

CALIFORNIA COASTAL COMMISSION

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Filed:	February 22, 2002
49 th Day:	April 12, 2002
Staff:	Randall Stemler
Staff Report:	March 21, 2002
Hearing Date:	April 11, 2002
Commission Action:	

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

APPEAL NO.:	A-1-MEN-02-012
APPLICANT:	John Brorsen and Diane Egelston
AGENT:	Rosenthal Construction
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	On Brewery Gulch Drive at 9300 North Highway One, Mendocino, Mendocino County (APN 191-340-15).
PROJECT DESCRIPTION:	Demolition of a 1,585-square-foot barn, a 1,865-square-foot single-family residence, a 756-square-foot carport, and a 216-square-foot utility building. Construction of a 3,052-square-foot single-family residence with a 672-square-foot bonus room, a 504-square-foot guest room and an 896-square-foot garage for a total of 5,124 square feet, maximum average height to be 27.5 feet. Connection to existing power, well and septic system. Temporary use of the guest cottage as a residence while constructing the residence.

APPELLANT:

Dr. Hillary Adams

SUBSTANTIVE FILE:
DOCUMENTS

- 1) Mendocino County CDP #85-01, and
- 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a *de novo* hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified LCP.

The development, as approved by the County, consists of demolition of a 1,585-square-foot barn, a 1,865-square-foot single-family residence, a 756-square-foot carport, and a 216-square-foot utility building, and the construction of a 3,052-square-foot single-family residence with a 672-square-foot bonus room, a 504-square-foot guest room and a 896-square-foot garage for a total of 5,124 square feet. The maximum average height is proposed to be 27.5 feet. Further development includes connection to existing power, well, and septic system. The guest cottage would be temporarily used as a residence while constructing the main residence.

The appellant contends that the approved project raises a substantial issue of conformance with the County's LCP policies pertaining to establishment of an adequate buffer between the approved development and the environmentally sensitive habitat on the site. Specifically, the appellant questions the fact that the County: (1) required only a 50-foot buffer be established between the development and the two watercourses/riparian areas that exist on the property; and (2) allowed the southeast corner of the approved residence to encroach into the buffer to as close as 30 feet from one of the watercourses/riparian areas.

Staff recommends that the Commission find that the project as approved, raises a substantial issue of conformance with the certified LCP with respect to the contentions raised concerning Environmentally Sensitive Habitat Area (ESHA) resource protection. In particular, there is no evidence that the narrow 50-foot ESHA buffer required for the project was established based on the specific standards for determining the appropriate width for a buffer set forth by the LCP and in consultation with the California Department of Fish and Game. In addition, the findings adopted by the County do not fully explain how the encroachment of the residence into the buffer area as close as 30 feet from the environmentally sensitive habitat conforms with the limited circumstances set forth in the LCP for allowing for such an encroachment. In particular, the findings do

not explain why there are no feasible alternatives to locating the structures within the buffer and how a residence is allowed as a use dependent on the resource.

Staff also recommends that the Commission continue the de novo portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information from the applicant to determine if the approved development can be found consistent with provisions of the certified LCP requiring the protection of ESHA resources with buffer areas.

The motion to adopt the staff recommendation of Substantial Issue is found on page 4.

STAFF NOTES

1. Appeal Process.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within one hundred feet of a wetland or stream, within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within 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, the developments constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission under Section 30603 of the Coastal Act because: (1) it is located within 100 feet of a wetland or stream; and 2) it is located in a sensitive coastal resource area—a designated highly scenic area.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2. Filing of Appeal.

The appellant filed an appeal (Exhibit 5) to the Commission in a timely manner on February 22, 2002 within 10 working days of receipt by the Commission on February 7, 2002 of the County's Notice of Final Action.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

MOTION

I move that the Commission determine that Appeal No. A-1-MEN-02-012 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-02-012 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTION.

The Commission received an appeal of the County of Mendocino's decision to approve the development from Dr. Hillary Adams. The project, as approved by the County, consists of demolition of a 1,585-square-foot barn, a 1,865-square-foot single-family residence, a 756-square-foot carport, and a 216-square-foot utility building, with construction of a 3,052-square-foot single-family residence, with a 672-square-foot bonus room, a 504-square-foot guest room, and a 896-square-foot garage, for a total of 5,124 square feet. The maximum average height is proposed to be 27.5 feet. The development includes connection to existing power, to the well, and to the septic system. Temporary use of the guest cottage would be allowed as a residence while the main residence is built. The appellant's contention is summarized below, and the full text of the contention is included as Exhibit No.5.

The current and proposed development lies between two watercourses/streams, one to the east and one to the west (See Exhibit No. 3). The watercourses/streams flow into a pond south of the development. The watercourses/streams and the riparian vegetation around them constitute environmentally sensitive habitat areas. The appeal raises a contention involving inconsistency of the approved project with the County's LCP policies regarding protection of environmentally sensitive habitat areas. Buffers of sufficient size are required by LCP policies and standards to protect Environmentally Sensitive Habitat Areas from potential impacts resulting from future development. A minimum width of 100 feet is required unless the applicant can demonstrate that a narrower width is adequate to protect ESHA resources, and that the Department of Fish and Game concurs that the narrower buffer is appropriate. The appellant contends that the project is inconsistent with these LCP buffer width standards as a buffer of only 50 feet would be provided and no evidence has been presented that (a) there is a scientific basis for reducing the buffer, and (b) the Department of Fish and Game agrees that the narrower buffer is appropriate. The appellant further asserts that the house, as approved, is allowed to extend 20 feet into that 50-foot buffer.

B. LOCAL GOVERNMENT ACTION.

On January 24, 2002 the Coastal Permit Administrator for Mendocino County approved Coastal Development Permit #85-01 for the subject development. The County attached to its coastal permit a number of special conditions.

Special Condition No. 1 states: "Except for use as a temporary residence the guest cottage shall not have cooking facilities and shall be clearly subordinate and incidental to the primary dwelling. The guest cottage shall be used, without compensation, by guests of the occupants of the primary dwelling."

Special Condition No. 2 states: "An administrative permit is hereby granted for temporary occupancy of the guest cottage portion of the residence while constructing the main portion of the single family residence, subject to the following conditions of approval:

- (a) The term of this administrative permit is valid for the period required to complete construction of the primary dwelling, but shall not exceed two years unless renewed.
- (b) The administrative permit shall be effective on the effective date of CDP #85-01 and shall expire two years henceforth.
- (c) A valid building permit for a permanent dwelling on the premises must be in effect.
- (d) Building and Health permits must be obtained prior to the occupancy of the guest cottage as a temporary residence.

The temporary residence shall be converted to a guest cottage prior to the final building inspection or occupancy of the permanent dwelling, whichever comes first."

Special Condition No. 3 states: "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."

Special Condition No. 4 states: "Prior to issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Coastal Permit Administrator, a final landscape plan based on the preliminary landscape plan in Exhibit I of this report. Specifications shall be included to indicate species, size, and establishment techniques, (e.g. irrigation, fertilization, etc.). All required landscaping shall be

established prior to the final inspection of the dwelling, or occupancy, whichever occurs first and shall be maintained in perpetuity.

Special Condition No. 5 states: "The watercourse to the east of the proposed demolition/construction, as indicated on the site plan annotated by Dr. Gordon McBride, shall be protected with a 50-foot buffer measured from the centerline of the watercourse as identified on said plan. No development, disturbance, or tree removal shall occur within the 50-foot buffer with the exception of the southeast corner of the structure as shown on Exhibit C. Prior to start of construction, the applicant shall install temporary protective fencing located along the edge of the 50-foot buffer area. The fence shall extend a minimum of 50 feet beyond all construction areas and shall remain in place until the final building inspection. Erosion control per Exhibit J and Dr. McBride shall be in place prior to the demolition of the existing structures and shall remain in-place for the duration of the construction of the residence."

Special Condition No. 6 states: "Prior to demolition the applicant shall prepare a photo record of the existing development to be given to the appropriate curator (i.e. the Kelley House or the County Museum.) A letter of receipt shall be submitted to the Planning Department prior to demolition."

After the hearing, the Coastal Permit Administrator added the following finding: "Due to constraints of property (slope, ESHA, visual considerations) and that development of a new/alternative building site would generate new environmental impacts, the selected building site is the most consistent with the L.C.P.."

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on February 7, 2002 (Exhibit 4).

C. PROJECT AND SITE DESCRIPTION.

The subject property is an 8.61-acre parcel located east of Mendocino Bay, on the south side of Brewery Gulch Drive, approximately ¼ mile east of Brewery Gulch Drive and its intersection with Highway One, at 9300 Highway One, Mendocino (See Exhibits 1-2). The Assessor's Parcel Number is 119-340-15.

Currently, the parcel contains a residence, barn, utility buildings, driveway, well, septic system and large yard that is regularly mowed. The approved development includes demolition of the 1,585-square-foot barn, the 1,865-square-foot single-family residence, the 756-square-foot carport, and the 216-square-foot utility building (See Exhibits 3-4). In place of the demolished structures the applicant would construct a 3,052-square-foot single-family residence with a 672-square-foot bonus room, a 504-square-foot guest room and an 896-square-foot garage for a total development of 5,124 square feet. The

maximum average height of the residence is to be 27.5 feet. The project includes the connection to existing power, well and septic system.

The parcel is zoned Rural Residential-5, and the approved development is designated as a principal permitted use consistent with the Rural Residential zoning district. The subject property is a multi-angle-shaped-polygon with the northern boundary following a slightly undulating east/west-line from the northwest corner of the property, along Brewery Gulch Road for a distance of approximately 382 feet, to the northeast corner. The east boundary extends in a straight line approximately 499 feet south to the southwest corner, and from that point approximately 782 feet to the southeast corner forming the southern boundary. The western boundary is formed by a line extending north approximately 563 feet following a curved road back to Brewery Gulch Road at the northwest corner.

The parcel slopes south and is incised by two watercourses/streams that join near the center, and flow into a large pond located in the center of the southern end of the property. The site of the current and proposed development is located in the center and along the top edge of the parcel between the two watercourses/streams, and is predominantly vegetated with mowed lawn. The riparian habitat of the two watercourses/streams supports associated plants including sword fern and rush, with the larger watercourse located to the east supporting an over story of alder, wax myrtle, and elderberry with associated under story plant species. Currently, a portion of the existing residence is located as close as 30 feet to the eastern watercourse. Also, the existing barn is located as close as 60 feet to the western watercourse. After demolition of the existing structures, the development as approved, would be located more or less in the same location, except that the new residence would be moved approximately 20 feet further back from the east-side riparian area.

The portions of the subject parcel that can be seen from Highway One are designated as Highly Scenic in the certified Land Use Plan. The approved development would be visible from Highway One for several hundred feet from a location north of the northern intersection of Gordon Lane and Highway One, south of the Brewery Gulch Road intersection. It is likely that the upper two-thirds of the approved structures would be visible. Because the parcel is on the east side of Highway One, development on the site would not block views of the ocean from any public vantage point.

D. SUBSTANTIAL ISSUE ANALYSIS.

Section 30603(b)(1) of the Coastal Act states:

"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."

The contention raised in this appeal presents potentially valid grounds for appeal in that it alleges the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. This contention alleges that the approval of the project by the County raises a substantial issue related to LCP provisions regarding the protection of environmentally sensitive habitat areas (ESHA) by the establishment of buffers between new development and the ESHA.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

"With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603."

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation below a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP.

