorian village. Almost all of the houses seem to have been built in the 1950's, long before the Coastal Act or the certified LCP for Mendocino County, but they typify the kind of effort for restraint of visual impact on coastal resources that the LCP addresses.

The statements in the staff reports, that the surrounding view is predominantly of two-story houses, can only be sustained by including Surfwood IV, a subdivision on the East side of Highway One, several miles away from the Lemley project. Surfwood is an old subdivision which was apparently exempted from the LCP. The land used for the fourth phase, Surfwood IV, was originally covered with trees. The trees were clearcut when that part of the subdivision was developed a few years ago (an act which was, in my opinion, out of compliance with the permit), leaving the large, new houses exceptionally visible from the headlands and the State Park. Surfwood IV should not be used to define neighborhood character for projects which are within the LCP and the historic town boundaries.

There is one, pre-LCP house of 1950's design to the immediate north of the Lemley property. It is painted a color that blends well with its landscape from the Lansing side, but is very visible from the trails. There is one more recently built two-story house of Victorian design and light color (which does not blend with this neighborhood) to the south. The fact that one or two houses have been mistakenly allowed to be out of character with the neighborhood should not be used as

\* related to MHRB 00-35

8 2 13

justification to continue to erode the neighborhood character.

As the Sheldon's stated in their letter, the original Lemley plan (MHRB 00-35; 01-10; CDP 67-00) was already out of character with the surrounding neighborhood because of the second story and the large size. The new project will be even more so. The bulk, height and visual impact of the house, with its huge brick wainscot, its red and green color scheme, its "lighthouse" cupola and its architectural copper flues, has no match anywhere in the historic village of Mendocino. Brick is not a traditional building material in Mendocino. There is no other house to my knowledge with a gate across the drive and lanterns on brick piers. Visually, the house and attached garage are significantly larger than the few two-story houses in the surrounding neighborhood and entirely out of character with that neighborhood.

## 2) Impact on Coastal Resources, State Park and Coastal Trails.

The visual impact of the Lemley project on the State Park and the recreational coastal trails seems never to have been seriously considered by MHRB or the Coastal Administrator. There is no mention of it in the staff reports from 2000 to 2002. There is a letter in the file from Superintendent Greg Picard of the California Department of Parks and Recreation, Mendocino District, dated March 7, 2002, which objects to the substantial changes to the new project and the visual impact on major viewing areas to and along the ocean from the adjacent State Park. The bulk, the height, the huge red brick "wainscot," (which reaches up to the windows and covers the massive exterior chimneys), the large copper flues, which could remain shiny and reflective for many years, the "lighthouse" top, and the light from the great number of exterior fixtures, will all impact the Park. Some of the lanterns are now of Mission Style (it is difficult to tell how many). They are neither downcast nor shielded.

Both day and night, the new project will have significant impact on visual coastal resources to and along the ocean, and from every public view area, including Lansing Street, Heeser Street, the public trails and the headlands. Immediately to the west of the small peninsula on which the project sits is the rest area for Heeser Drive, which also includes parking and picnic areas. A popular trail leads from the rest area along the coastal bluff. Hundreds of thousands of visitors use these areas every year. The impact on the Park and its recreation areas will be considerable. The house should be lower, smaller and blend better with its setting in hue and brightness.

## 3) Materials, Colors, Landscape and Visual Impacts

Although there may be an overall 50% reduction of window area, as claimed by the CDP amendment [CDP 67-00 (M)], that reduction does not seem to include the south and west elevations, which are the major public views of the project from

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the trails and the Park. The south and west elevations show banks of windows and glazed doors, massive areas of brick in "wainscot" and exterior chimneys, a huge copper flue, and a glazed "lighthouse" projection. Although the south and west elevations have the greatest public impact, they have been given the least visual protection. Landscape cannot be used as mitigation due to the fragile cliff edge. the house needs to be reduced and moved back further to allow for landscaping. Please note that the yard of the one-story house with brown shingles to the immediate south of the Lemley project fell into the ocean in the 1980's. Any landscaping it had has disappeared, and no new landscaping can be planted to mitigate the impact.

If the Lemley house were one story, smaller in size, and covered with dark-brown shingle, it would be in keeping with the neighborhood, could be placed further back from the edge of the cliff to allow a greater safety factor, and could be landscaped to mitigate the impact on the State Park and coastal trails.

3) Lot Coverage Requirement of no greater than 20% (MTP zoning code 20:644. 050)

The amended project is apparently larger than the allowed 20% development coverage. Neither the area of driveway nor the new brick piers topped by lights on either side of the driveway on the Lansing Street side appeared in the lot coverage calculations. (MTP zoning code: 20.644.050: 20% coverage for lots of less than two acres in size).

4) Height requirement of no greater than 26 feet 6 inches from any place on the lot.

