CALIFORNIA COASTAL COMMISSION



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Date Filed: 49th Day: 180th Day: Staff: Staff Report: Hearing Date: Commission Action: December 18, 2001 February 5, 2002 June 16, 2002 Tiffany S. Tauber January 18, 2002 February 6, 2002

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:

APPLICANT:

PROJECT LOCATION:

PROJECT DESCRIPTION:

1-01-065

ANGUS & JOAN STEWART

75 & 87 Sole Avenue, King Salmon area south of Eureka, Humboldt County (APNs 305-082-22 & -21)

(1) Merge a 0.20-acre and a 0.14-acre-parcel and (2) construct a 28-foot-high, 2,673-square-foot single-family residence (1,745-square-foot first floor and 928-square-foot second floor) with an attached 576-square-foot garage, fence, and driveway.

Residential Single Family with Flood combining zone (RS-5/F)

Residential/ Low Density (RL), 3-7 units per acre

Notice of Merger (approved November 6, 2001)

None Required

OTHER APPROVALS:

ZONING DESIGNATION:

SUBSTANTIVE FILE DOCUMENTS:

GENERAL PLAN DESIGNATION:

LOCAL APPROVALS RECEIVED:

Humboldt County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends <u>approval</u> with special conditions of the proposed lot merger and construction of a single-family residence, attached garage, fence, and paved driveway serving the garage. The project site is located in a densely developed, unincorporated residential area south of the City of Eureka adjacent to Humboldt Bay known as King Salmon. The rear of the site is located adjacent to an arm of Fisherman's Channel, a tidal channel that flows to Humboldt Bay.

The applicant proposes to merge two adjacent parcels of 0.20 and 0.14 acres to create a 0.34acre, or 14,750-square-foot parcel that would be 125 feet wide by 118 feet long. Additionally, the applicant proposes to construct a 28-foot-high, two-story, 2,673-square-foot single family residence with a 576-square-foot attached garage, a driveway serving the garage, and a new fence along the portion of the property fronting the street. The parcels are served by community sewer and water.

The proposed project would result in an increase in impervious surface area at the site and therefore, would increase the amount of potential surface runoff leaving the site. To minimize the volume and velocity of surface runoff leaving the site, staff recommends Special Condition No. 1 which requires the applicant to submit a drainage plan prior to issuance of the permit for the review and approval of the Executive Director. The condition requires the plan to demonstrate that runoff from the roof, driveway, and other impervious surfaces are collected and directed in a non-erosive manner to pervious areas on the site (landscaped areas) prior to being conveyed off-site so as to achieve infiltration to the maximum extent practicable.

The primary natural hazard affecting development of the subject property is flooding. The project site is designated in the County's LCP as being within a flood combining zone. To ensure that the proposed residence is designed to minimize risks to life and property from flood hazards, staff recommends Special Condition No. 2 that requires the applicant to provide evidence of a Flood Elevation Certificate approved by the Humboldt County Building Department as being adequate to demonstrate that the finished foundation would be at least one foot above the Base Flood Elevation. Special Condition No. 4 requires the applicant to acknowledge and assume the risks of flooding to the applicant and the property that is the subject of this permit.

The proposed development is located in King Salmon, an area shown on State Lands Commission maps as being subject to the public trust. To assure that the applicant has the legal ability to carryout the project and to comply with the terms and conditions of this permit, staff recommends Special Condition No. 3 which requires that the applicant, prior to issuance of the permit, submit evidence that any necessary authorization from the State Lands Commission has been obtained, or that no authorization from the State Lands Commission is necessary.

As conditioned, staff believes that the project is fully consistent with the Chapter 3 policies of the Coastal Act.

STAFF NOTE:

1. Standard of Review

The proposed development is located in an area shown on State Lands Commission maps as being subject to the public trust. Therefore, the proposed development is within the Commission's retained coastal development permit jurisdiction and the standard of review for the permit application is the Coastal Act.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-01-065 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. Drainage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and written approval, a drainage plan demonstrating that the runoff from the roof, driveway and other impervious surfaces shall be collected and directed in a non-erosive manner into pervious areas on the site (landscaped areas) prior to being conveyed off-site so as to achieve infiltration to the maximum extent practicable.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. <u>Flood Elevation Certificate</u>