Allegation Raising Substantial Issue

Protection of Environmentally Sensitive Habitat Areas

The appellant contends that the project as approved is not consistent with provisions of the Coastal Act, certain policies of the certified Local Coastal Program, and certain sections of the Coastal Zoning Code. The appellant specifically cites inconsistencies with Sections 30231 and 30240 of the California Coastal Act, LUP Policy 3.1 et seq., particularly Policy 3.1-2, and Policy 3.1-7, and Coastal Zoning Code Ordinance Sections 20.496.020 et seq. and 20.496.025. The appellant states that the requirement for a 100-foot minimum buffer from environmentally sensitive habitat areas was reduced to 50 feet without scientific justification, and without the required agreement from the California Department of Fish and Game. The appellant also points out that the house is allowed to project 20 feet into this questionable 50-foot buffer.

LCP Policies:

Policy 3.1-2 states in part: *"Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones or streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, [and] a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas. If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands."* (Exhibit 6)

Policy 3.1-7 states in applicable part, "A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and

agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width..." [emphasis added] New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

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

Policy 3.1-10 states in applicable part, "Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources.[emphasis added] All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian corridor except for:

- Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;
- pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible;
- existing agricultural operations;
- removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values."

Section 20.308.130 (E) (wetland definition) of the Coastal Zoning Ordinance states in applicable part:

“(E) ‘Wetlands’ means lands covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are extremely fertile and productive environments. Tidal flushing from the ocean and/or nutrient-rich freshwater runoff mix to form a delicate balance responsible for their productivity. They function as nurseries for many aquatic species and serve as feeding and nesting areas for water fowl, shore birds and wading birds, as well as a few rare and endangered species such as the peregrine falcon.”

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part:

“ESHA- Development Criteria

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

(1) *Width.*

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width [emphasis added].... Standards for determining the appropriate width of the buffer area are as follows:

(a) *Biological Significance of Adjacent Lands.*

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

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of

the wetland, stream, or riparian habitat that is adjacent to the proposed development.

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

 - (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
 - (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*
 - (iii) An assessment of the impact and activity levels of the proposed development on the resource.*
- (c) Susceptibility of Parcel to Erosion. The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*
- (d) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*
- (e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*
- (f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure*

additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

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

...

(4) Permitted Development.

Development permitted within the buffer area shall comply at a minimum with the following standards:

- (a) *Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*
- (b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*
- (c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*
- (d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*
- (e) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

- (f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*
- (g) *Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*
- (h) *Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.*
- (i) *Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*
- (j) *Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*
- (k) *If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)*

Section 20.496.025 states in applicable part:

“(B) Requirements for Permitted Development in Wetlands and Estuaries.

- (1) Any proposed development that is a permitted development in wetlands and estuaries must meet the following statutory requirements...*

(a) There is no feasible, less environmentally damaging alternative;

(b) Where there is no feasible, less environmentally damaging alternative, mitigation measures have been provided to minimize adverse environmental effects."

Discussion:

As set forth above, LUP Policy 3.1-7 and Zoning Code Section 20.496.020 require that buffer areas shall be established adjacent to all environmentally sensitive habitat areas to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. These provisions of the LCP state that the width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development, in which case the buffer can be reduced to not less than fifty (50) feet in width.

Coastal Zoning Code Section 20.496.020 (A) (1) (a) through (g) sets forth specific standards to be considered when determining the width of a buffer. These standards include: (a) an assessment of the biological significance of adjacent lands and the degree to which they are functionally related to wetland resources, (b) the sensitivity of species to disturbance such that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development, (c) the susceptibility of the parcel to erosion determined from an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel, (d) the use of natural topographic features to locate development so that hills and bluffs adjacent to ESHA's can be used to buffer habitat areas, (e) use of existing cultural features such as roads and dikes to buffer habitat areas, (f) lot configuration and location of existing development such that buildings are a uniform distance from the habitat area, and provision for additional mitigation if the distance is less than 100 feet, and (g) the type and scale of development proposed as a determining factor for the size of the buffer zone necessary to protect the ESHA.

If the proposed development is constricted by geographic or other limiting factors, the LCP policies and standards provide mechanisms for dealing with such situations. The ESHA buffer may be reduced to 50 feet when the applicant presents appropriate evidence demonstrating that based on a review of the buffer width standards set forth in Coastal Zoning Ordinance Section 20.496.020 (A) (1), a narrower buffer would still protect the ESHA from significant disruption, and when the Department of Fish & Game agrees. Even where it is not appropriate to reduce the minimum buffer, limited development could still be approved within the buffer pursuant to LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 (A) (4) if it can be demonstrated that (a) the development is generally the same as those uses permitted in the adjacent ESHA, (b) it

will be sited and designed to prevent impacts which would significantly degrade such areas, (c) it will be compatible with the continuance of such habitat by maintaining the habitat's functional capacity and its ability to be self-sustaining and to maintain natural species diversity, and (d) there is no other feasible site available on the parcel and mitigation measures will be implemented to replace the protective values of the buffer area.

Currently, a portion of the existing residence is located as close as 30 feet to the eastern watercourse. Also, the existing barn is located as close as 60 feet to the western watercourse. After demolition of the existing structures, the development as approved, would be located more or less in the same location, except that the new residence would be moved approximately 20 feet further back from the east-side riparian area.

A botanical survey was performed for the project by Dr. Gordon McBride. According to Dr. Gordon McBride, his proposed setback and erosion control measures recommended in his December 17, 2000, *Botanical Survey and Riparian Habitat Determination* are sufficient to "prevent disturbance of the riparian plant community along the larger watercourse to the east and south of the existing single family residence. When the single family dwelling is removed and replaced, a construction debris barrier...is recommended to protect the integrity of the riparian plant community associated with this watercourse." For the smaller watercourse to the west, recommendation for a construction debris barrier is made, but no recommendation for a buffer setback is provided.

Even though Dr. McBride includes a recommendation for a 50-foot buffer to protect riparian ESHA for the larger east-side creek, no discussion is provided in the report that substantiates why only a 50-foot buffer is adequate, and the factors set forth in Coastal Zoning Ordinance Section 20.496.020 (A) (1) (a) through (g) for determining the width of a buffer are not addressed. Additionally, no buffer is recommended for the west-side watercourse that is closer than the required 100-foot minimum.

Furthermore, there is no evidence in the County local record that the California Department of Fish and Game was consulted with and agreed to a reduction of the buffer below the minimum standard of 100 feet. It is unclear if Fish & Game was even contacted about the project. As noted previously, LUP Policy 3.1-7 and Zoning Code Section 20.496.020 states that the width of a buffer shall be a minimum of 100 feet unless an applicant can demonstrate, after consultation with the Department of Fish and Game and County Planning Staff that one hundred feet is not necessary to protect the habitat resources.

In approving the project, the County imposed Special Condition No. 5 that requires a 50-foot buffer be established and maintained and that temporary protective fencing be installed along the edge of the buffer during construction, with the exception that development could occur within the buffer at the southeast corner of the structure. The County staff report and findings do not include any evaluation of what an appropriate

buffer width is in this case that is based on the standards of Coastal Zoning Ordinance Section 20.496.020(A). In his action on the application, the Coastal Permit Administrator for the County added a finding stating that "Due to constraints of property (slope, ESHA, visual considerations) and that development of a new/alternative building site would generate new environmental impacts, the selected building site is the most consistent with the L.C.P." The Commission notes that the two factors cited by the Coastal Permit Administrator, constraints on development, and development of a new/alternative site, do not address the standards set forth in Coastal Zoning Ordinance Section 20.496.020 (A) (1) (a) through (g) for determining the width of a buffer. These standards do not include development constraints or selection of alternative development site locations as factors in establishing buffer widths.

Furthermore, the Commission notes that the County staff report and the findings that were adopted do not fully explain why an encroachment into the buffer for the southeast corner of the residence, effectively reducing the buffer in this location to approximately 30 feet, is consistent with LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 (A) (4).

As discussed previously, limited development could still be approved within the buffer pursuant to LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 (A) (4) if it can be demonstrated that (a) the development is generally the same as those uses permitted in the adjacent ESHA, (b) it will be sited and designed to prevent impacts which would significantly degrade such areas, (c) it will be compatible with the continuance of such habitat by maintaining the habitat's functional capacity and its ability to be self-sustaining and to maintain natural species diversity, and (d) there is no other feasible site available on the parcel and mitigation measures will be implemented to replace the protective values of the buffer area.

The botanical information prepared by the project consultant discusses the fact that the approved residence will actually encroach less towards the riparian area than would the residence to be demolished. The consultant indicates that the encroachment would pose no threat to the plant community of the riparian area so long as construction debris and sediment is prevented from reaching the riparian plant community. In a follow-up letter submitted to the County on July 25, 2001 to address the encroachment into the buffer, Dr. McBride states the following:

"Provided that a reasonable effort is made to prevent construction debris from being deposited in, or construction generated erosion flowing to the riparian plant community described on the Brorsen parcel, I see no threat to that plant community by demolition and rebuilding of the existing structures. It appears to me from the plans that Rosenthal Construction has provided, the proposed structure would be further away from the riparian community than the existing structure."

Based on this recommendation, the County allowed the approved residence to encroach within 30 feet of the riparian habitat area. As discussed previously, the County included Special Condition No. 5 requiring that the applicant install temporary protective fencing along the edge of the buffer during demolition and construction and requiring that no construction or equipment encroach beyond the fence. The County staff report indicates that because the new structure would be located more or less in the same location as the existing structure, disturbance to the land and potential disturbance to the resource would be minimized. The County staff report also points out that the erosion control measures required by Special Condition No. 5 will adequately protect the riparian area consistent with the recommendations of Dr. McBride, and as such, the criteria for locating a structure within a buffer have been met and the project is consistent with Section 20.496.020 of the Coastal Zoning Code. The adopted findings make the following conclusions about the encroachment into the buffer without further elaboration or explanation:

8. The riparian area as identified will not be significantly degraded by the proposed development.
9. There is no feasible less environmentally damaging alternative.
10. All feasible mitigation measures capable of reducing or eliminating project related impacts to the riparian area have been adopted.

The criteria that must be met to allow development to encroach into a required buffer are set forth in LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 (A) (4), as summarized above. The County staff report and the findings attempt to address the conformance of the project as approved with some of these criteria. For example, the requirement for protective fencing to be installed and maintained during construction addresses the criteria that the development will be designed to prevent impacts which would significantly degrade such areas. However, the County staff report and findings do not address several of the other key criteria. One such criterion is that there is no other feasible site available on the parcel. The project as approved includes completely removing the existing structures on the site. With the removal of the existing structures, an approximately 14,000-square-foot area that is 50 feet or more away from the ESHA exists north of the confluence of the two watercourses. As approved, the residence and the combination garage/guest house structure have footprints of 3,052 square feet and 1,400 square feet respectively. The combined total of these two building footprints would occupy only about 32% of the area identified above that is at least 50 feet away from the ESHA. The County's adopted findings and staff report do not discuss why it would not be feasible to locate the approved buildings within this area and maintain a minimum 50-foot buffer, or in any other way explain why it is not feasible to develop the project without encroaching into the 50-foot buffer. Therefore, a substantial issue is raised regarding the project's conformance with the requirements of LUP Policy 3.1-7 (3)

and Coastal Zoning Code Section 20.496.020(4)(b) that structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

In addition, the County staff report and findings do not address at all how development of the approved residence would conform with the requirement of LUP policy 3.1-7 that "Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area." The certified LCP does not allow residences to be located within riparian environmentally sensitive habitat areas. LUP Policy 3.1-10 states as follows, in applicable part:

"Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources."

Residences are not a use dependent on riparian resources. Therefore, as LUP Policy 3.1-7 limits developments within buffer areas to uses that are generally the same as those uses permitted in the adjacent ESHA, a substantial issue is raised as to how a residence can be permitted within a buffer.