The Mendocino town plan allows a maximum of two stories and 28 feet in height. However, it also requires that new development be in character with its neighborhood( MTP Zoning Code 20.644 "...lesser heights may be required where it is found that building height would have an adverse impact to community character, historic structures, open space, or public views" ). The old project, permitted under CDP 67-00, had a maximum height allowance of 26 feet, six inches. Since the new project was approved as an amendment to CDP 67-00, it must meet that permit's height requirement. The height of the "lighthouse" is stated as 26' 6" on the blueprint, but scales at nearly 28 feet, using the blueprint scale designation of 1/8" = 1' 0." That is also true of the huge copper flues, which are designed as an architectural element. The height of the flues scale at close to 29 feet. All of the other written measurements on the blueprints are scaled correctly. Therefore, the maximum height measurements appear to be intentionally misrepresented.

Sincerely,

*Hillary Adams*  
Dr. Hillary Adams

10413



RAYMOND HALL  
DIRECTOR

COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS:  
780 SO. FRANKLIN  
FORT BRAGG, CA 95437  
AMENDMENT TO PERMIT

TELEPHONE  
(707) 964-5374

FAX:

961-2427

DATE: March 14, 2002

SUBJECT: Coastal Development Permit #CDP 67-00(M)

Granted to John and Nil Lemley for remodel and addition to an existing 3 bedroom 2,486  $\pm$  sq. ft. single family residence. The remodel includes a second story addition with a maximum height of approximately 26'6" feet above grade. The proposed addition would result in a 3-bedroom, 4,851  $\pm$  sq. ft. residence. It is located at in the town of Mendocino, on the W side of Highway One, on the W side of Lansing Street (CR# 500), approximately 300 feet N of its intersection with Heeser Drive (CR# 407ff), on a blufftop parcel at 11050 Lansing Street (APN 119-060-26). It has been amended to include the following changes:

1. The main N-S axis of the house will be rotated 27 degrees clockwise.
2. Change the window configuration to reduce the glass area by approximately 50%.
3. Change the style of architecture from a "contemporary" to an "arts and crafts" design which includes the use of Iron-spot brick wainscot, dark olive-brown cedar siding and shingles and charcoal-colored composition roof shingles.

The amendment was determined by the Coastal Permit Administrator to be immaterial, was duly noticed, and the objections received did not constitute the need for a new hearing and/or special conditions.

This amendment will become effective upon return of a signed copy of this form to this office. Please note that all original permit conditions are still in effect.

Nil Melk for DZ  
Doug Zanini, Coastal Permit Administrator

3-14-02  
Date

ACKNOWLEDGMENT: I have read and understand the above amendment and agree to be bound by its conditions and the remaining conditions of Coastal Development Permit Number #CDP 67-00.

Signature

3-19-02  
Date:

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RECEIVED

Dr. Hillary Adams  
P. O. Box 1936  
Mendocino, CA. 95432

MAR 08 2002  
PLANNING & BUILDING SERV.  
FORT BRAGG, CA

March 7, 2002

Mr. Doug Zanini  
Department of Planning and  
Building Services  
Mendocino County  
790 South Franklin Street  
Fort Bragg, CA. 95437

Via Fax: (707) 961-2427  
and by post

Dear Mr. Zanini:

I am writing to object to the administrative amendment for CDP 67-00 (Lemly) within the historic district on Lansing Street to the north of the village. The completely new design, whether or not it is preferable, and the proposed total demolition of the older structure, alone should have required a new CDP (Section 20.720.055 of the Zoning Code, Town of Mendocino. which allows an administrative amendment only if there are no substantial alterations. See the same criteria in CZC Chapter 20.536. Section 020).

The changes cited, among others, constitute a material change from the original CDP, especially since that CDP states "remodel with some demolition." I request that a new CDP be opened and a public hearing be held.

Sincerely,

*Hillary Adams*  
Dr. Hillary Adams

12413



Mendocino District  
P.O. Box 440  
Mendocino, CA 95460  
(707) 937-5804

RECEIVED

MAR 11 2002

PLANNING & BUILDING SERV.  
FORT BRAGG, CA

March 7, 2002

County of Mendocino  
Department of Planning and Building Services  
790 So. Franklin  
Fort Bragg, CA 95437

Dear Mr. Miller,

I am writing this letter in reference to CDP #87-00 (Lemley) at 11050 Lansing Street in Mendocino. We originally received a notice of this partial demolition and construction proposal in October of 2000. Since then the project appears to have metamorphosed into a complete demolition of the existing structure and a new construction that looks quite different and somehow appears to present a much larger image to the viewshed of Mendocino Headlands State Park.

In our opinion, any structure in a highly scenic coastal viewshed should be built in a manner and location that has the least impact on coastal views from other properties in the area, and in particular from public use properties like Mendocino Headlands State Park. In the present case the proposed structure is highly visible from the park in many prime-viewing locations. For the structure to be built in a manner taking this concern into account it needs to be sited as far back from the bluff edge as possible considering construction limitations, be screened by native tree species that screen and break up the presence of the house, use non-reflective glass in the windows, and maintain dark materials for siding and roofing.

In addition, this structure appears to be very near the bluff edge, and I am surprised (especially considering the fresh slide I saw there just today) that the geologic report certified it as safe to build.

In light of the significant changes in the proposed structure I hope you will encourage a review and re-evaluation of the project and take my comments into consideration.

Sincerely,

Greg Picard  
District Superintendent

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