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall provide to the Executive Director a copy of a Flood Elevation Certificate, prepared by a qualified, registered land surveyor, engineer, or architect, and approved by the Humboldt County Building Department demonstrating that the finished foundation of the residence would be at least one foot above the Base Flood Elevation. The applicant shall inform the Executive Director of any changes to the project required by the Humboldt County Building Department. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. <u>State Lands Commission Review</u>

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or
- b. State lands are involved in the development and all permits required by the State Lands Commission have been obtained; or

c. State lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

4. Assumption of Risk

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

1. <u>Site Description & Project Description</u>

The proposed project involves merging two adjacent parcels and constructing a 2,673-squarefoot single-family residence. The subject property is located at 75 and 87 Sole Street in the unincorporated community of King Salmon, approximately two miles south of Eureka in Humboldt County (Exhibits No. 1-2).

The King Salmon subdivision consists of former tidelands that were filled during the mid-1900's and later subdivided. Most of the surrounding lots in the residentially zoned neighborhood have been developed with single family residences. The rear of the flat, rectangular property backs up to an arm of Fisherman's Channel, a man-made tidal channel that connects to Humboldt Bay.

The two parcels to be merged are separate, contiguous legal parcels and are currently developed with an existing bulkhead, a 1,750-square-foot wooden deck cantilevered over the channel on concrete piles, and a four-foot-wide floating dock in the channel. Also existing at the site is a perimeter fence and a mobile storage shed. The centerline of the fence separating the parcels to be merged and the mobile storage shed are proposed to be removed. The bulkhead, deck, and floating dock were constructed in the 1960's prior to coastal development permit requirements. The upland area of the property is covered by grasses and ruderal vegetation and contains no known environmentally sensitive habitat.

The applicant proposes to merge two adjacent parcels of 0.20 and 0.14 acres to create a 0.34acre, or 14,750-square-foot parcel that would be 125 feet wide by 118 feet long. Additionally, the applicant proposes to construct a 28-foot-high, two-story, 2,673-square-foot single family residence with a 576-square-foot attached garage, a driveway serving the garage, and a new fence along the portion of the property fronting the street. The parcels are served by community sewer and water. The proposed project does not involve any grading, as the parcels are relatively flat.

2. Locating and Planning New Development

Section 30250(a) of the Coastal Act states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The proposed project involves merging two legal, contiguous parcels into one. The subject property is within a developed residential neighborhood zoned residential single-family with 5,000-square-foot minimum parcel sizes, where 3-7 residential units per acre is a principally permitted use. The proposed lot merger would merge a 8,850-square-foot lot and a 5,900-square-foot lot to form one 14,750-square-foot parcel that conforms with the 5,000-square-foot minimum parcel size.

As currently configured, the two subject parcels contain the potential for two primary residential units and two secondary dwelling units. As merged, there would only be one parcel with one primary residence and the potential for one secondary residence. Therefore, the parcel merger would not result in an increase in the potential residential development allowable, but rather, would reduce the number of parcels by one and the potential number of residential units (including both primary and secondary) by two. Additionally, the subject parcels are located in a developed subdivision with community water and sewer systems that would serve the proposed residence and thus, the area has adequate services to accommodate the proposed development.

The subject parcels are located in a designated flood combining zone indicating potential flood hazard. As discussed in Finding No. 3 below, the proposed development has been conditioned to minimize flood hazards. Additionally, as discussed in Finding No. 4 below, the project has been conditioned to minimize adverse impacts to coastal water quality.

As the proposed lot merger would not allow for increased density, the project would not result in a greater demand on coastal resources. Therefore, the Commission finds that as conditioned, the proposed development is consistent with Coastal Act Section 30250(a) in that it is located in a developed area, it has adequate water and sewer capability to accommodate it, and it will not cause significant adverse effects, either individually or cumulatively, to coastal resources.

3. Flood Hazard

Section 30253 states in applicable part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

Coastal Act Section 30253 requires in applicable part that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and neither create nor contribute significantly to erosion or geologic instability.

The primary natural hazard affecting development of the subject property is flooding. The project site is designated in the County's LCP as being within a flood combining zone. All portions of the flat site will be subject to flooding from extreme high tides. Consequently, the primary way to minimize flooding risks is to raise the structure above flood elevations. According to the County Building Department, the 100-year Base Flood Elevation (BFE) at the subject site is estimated to be 6 feet NGVD. Humboldt County building permit regulations require new residences to have a finished floor elevation at least one-foot above Base Flood Elevation. The County requires the applicant to provide a Flood Elevation Certificate prepared by a registered land surveyor, engineer, or architect in accordance with Federal Emergency Management Agency (FEMA) guidelines demonstrating that the finished foundation would be constructed at least one foot above the Base Flood Elevation prior to issuance of the County building permit.