The Commission finds that the degree of factual and legal support for the County's action is low, given that the required information necessary to justify a reduced ESHA buffer, or encroachment into a buffer, has not been presented. In addition, the Commission finds that the precedential value of the County's action in regard to future interpretations of the LCP is relatively high given that another project recently appealed to the Commission, A-1-MEN-02-014, Spies, was approved by the County with a 50-foot buffer without the direct consultation and agreement of Fish and Game.

Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 concerning establishment of buffers between future development on a parcel and existing ESHA because the development as approved would not provide for the establishment of a buffer width based on the standards set forth in Coastal Zoning Ordinance Section 20.496.020 (A) (1) (a) through (g). Furthermore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 (A) (1) for reducing the minimum buffer below 100 feet as no evidence has been provided that all the necessary criteria for reducing the buffer to a width less than 100 feet have been satisfied. Moreover, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.1-7 and 3.1-10 and Coastal Zoning Ordinance Section 20.496.020 (A) for allowing development to encroach into a required buffer.

Information Needed for de Novo Review of Application

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a de novo hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the de novo hearing to a subsequent date. The de novo portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP and the public access and recreation policies set forth in the Coastal Act.

Given that the project that the Commission will be considering de novo, has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP and the public access and recreation policies of the Coastal Act. Following is a discussion of the information needed to evaluate the development.

Buffers for Environmentally Sensitive Habitat Areas

The applicants propose that a 50-foot buffer be utilized to protect the riparian ESHA habitat from impacts of the proposed development. As discussed previously, LUP Policies require minimum 100-foot buffers protecting ESHA resources unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game and County Department of Planning and Building staff, that 100-foot buffer is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. Standards to be used for determining the appropriate widths for ESHA buffer areas are set forth in Section 20.496.020 (A) (1) (a) through (g).

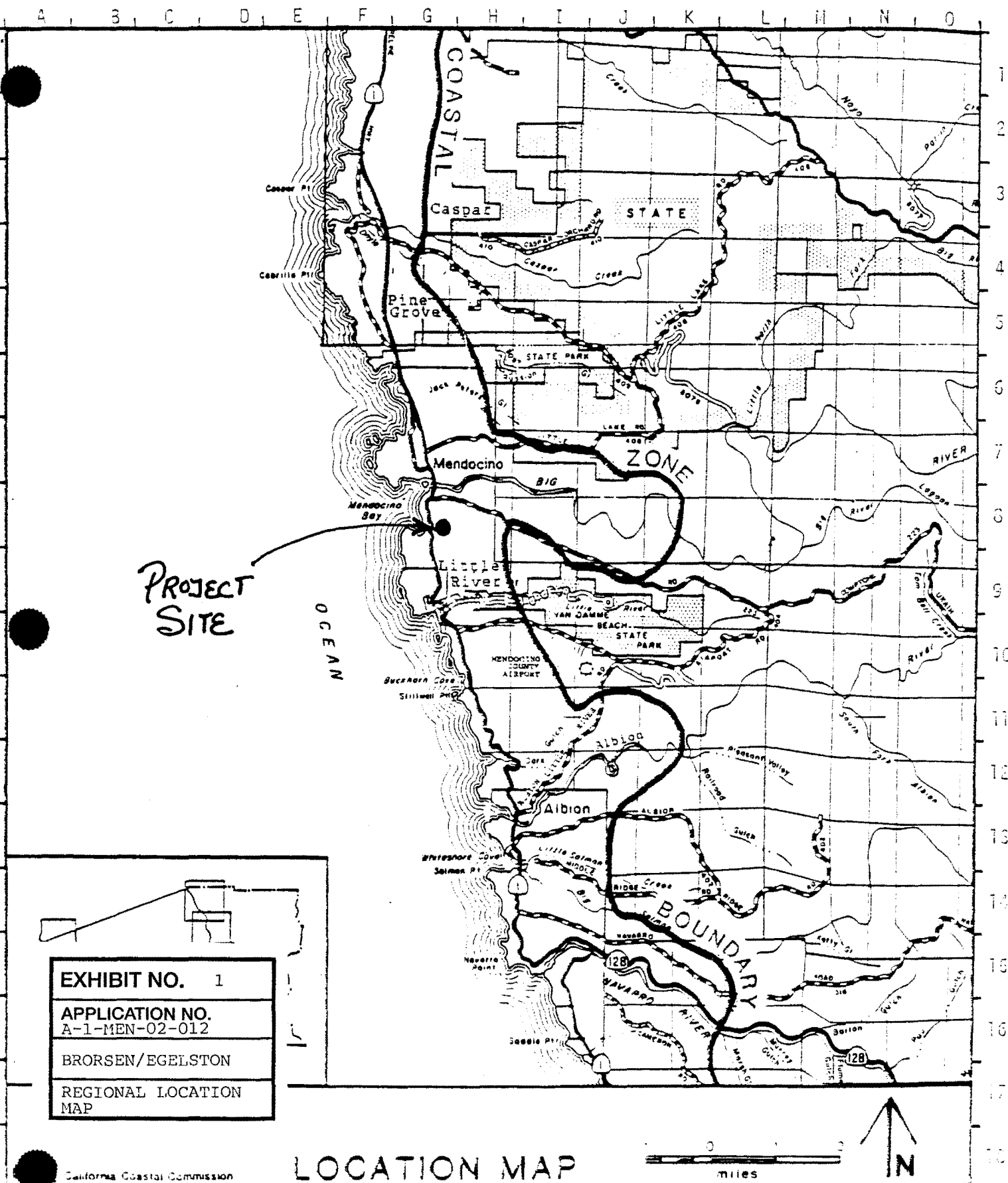
Dr. Gordon McBride makes a recommendation for a 50-foot buffer in his botanical survey performed for the applicant in December, 2000. He states: "The larger watercourse to the east and south of the single-family dwelling and barn does support a well developed riparian plant community. This plant community should be protected by a 50 foot buffer, measured from the edge of the riparian community as delineated on December 15, 2000." However, no evaluation is performed or buffer recommendation made for the watercourse to the west of the barn where the proposed project would include development closer than the minimum 100 feet allowed. In addition, in neither case does the botanical survey or the County findings for approval explain how buffer widths have been established based on the standards referred to in Section 20.496.020 (A)(1)(a) through (g). Such an evaluation prepared by a qualified biologist is needed to determine what width of buffer is appropriate and whether the buffer can be reduced to

50 feet under the criteria specified in the LCP. If an evaluation provides a basis for a buffer of less than 100 feet, then staff will be able to share the evaluation with the Department of Fish and Game and seek the Department's opinion as to whether Department staff agree that a narrower buffer is sufficient.

Without the above information concerning the adequacy of protection for ESHA resources, the Commission cannot reach a final determination concerning the project's consistency with the ESHA policies of the LCP. Therefore, before the Commission can act on the proposed project de Novo, the applicant must submit all of the above-identified information.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Site Plan
4. Notice of Final Action & Staff Report
5. Appeal
- 6 LUP Appendix 8- California Coastal Commission Statewide Interpretive Guidelines



County of Mendocino

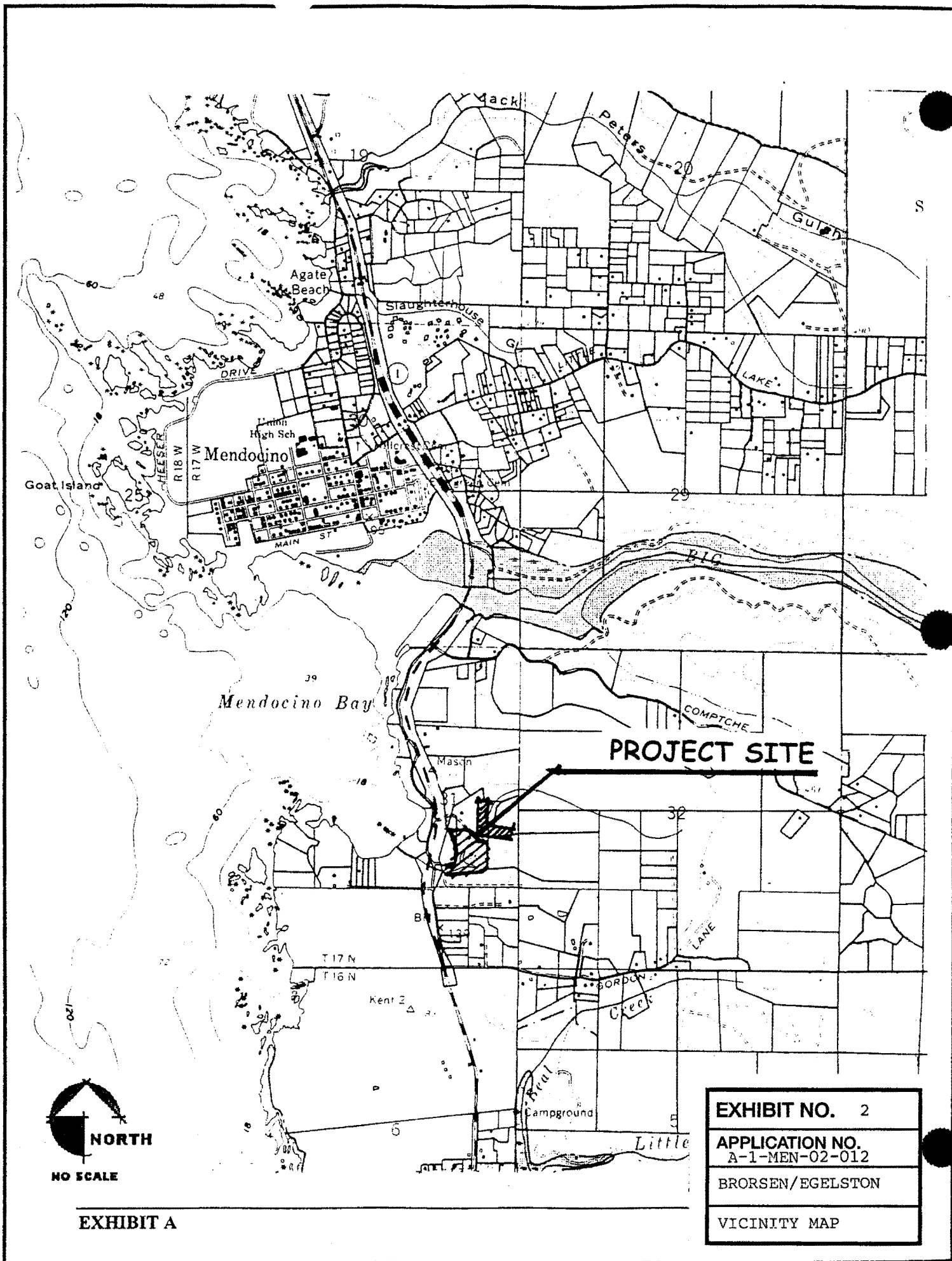
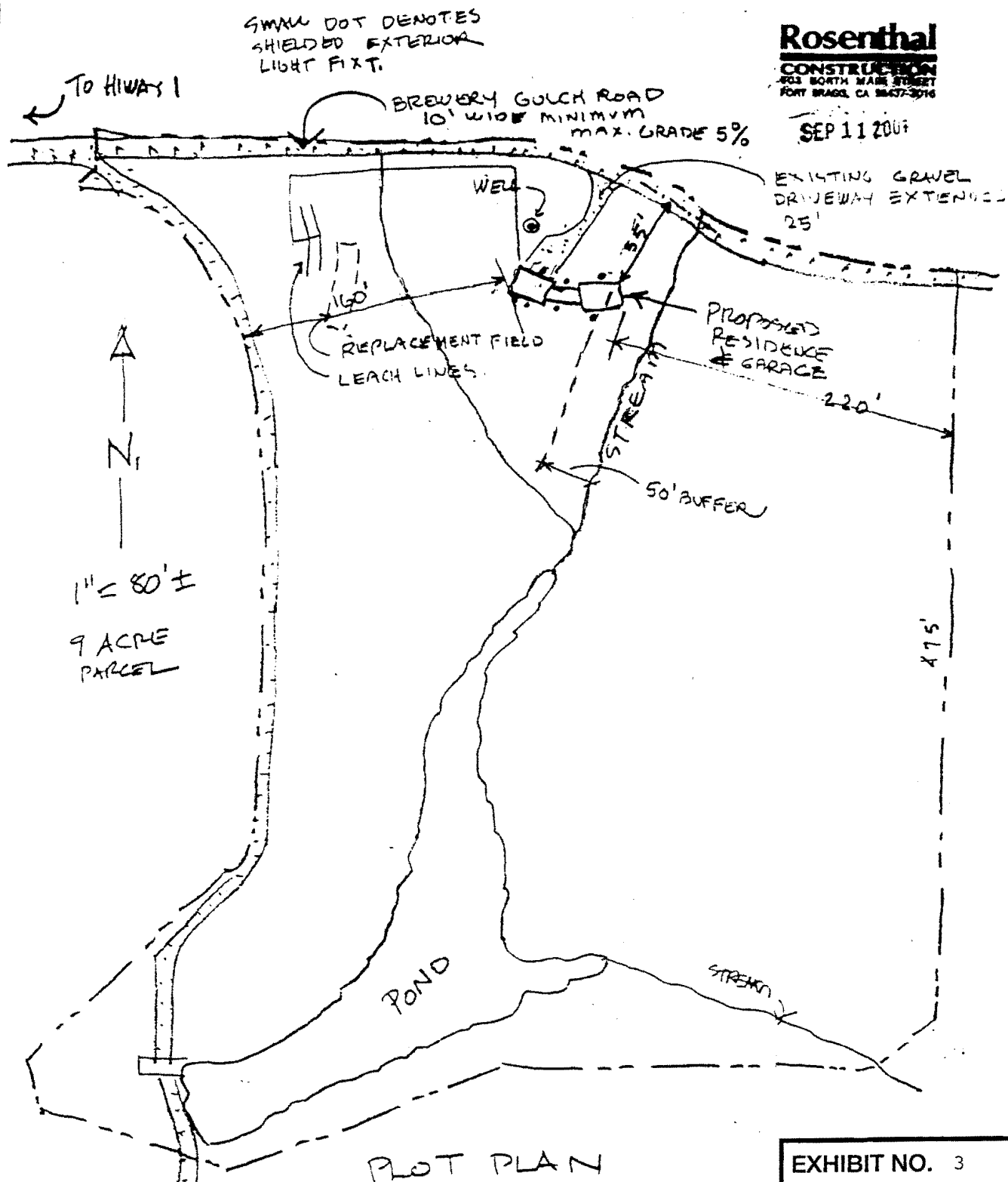


EXHIBIT A





RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

TELEPHONE
(707) 964-5379

February 4, 2002

RECEIVED

FEB 07 2002

NOTICE OF FINAL ACTION

CALIFORNIA
COASTAL COMMISSION

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

CASE#: CDP #85-01
OWNER: John Brorsen & Diane Egelston
AGENT: Rosenthal Construction
REQUEST: Demolition of a 1,585 square foot barn, a 1,865 square foot single-family residence, a 756 square foot carport and a 216 square foot utility building. Construction of a 3,052 square foot single-family residence with a 672 square foot bonus room, a 504 square foot guest room and an 896 square foot garage for a total of 5,124 square feet, maximum average height to be 27.5 feet. Connect to existing power, well and septic system. Temporary use of the guest cottage as a residence while constructing the residence.
LOCATION: S side of Brewery Gulch Drive approximately 1/4 mile E of its intersection with Highway One at 9300 N. Highway One (APN 119-340-15).
PROJECT COORDINATOR: Doug Zanini

HEARING DATE: January 24, 2002

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 26603. 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.	4
APPLICATION NO.	A-1-MEN-02-012
BRORSEN/EGELSTON	
NOTICE OF FINAL	
ACTION & STAFF	
REPORT (1 of 21)	

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 85-01 HEARING DATE: 1/24/02

OWNER: Boersen/Egelsten

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt

☐ Negative Declaration

☐ EIR

FINDINGS:

☐ Per staff report

☒ Modifications and/or additions

add: Due to constraints of property (slope, ESHA, visual consider-
and that development of a new/alternative building site
would generate new environmental impacts, the
selected building site is the most consistent with the

L.C.P.
ACTION:

☒ Approved

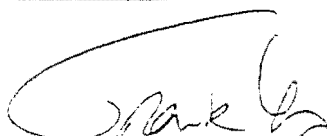
☐ Denied

☐ Continued _____

CONDITIONS:

☒ Per staff report

☐ Modifications and/or additions


Signed: Coastal Permit Administrator

OWNER:

John Brorsen & Diane Egelston
247 Trinity Ave.
Kensington, CA 94708

AGENT:

Rosenthal Construction
703 North Main Street
Fort Bragg, CA 95437

REQUEST:

Demolition of a 1,585 square foot barn, a 1,865 square foot single-family residence, a 756 square foot carport and a 216 square foot utility building. Construction of a 3,052 square foot single-family residence with a 672 square foot bonus room, a 504 square foot guest cottage, and an 896 square foot garage for a total of 5,124 square feet, maximum average height to be 27.5 feet. Connection to existing power, well and septic system. Temporary use of the guest cottage as a residence while building the main residence.

LOCATION:

On the south side of Brewery Gulch Drive approximately ¼ mile east of its intersection with Highway One at 9300 North Highway One (APN 119-340-15)

APPEALABLE AREA:

Yes (highly scenic area)

PERMIT TYPE:

Standard

TOTAL ACREAGE:

8.61 Acres

ZONING:

RR:L-5

GENERAL PLAN:

RR-5

EXISTING USES:

Residential

SUPERVISORIAL DISTRICT:

5

ENVIRONMENTAL DETERMINATION: Categorically Exempt, Class 2

OTHER RELATED APPLICATIONS: N/A

PROJECT DESCRIPTION: The parcel currently contains a residence, a barn, a driveway, well, septic system and large yard that is regularly mowed. The current and proposed development lies between two watercourses, one to the north and one to the south. The watercourses flow into a pond to the south of the development. The applicant proposes to demolish a 1,585 square foot barn, a 1,865 square foot single-family residence, a 756 square foot carport and a 216 square foot utility building.

In place of the demolished structures the applicant proposes to construct a 3,052 square foot single-family residence with a 672 square foot bonus room, a 504 square foot guest room and an 896 square foot garage for a total development of 5,124 square feet. The maximum average height of the residence is to be 27.5 feet. The project includes the connection to existing power, well and septic system.

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LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below. A ☒ indicates that the statement regarding policy consistency applies to the proposed project.

Land Use

- ☒ The proposed residence is compatible with the zoning district and is designated as a principal permitted use.

Guest cottages not exceeding 640 square feet are permitted in the RR-5 zoning district under Section 20.456.015(G) (Accessory Use Regulations). By definition, (Coastal Zoning Code Section 20.308.050 (I)), guest cottages are not permitted to have a kitchen, are to be clearly subordinate and incidental to the primary dwelling on the same lot and intended for use without compensation by guests of the occupants of the primary dwelling. Special Condition #1 has been added to ensure that the guest cottage is not to be used as a rental unit or a secondary residence. Special Condition # 1 is recommended to ensure that the use of the guest cottage complies with this code section.

Section 20.460.025 of the Coastal Zoning Code allows for the temporary occupancy of buildings during the course of construction with the issuance of a CDP. This section also states that all temporary uses shall be terminated not later than twenty-four (24) months after issuance of building permits unless a written request for extension of time has been submitted to and approved by the Planning Director prior to the expiration of said 24 months. Special Condition # 2 requires that the temporary use of the guest cottage as a residence beyond 24 months be renewed by written request and renewal fee submitted to the Planning Director prior to the second anniversary of the issuance date of the building permit for the primary residence.

The proposed development complies with the maximum building height of 28 feet and setback requirements of 30 feet for the RR-5 zoning district. The parcel to the east of the subject site is zoned as "Rangeland", which is afforded protection as an agricultural resource in the County Zoning Code. Section 20.508.015 (A) (1) states:

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

According to the site plan, all proposed development is located more than 200 feet from the Rangeland zoned parcel to the east.

Public Access

- ☒ The project site is located east of Highway 1 and public access to coastal resources is not an issue.

Hazards

- ☒ The site is located in a State Responsibility Area and potential hazards associated with fire protection on the subject property are addressed by CDF. A preliminary fire clearance form has been submitted by the applicant (512-01).
- ☒ The proposed development would be located on slopes which are less than 20% and the development does not present any issues relative to erosion and/or slope failure.

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- ☒ There are no known faults, landslides or other geologic hazards in close proximity to the proposed development.

Visual Resources

The project is located within a designated conditional highly scenic area, which is to say that the project is in the highly scenic area only if it is visible from Highway One. Based on the site analysis conducted by staff the proposed development will be visible from Highway One for several hundred feet from a location north of the northern intersection of Gordon Lane and Highway One. It appears that the upper two thirds of the development would be visible.

Policy 3.5-1 of the Mendocino County Coastal Element states:

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

Policy 3.5-3 states:

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

The above policies are codified in Section 20.504.015 et. al. of the Coastal Zoning Code. Therefore consistency with these policies results in consistency with the corresponding sections of the Zoning Code. Policy 3.5-5 states:

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

The application states that the walls are to be vertical redwood boards with blue to grey stain. The roof is proposed to be grey composition shingles. After discussing the visibility of the project with the applicant's agent, the color for the structure was revised to be a dark slate grey stain with a black composition shingle roof. The dark colors will greatly help the structure blend into the background as compared with the light siding and light roof of the existing residence. Special Condition #3 is recommended to ensure that the colors and materials are not changed without Coastal Permit Administrator approval.

In addition, the application has been revised to include screen trees to screen the proposed residence from the highway. Plantings are proposed in two areas. One area is on a high point on the ridge so that screening occurs quickly. The other area is located near the proposed structure to the southwest to visually break up the architecture. Special Condition #4 is recommended to ensure that the screen trees are installed and maintained in perpetuity.

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Section 20.504.035 of the Zoning Code requires that exterior lights be downcast and shielded and glare is not permitted to go beyond the boundaries of the project site. The applicant has submitted lighting details indicating that all exterior lights would be downcast and shielded. Therefore, the project complies with the exterior lighting regulations of Section 20.504.035 of the Zoning Code.

Natural Resources

- ☒ There are no known rare or endangered plant or animal species located on or in close proximity to the project site.

A small watercourse flowing from north to south is located west of the existing barn. The small watercourse joins with a larger watercourse east and south of the residence. Both watercourses flow to the south into a manmade pond south of the proposed development. A Botanical Survey was prepared by Dr. Gordon McBride on December 17, 2000, to determine the presence or absence of riparian habitat along the two watercourses. The results of Dr. McBride's survey are:

The watercourse to the west and south of the residence and barn does not support a riparian plant community. It is, however, a seasonal watercourse that has the potential for erosion and degradation of downstream watercourses should its vegetated banks be disturbed. Proposed demolition and reconstruction of the barn on the existing footprint does not appear to pose a threat to the watercourse. However, in order to prevent construction debris from accumulating in the vicinity of the watercourse I recommend that a barrier be constructed by either a plastic fence material supported by metal fence posts or a series of straw bales, [should be] placed end to end between the area of construction and the watercourse. All construction debris should be removed from the area before the barrier is removed.