To ensure that the proposed residence is designed to minimize risks to life and property from flood hazards as required by Coastal Act Section 30253, the Commission attaches Special Condition No. 2 that requires the applicant to provide evidence of a Flood Elevation Certificate approved by the Humboldt County Building Department as being adequate to demonstrate that the finished foundation would be at least one foot above the Base Flood Elevation.

Additionally, the Commission attaches Special Condition No. 4 which requires the landowner to assume the risks of flooding hazards to the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the project despite flooding risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, the condition ensures that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

Therefore, as conditioned, the project would minimize risks to life and property from flood hazards and is consistent with Section 30253 of the Coastal Act.

4. Water Quality

Sections 30231 and 30230 of the Coastal Act address the protection of coastal water quality and marine resources in conjunction with development and other land use activities. Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and the protection of human health shall be maintained and, where feasible, restored through, among other means, <u>minimizing adverse effects of wastewater discharges and</u> <u>entrainment, controlling runoff</u>, preventing depletion of ground water supplies and substantial interference with the surface water flow, encouraging wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams. (emphasis added)

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters be maintained and, where feasible, restored through among other means, minimizing adverse effects of wastewater discharge and entrainment, and controlling runoff.

The rear of the subject parcels backs up to an arm of Fisherman's Channel, a tidal channel that connects to Humboldt Bay. The subject site is flat and is vegetated with grasses and blackberry bushes with no developed impervious surfaces. Thus, the majority of stormwater at the site currently infiltrates prior to leaving the site as surface runoff. The proposed house, garage, and driveway would result in 3,655-square-feet of impervious surface area at the site. The increase in impervious surface area would decrease the infiltrative function and capacity of the existing permeable land on site. The reduction in permeable surface area therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides and pesticides; and bacteria and pathogens

from animal waste. The discharge of these pollutants to coastal waters can cause cumulative adverse impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters and reduce optimum populations of marine organisms.

Section 30412 prevents the Commission from modifying, adopting conditions, or taking any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality. There are no existing National Pollutant Discharge Elimination System (NPDES) permits that apply to the site and the proposed project does not require any permits from the Regional Water Quality Control Board. Therefore, conditions and/or BMPs required by the Commission to minimize adverse impacts to water quality from the proposed development would not conflict with actions of the RWQCB consistent with the requirements of Coastal Act Section 30412.

To protect the quality and biological productivity of the coastal waters by minimizing the volume of stormwater runoff that could potentially drain to the tidal channel that flows to Humboldt Bay, the Commission attaches Special Condition No. 1. The condition requires the applicant to submit a drainage plan to the Executive Director for review and written approval prior to the issuance of the coastal development permit. The condition requires the drainage plan to demonstrate that the runoff from the roof, driveway and other impervious surfaces are collected and directed in a non-erosive manner into pervious areas on the site (landscaped areas) prior to being conveyed off-site so as to achieve infiltration to the maximum extent practicable.

The Commission finds it necessary to require the submittal of a drainage plan to minimize significant adverse impacts to the biological productivity and water quality consistent with the water quality protection policies of the Coastal Act and has conditioned the project accordingly. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

5. Visual Resources

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and requires in applicable part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

The proposed single-family residence is located in a densely developed residential area. The residence would be visible from public streets within the subdivision and boat access channels

within the subdivision. However, the residence would not be visible from any designated scenic public road or public park, or the open waters of Humboldt Bay. The development would thus not block any public views of the ocean, Humboldt Bay, or other coastal areas. The project would not result in the alteration of natural landforms, as the site is relatively flat and does not require grading. The character of the King Salmon area is largely defined by a diversity of architectural styles and sizes of residences ranging from small, manufactured homes to larger two-story homes. The proposed two-story, redwood shingle-sided residence and attached garage would be of similar size, scale, and architectural style to other development in the neighborhood. Thus, the project would also be visually compatible with the residential character of the surrounding area.

Therefore, the project would be consistent with Section 30251, as the project would not adversely affect views to or along the coast, result in major landform alteration, or be incompatible with the character of the surrounding area.

6. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

The proposed project would not adversely affect public access. The parcel merger would not result in an increase in the potential residential development allowable, but rather, would reduce the number of parcels by one and the potential number of residential units (including both primary and secondary) by two. As the proposed lot merger would not allow for increased density, the project would not result in a greater demand on coastal resources. In addition, the project site does not front directly on Humboldt Bay, as it is separated from the Bay tidelands by other parts of the King Salmon subdivision. The entire bayfront of the subdivision, along the west side of Buhne Drive, is open and available for public access use. Although the rear of the property lies adjacent to an arm of the Fisherman's Channel, a tidal channel that connects to Humboldt Bay, no evidence has been presented to suggest that an implied dedication of a public access easement to or along the 125-foot-wide channel shoreline of the property has occurred. Therefore, the proposed project would not adversely affect any existing rights of access that may

have been acquired through use. Finally, the project would not otherwise adversely affect public access, as no existing public access would be blocked by the proposed development.

Therefore, the Commission finds that the proposed project does not have any significant adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, 30212, and 30214.

7. State Lands Commission Review

The proposed development is located in King Salmon, an area shown on State Lands Commission maps as being subject to the public trust. As such, the State of California may hold a public trust easement or other property interest at the site. Any such property interest would be administered by the State Lands Commission. To assure that the applicant has the legal ability to carryout the project and to comply with the terms and conditions of this permit, the Commission attaches Special Condition No. 3 which requires that the applicant, prior to issuance of the permit, submit evidence that any necessary authorization from the State Lands Commission has been obtained, or that no authorization from the State Lands Commission is necessary.

8. California Environmental Quality Act (CEQA)

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

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

EXHIBITS:

- Regional Location
 Vicinity Map
 Project Site

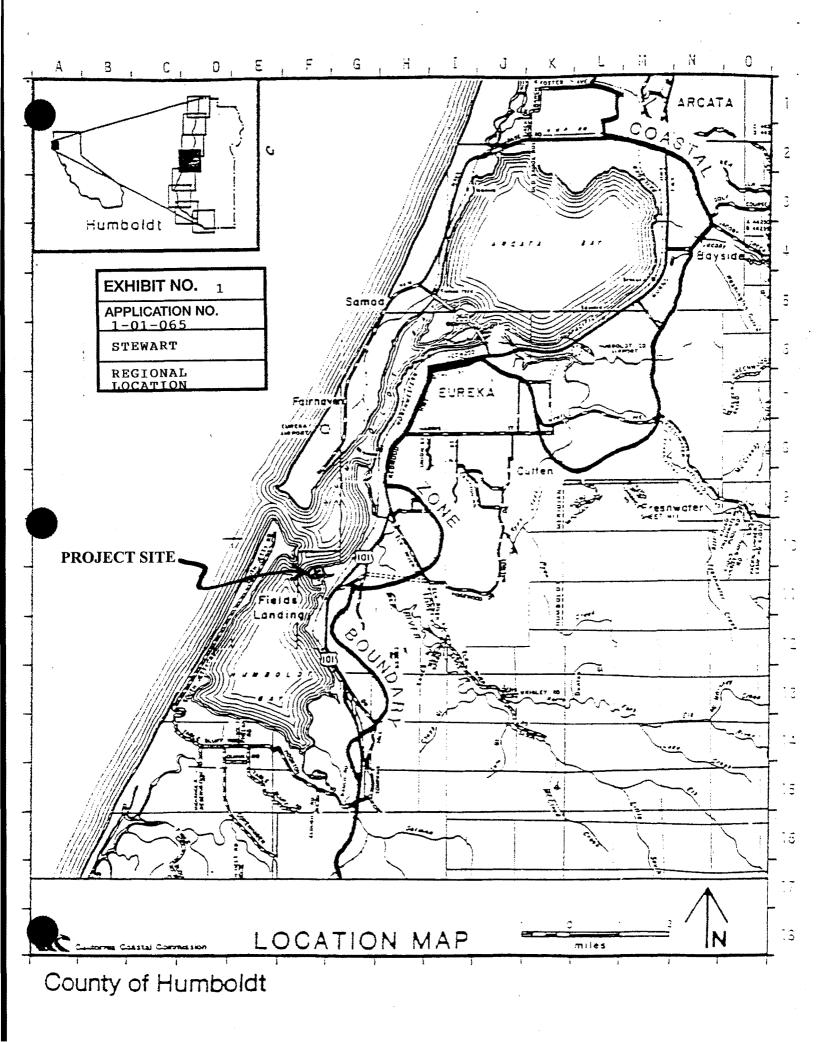
- 4. Plot Plan
- 5. Cross Section Plan
- 6. Elevations