The larger watercourse to the east and south of the single family dwelling and barn does support a well developed riparian plant community. The plant community should be protected by a 50 foot buffer, measured from the edge of the riparian community as delineated on December 15, 2000. The single family dwelling, presently situated within the proposed buffer area is proposed for removal and replacement. Inasmuch as the existing single family dwelling has historically existed with the buffer area I do not believe that removal and replacement will compromise the riparian plant community as long as measures are taken to prevent demolition or construction disturbance to the riparian community. As with the proposed barn replacement a barrier consisting of a plastic fence material supported by metal fence posts or a series of straw bales, placed end to end between the area of construction and the riparian plan community. Extreme care should be taken to prevent demolition or construction debris should be removed from the area before the barrier is removed.

Dr. McBride submitted a follow up letter on July 25, 2001 to address the fact that a portion of the proposed structure is within the recommended 50-foot buffer:

Provided that a reasonable effort is made to prevent construction debris from being deposited in, or construction generated erosion flowing to the riparian plant community described on the Brorsen parcel, I see no threat to that plant community by demolition and rebuilding of the existing structures. It appears to me from the plans that Rosenthal Construction has provided, the proposed structure would be further away from the riparian community than the existing structure.

A portion of the existing residence is closer than 50 feet from the watercourse. This application proposes to relocate the new structure further from the riparian area than the existing structure. However, the new structure is not completely outside of the 50-foot buffer area. Dr. McBride states that as long as erosion

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control is provided, there will not be a threat to the riparian plant community. As of the writing of this report no erosion control plan has been submitted. However, a plan has been requested of the applicant that will hopefully be available prior to the hearing. Special Condition #5 requires that the applicant adhere to the erosion control plan during demolition and construction.

Per section 20.420.020 of the Coastal Zoning Code, development within ESHA buffer areas is permitted only in accordance with the following standards:

- a) *Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*
- b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*
- c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*
- d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*
- e) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*
- f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural land forms.*

The proposed structure is located more or less in the same location as the existing structure. By locating the new residence in the same place, disturbance to the land and potential disturbance to the resource are minimized. According to Dr. McBride, the setbacks along with erosion control measures will adequately protect the riparian area. The erosion control plan in Exhibit J requires anchored straw bales to intercept any debris from the demolition or construction of the project. As such, staff believes that the criteria have been met and the project is consistent with 20.420.020 of the Coastal Zoning Code.

Development is not permitted in an ESHA unless the following findings per Section 20.532.100 (A) of the Coastal Zoning Code can be made:

1. *The resource as identified will not be significantly degraded by the proposed development.*
2. *There is no feasible less environmentally damaging alternative.*

7 of 21

3. *All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.*

Archaeological/Cultural Resources

This project was referred to the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University (SSU) for an archaeological records search. SSU responded that the site has a possibility of containing archaeological resources and further investigation was recommended. The application was referred to the County Archaeological Commission on January 9, 2002. The Commission did not require that a survey be performed. However, the Commission did require that the applicant prepare a photo record of the existing development to be given to the appropriate curator (i.e. the Kelley House or the County Museum.) Special Condition #6 has been added to ensure compliance with this requirement. The applicant is advised by Standard Condition #8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

Groundwater Resources

- ☒ The proposed development would be served by an existing on-site water source and would not adversely affect groundwater resources.
- ☒ The proposed development would be served by an existing septic system and would not adversely affect groundwater resources. The septic system force line and lateral would be relocated to accommodate the new residence. The Division of Environmental Health has stated that it can clear this permit.

Transportation/Circulation

- ☒ The project site is presently developed and the proposed project would not increase the intensity of use at the site. No impacts to Highway 1, local roads and circulation systems would occur.

Zoning Requirements

- ☒ The project, as conditioned, complies with all of the zoning requirements of Division II of Title 20 of the Mendocino County Code.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code. 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

8 of 21

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
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.
8. The riparian area as identified will not be significantly degraded by the proposed development.
9. There is no feasible less environmentally damaging alternative.
10. All feasible mitigation measures capable of reducing or eliminating project related impacts to the riparian area have been adopted.

STANDARD CONDITIONS:

1. This action shall become final on the 11th 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.

9921

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.
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. Except for use as a temporary residence the guest cottage shall not have cooking facilities and shall be clearly subordinate and incidental to the primary dwelling. The guest cottage shall be used, without compensation, by guests of the occupants of the primary dwelling.
2. An administrative permit is hereby granted for temporary occupancy of the guest cottage portion of the residence while constructing the main portion of the single family residence, subject to the following conditions of approval:
 - (a) The term of this administrative permit is valid for the period required to complete construction of the primary dwelling, but shall not exceed two years unless renewed.
 - (b) The administrative permit shall be effective on the effective date of CDP #85-01 and shall expire two years henceforth.
 - (c) A valid building permit for a permanent dwelling on the premises must be in effect.
 - (d) Building and Health permits must be obtained prior to the occupancy of the guest cottage as a temporary residence.

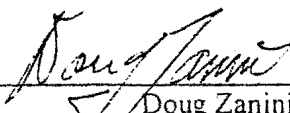
The temporary residence shall be converted to a guest cottage prior to the final building inspection or occupancy of the permanent dwelling, whichever comes first.

10421

3. 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.
4. Prior to issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Coastal Permit Administrator, a final landscape plan based on the preliminary landscape plan in Exhibit I of this report. Specifications shall be included to indicate species, size, and establishment techniques, (e.g. irrigation, fertilization, etc.). All required landscaping shall be established prior to the final inspection of the dwelling, or occupancy, whichever occurs first and shall be maintained in perpetuity.
5. The watercourse to the east of the proposed demolition/construction, as indicated on the site plan annotated by Dr. Gordon McBride, shall be protected with a 50-foot buffer measured from the centerline of the watercourse as identified on said plan. No development, disturbance, or tree removal shall occur within the 50-foot buffer with the exception of the southeast corner of the structure as shown on Exhibit C. Prior to start of construction, the applicant shall install temporary protective fencing located along the edge of the 50-foot watercourse buffer. No construction or equipment shall encroach into the 50-foot buffer area. The fence shall extend a minimum of 50 feet beyond all construction areas and shall remain in place until the final building inspection. Erosion control per Exhibit J and Dr. McBride shall be in place prior to the demolition of the existing structures and shall remain in-place for the duration of the construction of the residence.
6. Prior to demolition the applicant shall prepare a photo record of the existing development to be given to the appropriate curator (i.e. the Kelley House or the County Museum.) A letter of receipt shall be submitted to the Planning Department prior to demolition.

Staff Report Prepared By:

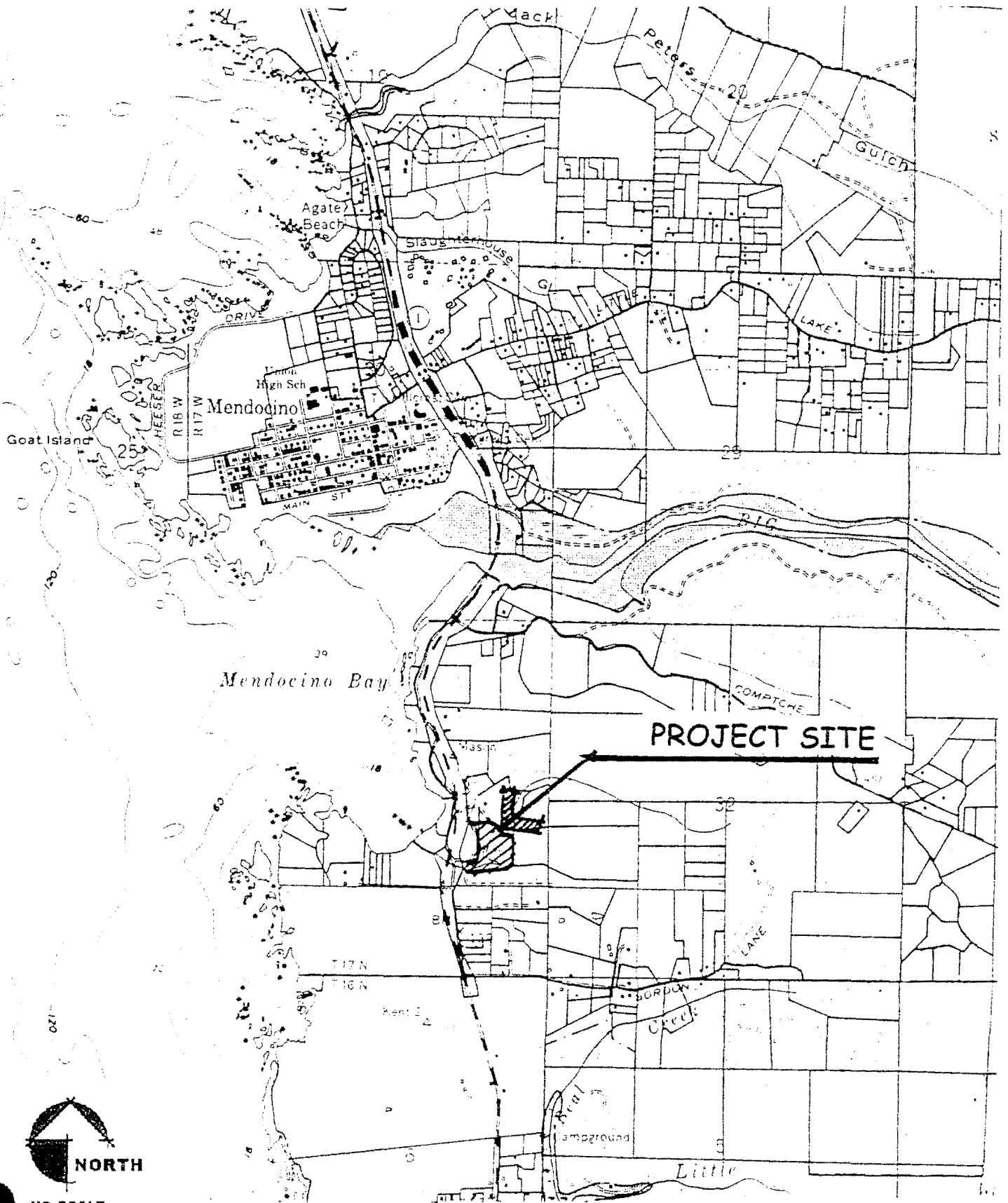
1/16/02
Date


Doug Zanini
Supervising Planner

Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit C: Site Plan Detail
Exhibit D: Floor Plans – Main House
Exhibit E: Elevations – Main House
Exhibit F: Floor Plans – Garage/Guest Cottage
Exhibit G: Elevations – Garage/Guest Cottage
Exhibit H: Drainage Plan

Appeal Period: 10 days
Appeal Fee: \$555

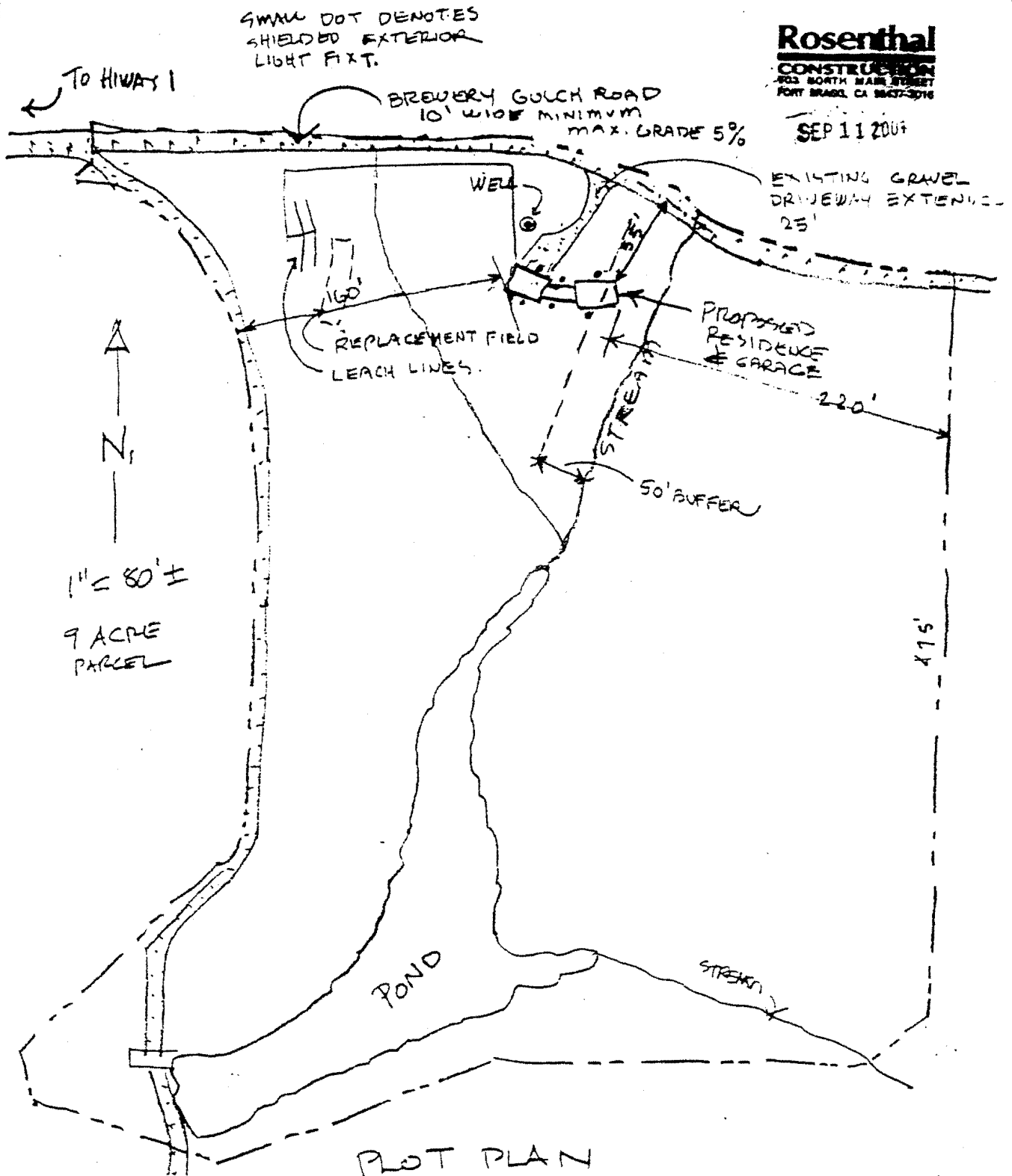
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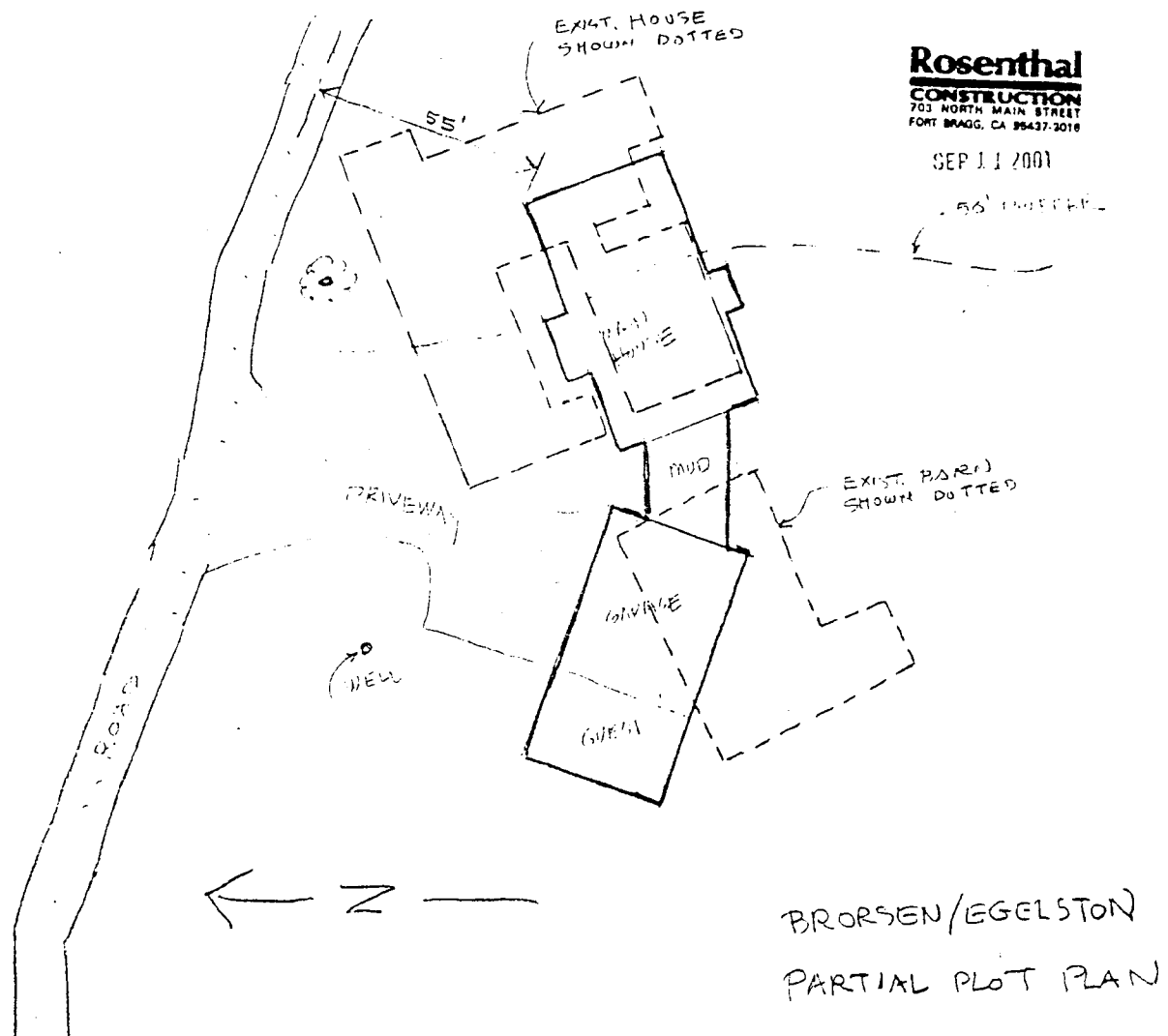


12 of 21

Rosenthal
CONSTRUCTION
203 NORTH MAIN STREET
FORT BRAGG, CA 94502-3916

SEP 11 2004



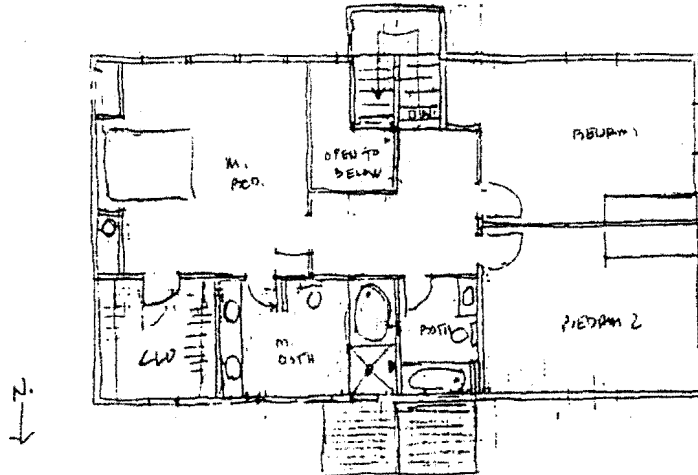


Rosenthal
CONSTRUCTION
703 NORTH MAIN STREET
FORT BRAGG, CA 95427-3018

SEP 11 2001

Kosentna
CONSTRUCTION
701 NORTH MAIN STREET
FORT BRAGG, CA 94537-3014

SEP 11 2001



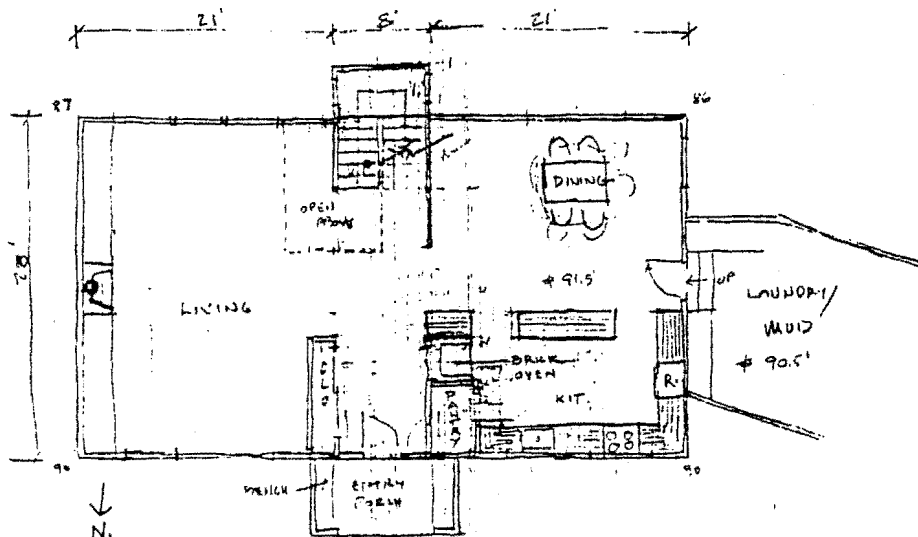
MAIN HOUSE - UPPER FLOOR

1/8" = 1'

Prior & Egelston

Kosentna
CONSTRUCTION
701 NORTH MAIN STREET
FORT BRAGG, CA 94537-3014

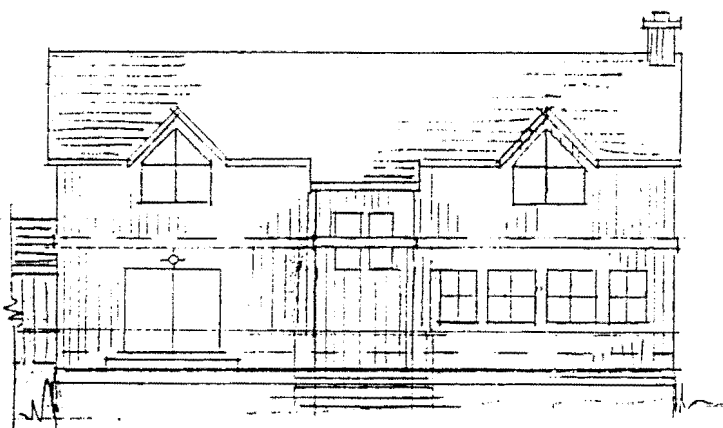
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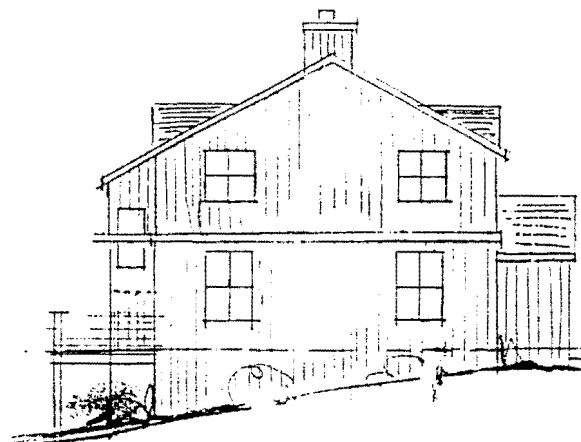
MAIN HOUSE - LOWER FLOOR