ATTACHMENT A

Standard Conditions:

- 1. <u>Notice of Receipt and Acknowledgment</u>. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. <u>Expiration</u>. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Interpretation</u>. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment</u>. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. <u>Terms and Conditions Run with the Land</u>. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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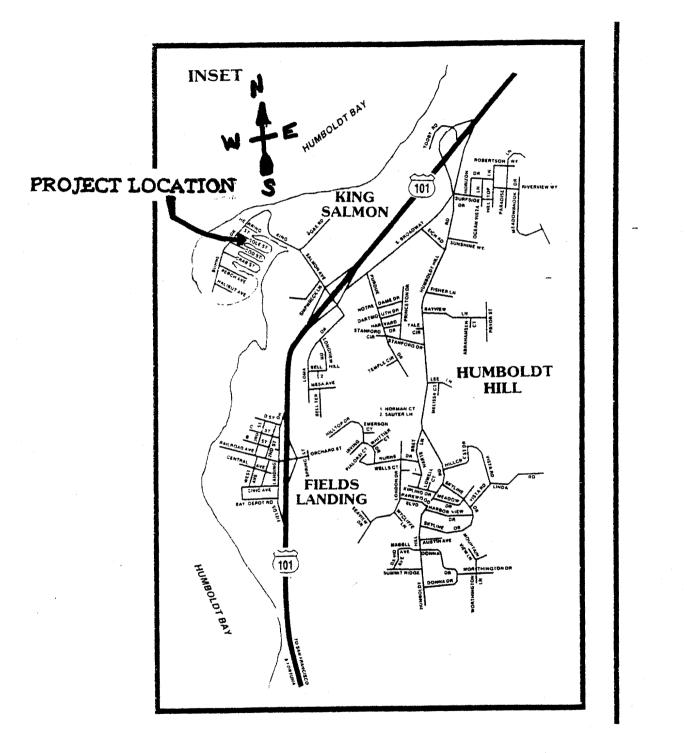
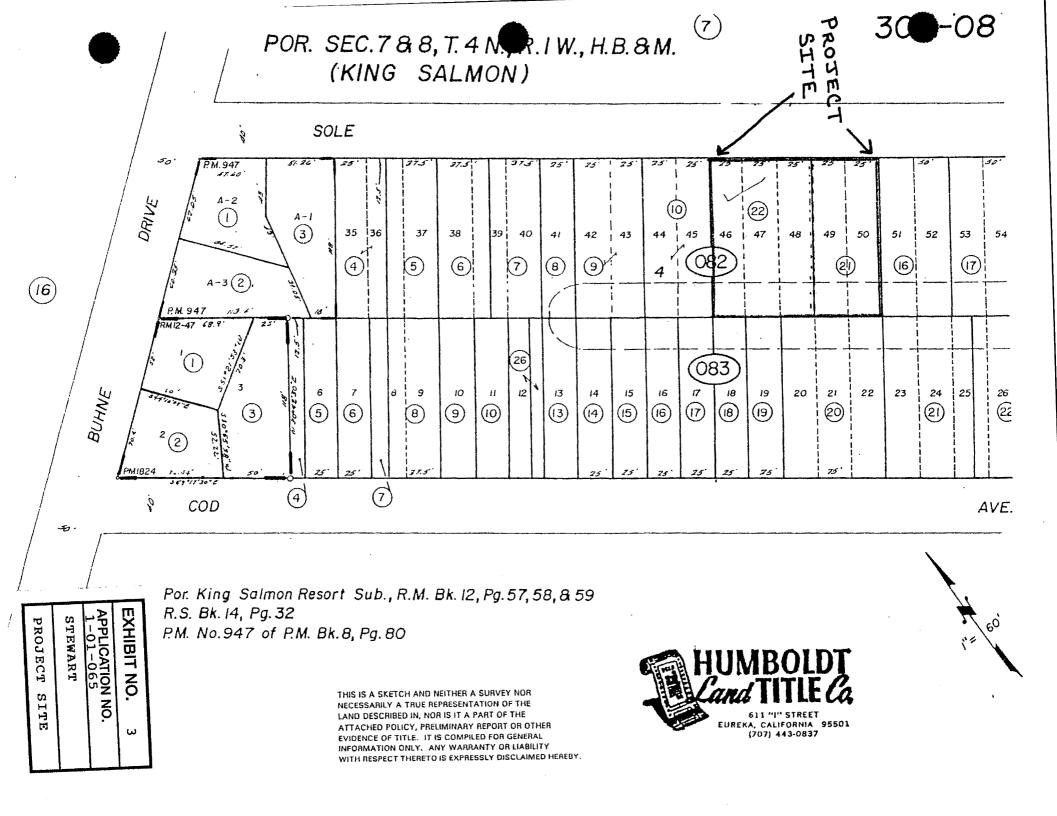
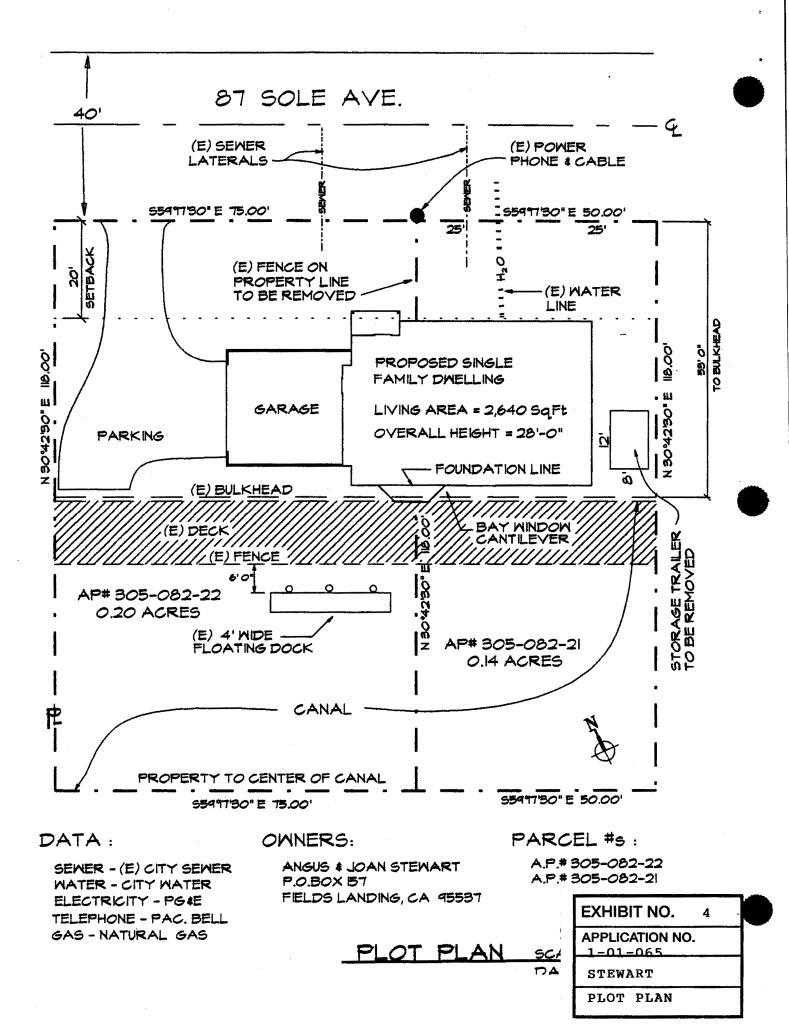
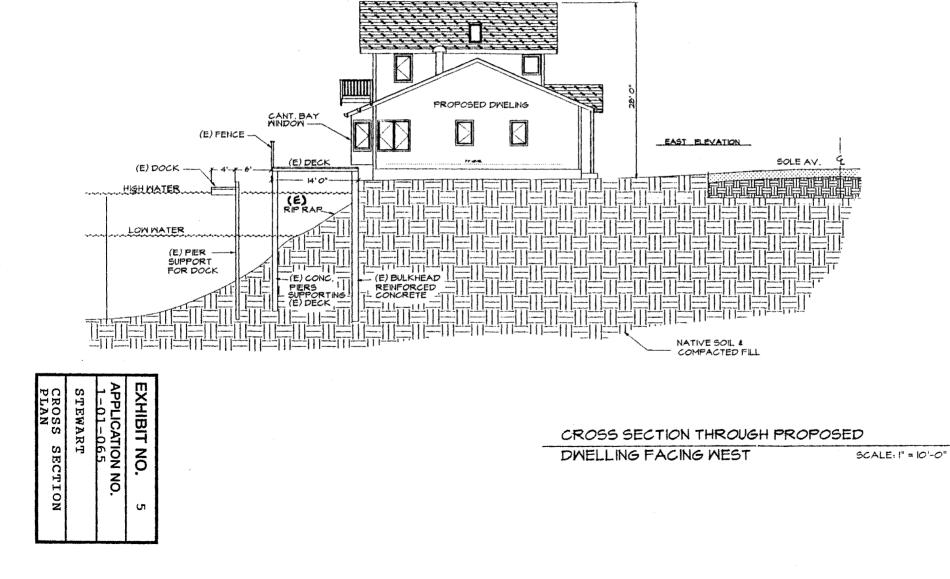