1/8" = 1'

Prior & Egelston



SOUTH ELEVATION
MAIN HOUSE



EAST ELEVATION
MAIN HOUSE $\frac{1}{8}"=1'$

AVERAGE HEIGHT = 23' SFF 1.0001

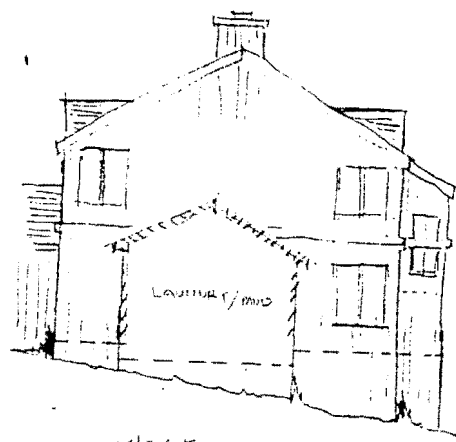


NORTH ELEVATION

LAUNDRY/
MUD

SHEDDED LITE FIXT

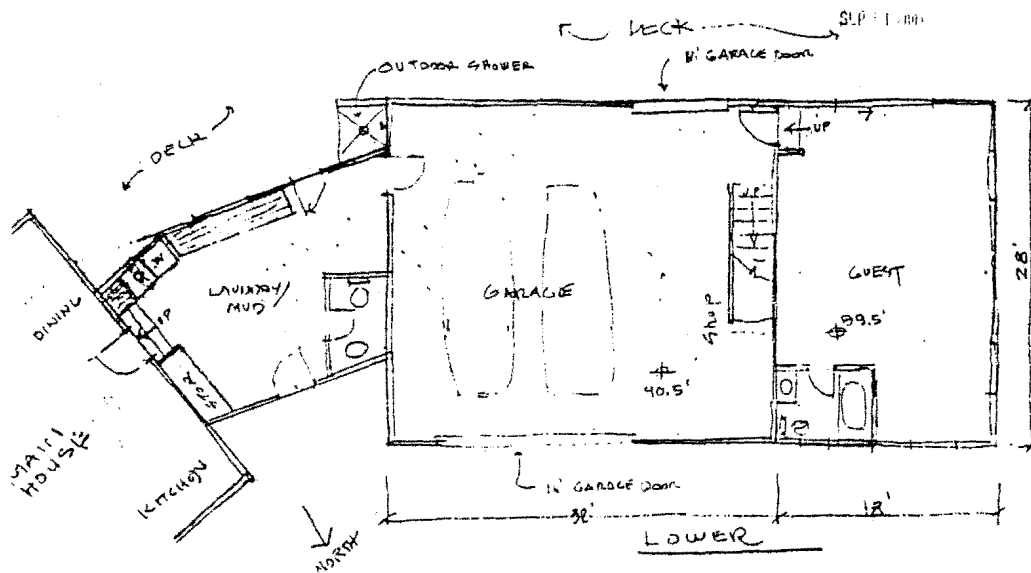
DISCREET
EDELSTEIN



WEST ELEVATION

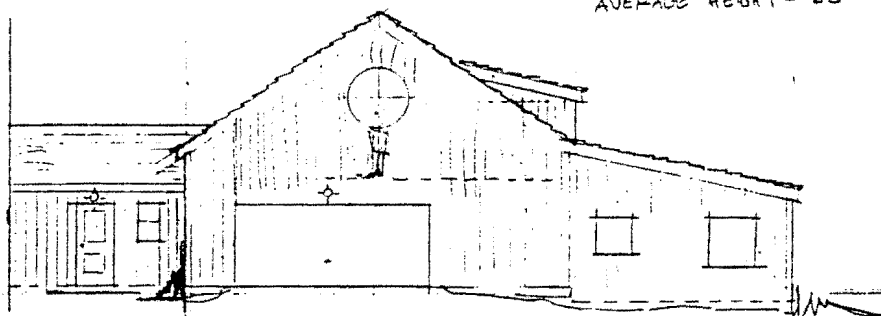


CONSTRUCTION
703 NORTH MAIN STREET
PORT BRADY, CA 95427 2014

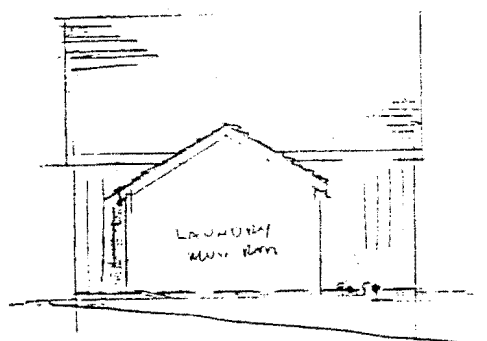


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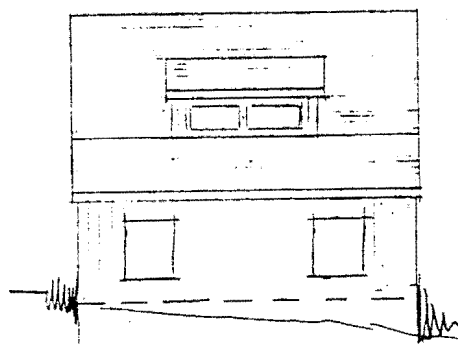
AVERAGE HEIGHT = 28'