EXHIBIT NO. 2
APPLICATION NO. 1-01-065
STEWART
VICINITY MAP







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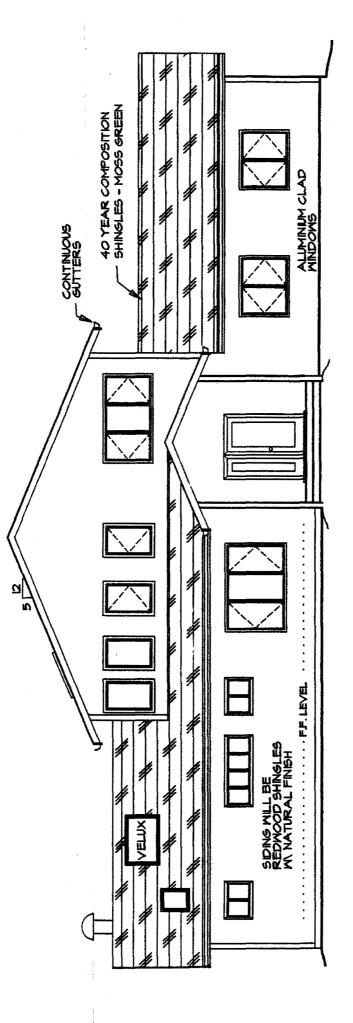
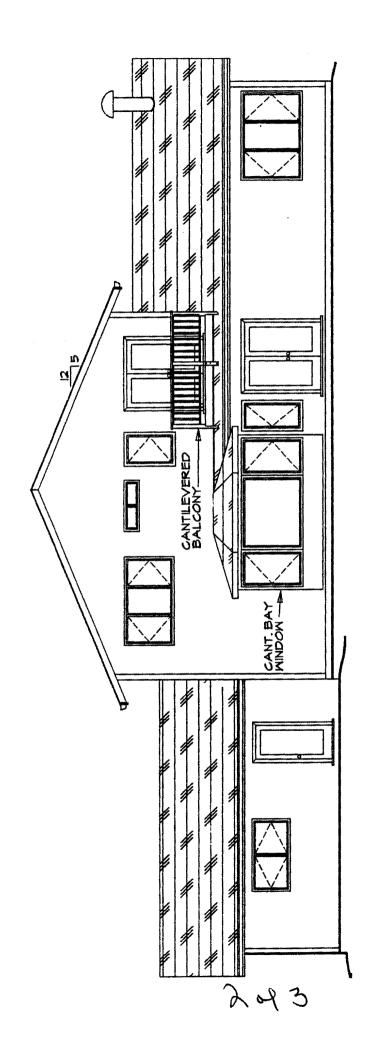




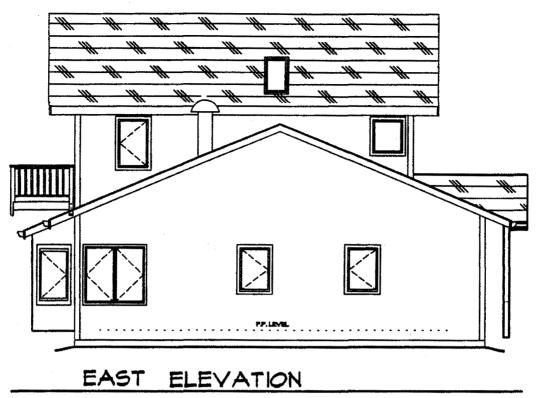
EXHIBIT NO. 6	
APPLICATION NO. 1-01-065	
STEWART	٦`
ELEVATIONS (1 of 3)	

SCALE: 1/8" = 1'-0"



SOUTH ELEVATION

SCALE: 1/8" = 1'-0"



SCALE: 1/8" = 1'-0"