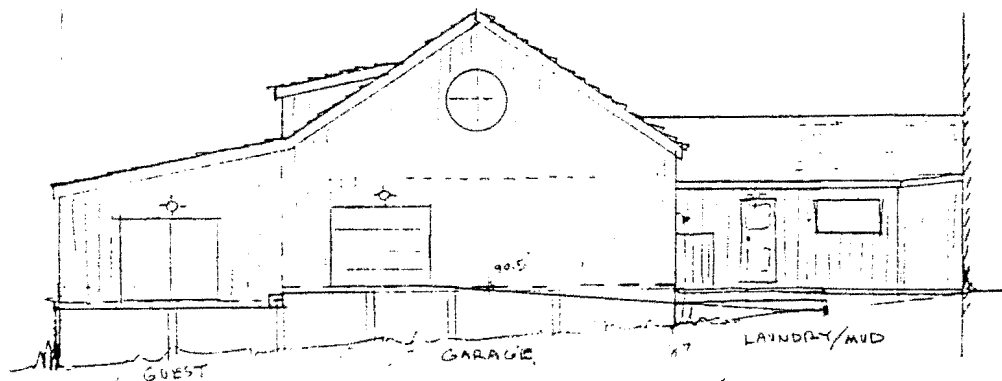
NORTH ELEVATION



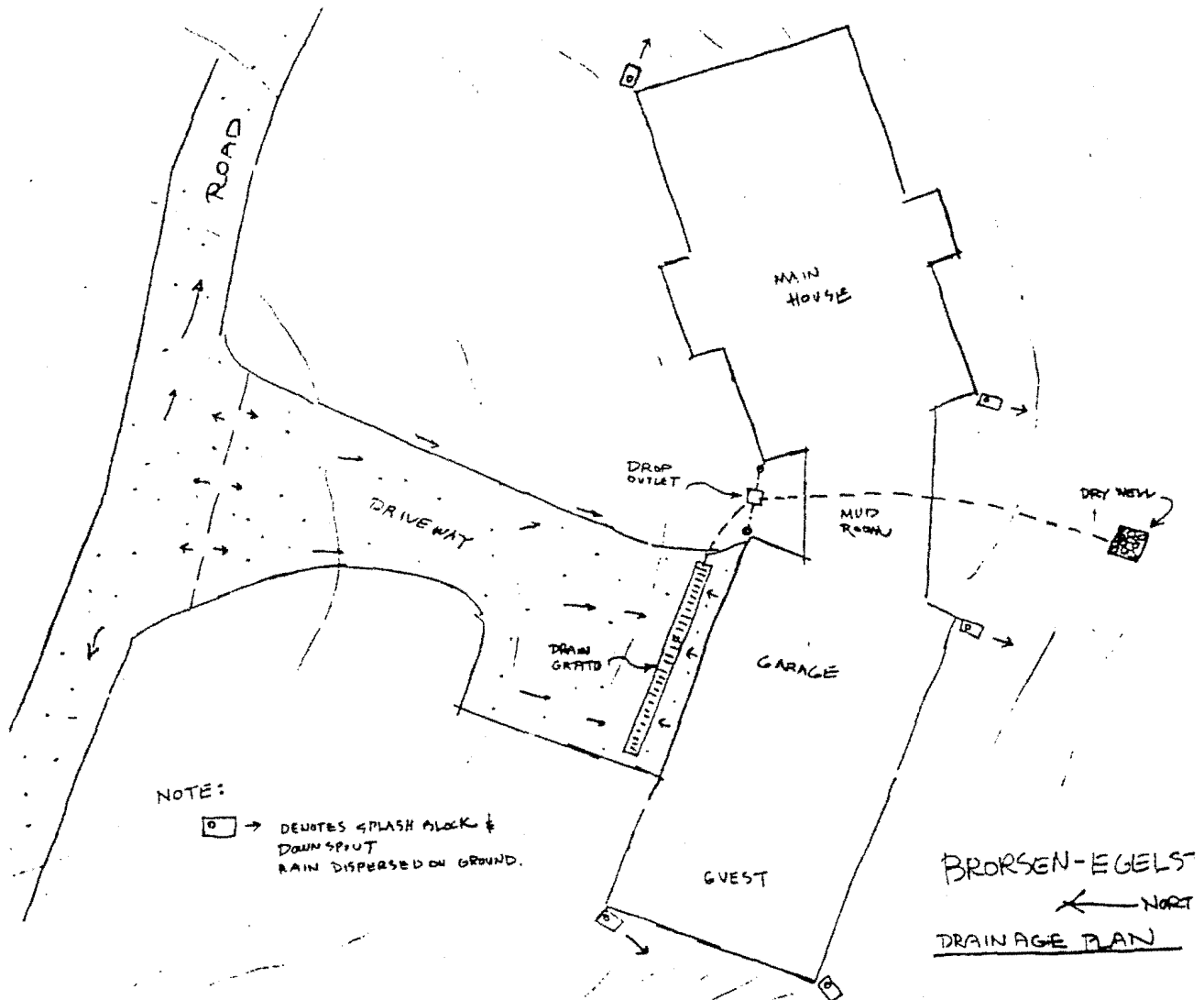
EAST ELEVATION



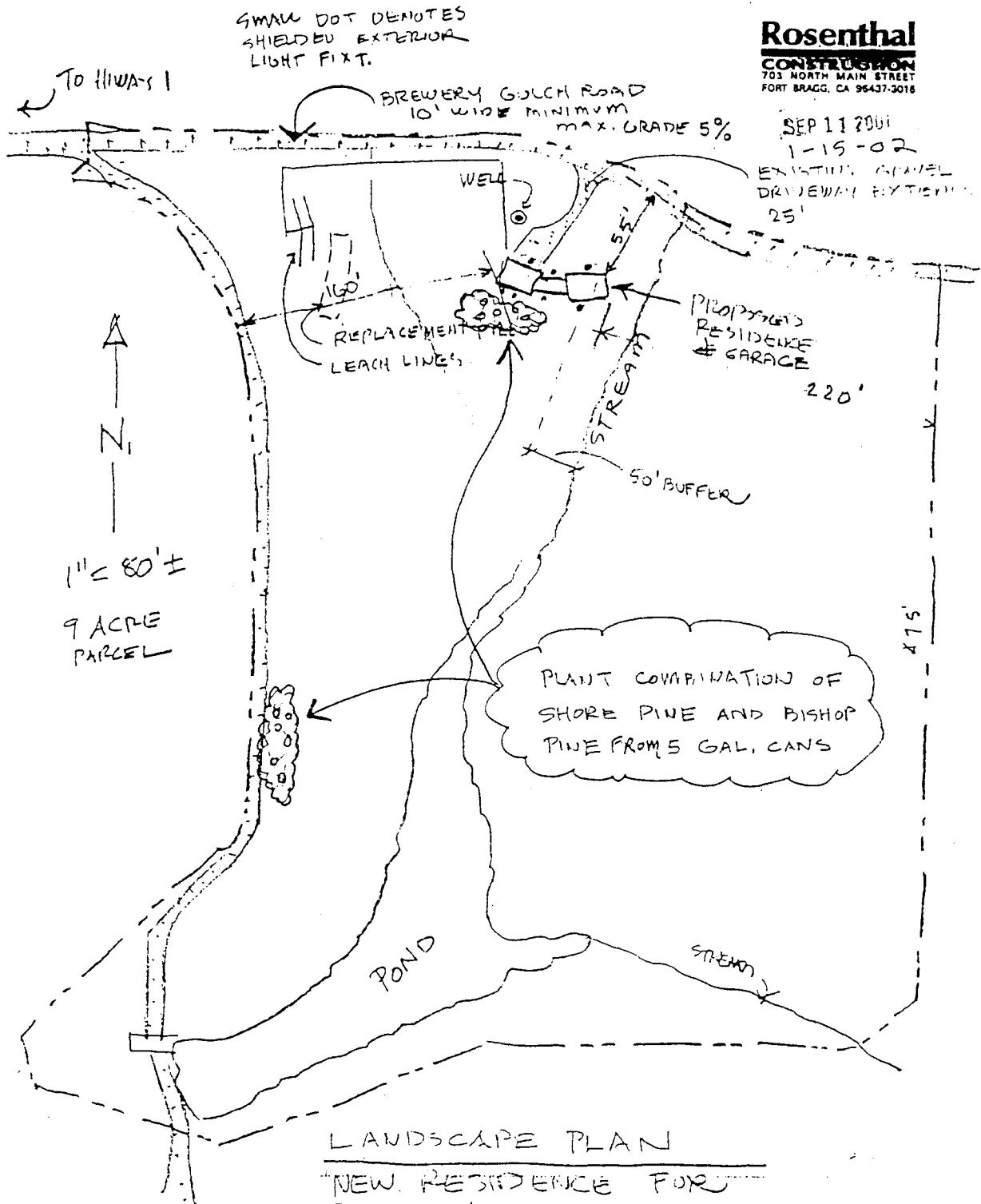
WEST ELEVATION
1/8" = 1'



SOUTH ELEVATION



Rosenthal
CONSTRUCTION
703 NORTH MAIN STREET
FORT BRAGG, CA 95437-3018

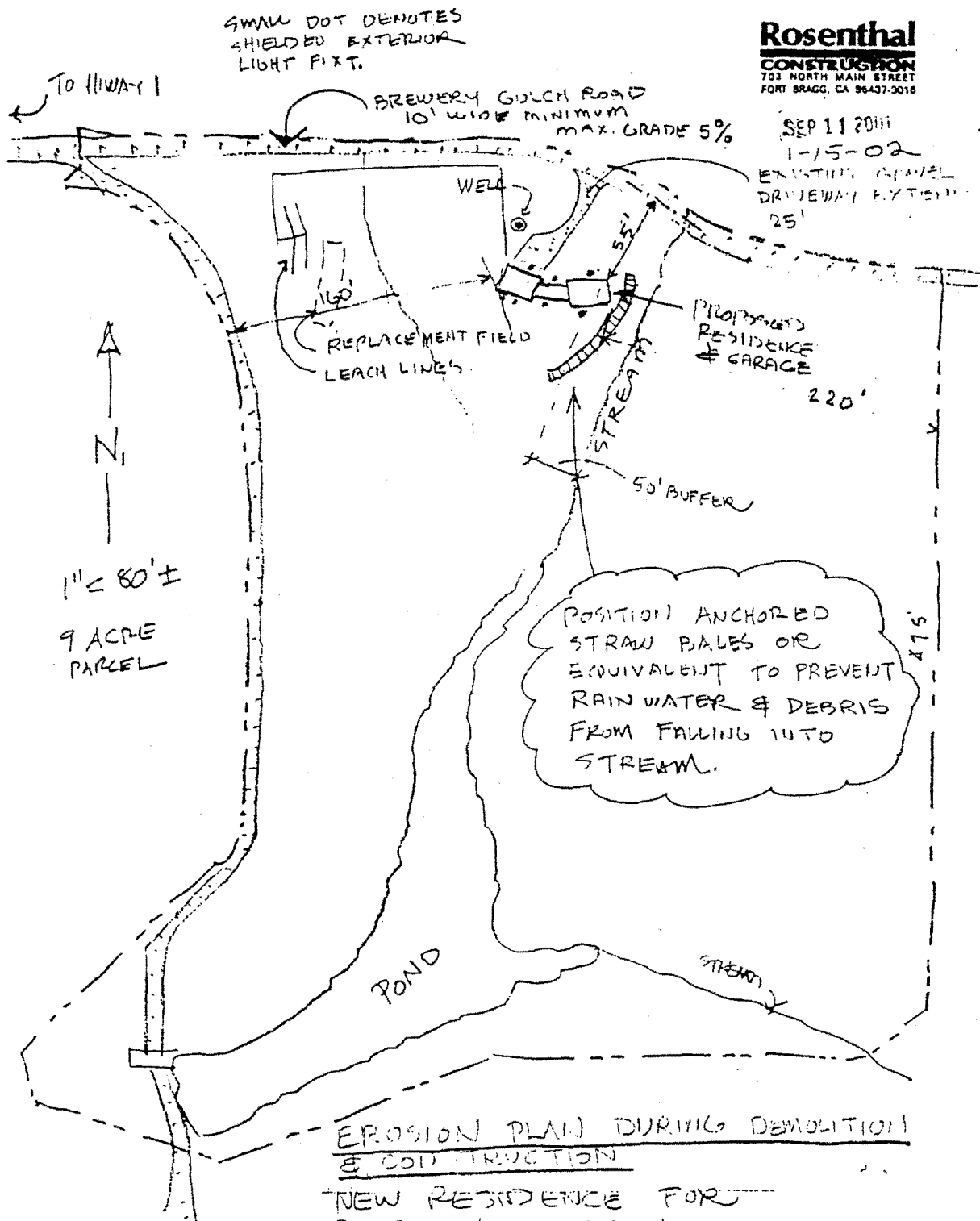


LANDSCAPE PLAN

NEW RESIDENCE FOR
PRORSEN/EGELSTON

9300 N. HWY 1, MENDOCINO A/R# 1191-740-15

Rosenthal
CONSTRUCTION
733 NORTH MAIN STREET
FORT BRAGG, CA 95437-3018



NEW RESIDENCE FOR
PROSENY/EGELSTON

9300 N. HIGHWAY 1, MENDOCINO AP# 119-240-15

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

RECEIVED

FEB 22 2002

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

Dr. Hillary Adams

P.O. Box 1936

Mendocino, CA 95460

(707) 877-3527

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Mendocino County, Dept. of Planning and Building

2. Brief description of development being appealed: Demolish 1,585 sq ft barn + 1,865 sq ft residence, 756 sq ft ramp and 816 sq ft utility Bldg. Construct a 5,124 sq ft. structure including attached garage and guest cottage

3. Development's location (street address, assessor's parcel no., cross street, etc.): 3900 North Highway One, on Brewery Gulch Drive (APN 119-340-15)

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: X

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: A-1-MEN-02-012

DATE FILED: 2/22/02

DISTRICT: North Coast

HS: 4/88

EXHIBIT NO. 5

APPLICATION NO.
A-1-MEN-02-012

BRORSEN/EGELSTON

APPEAL (1 of 3)

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

6. Date of local government's decision: _____

7. Local government's file number (if any): _____

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 Brorsen, Diane Egalston
247 Trinity Ave.
Kensington, CA. 94708

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) Mr. Rosenthal, Rosenthal Construction
703 Main Street
Fort Bragg, CA. 95437

(2) Siera club
Redwood Chapter Attn. M. Pennington
P.O. Box 466
Santa Rosa, CA. 95402

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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.

2 of 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.)

Coastal Act: 30231 (wetlands & streams); 30240 (ESHA)

Local Coastal Program: 3.1 et seq. LUP 3.1-2 + 7 especially

Coastal Zoning Code: Sec 20.496.020 et seq. (ESHA) +

20.496.025 (wetlands). ^{in my opinion,} There is both a class 2 (year round)
and a class 3 (annual) stream on this property. They meet to form a
natural pond which then passes down hill and through a culvert under
Highway 1 to the Ocean. 100' minimum buffer was reduced to 50' without
consultation with Fish & Game, and no scientific reasons given. The
house is allowed to project 20' within a 50' buffer.

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.

Further information including photographs to follow.

SECTION V. Certification

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

Hillary de M. Adams

(Signature of Appellant(s) or
Authorized Agent)

Date February 18, 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 _____

3 of 3

APPENDIX D. TECHNICAL CRITERIA FOR IDENTIFYING AND MAPPING WETLANDS AND OTHER WET ENVIRONMENTALLY SENSITIVE HABITAT AREAS

The purpose of this discussion is to provide guidance in the practical application of the definition of "wetland" contained in the Coastal Act. The Coastal Act definition of "wetland" is set forth in Section 30121 of the Act which states:

SEC. 30121

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

EXHIBIT NO. 6
APPLICATION NO. A-1-MEN-02-012
APPENDIX 8 - CALIFORNIA COASTAL COMMISSION
STATEWIDE INTERPRETIVE GUIDELINES (1 of 8)

This is the definition upon which the Commission relies to identify "wetlands." The definition refers to lands "... which may be periodically or permanently covered with shallow water" However, due to highly variable environmental conditions along the length of the California coast, wetlands may include a variety of different types of habitat areas. For this reason, some wetlands may not be readily identifiable by simple means. In such cases, the Commission will also rely on the presence of hydrophytes and/or the presence of hydric soils. The rationale for this in general is that wetlands are lands where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface. For this reason, the single feature that most wetlands share is soil or substrate that is at least periodically saturated with or covered by water, and this is the feature used to describe wetlands in the Coastal Act. The water creates severe physiological problems for all plants and animals except those that are adapted for life in water or in saturated soil, and therefore only plants adapted to these wet conditions (hydrophytes) could thrive in these wet (hydric) soils. Thus, the presence or absence of hydrophytes and hydric soils make excellent physical parameters upon which to judge the existence of wetland habitat areas for the purposes of the Coastal Act, but they are not the sole criteria. In some cases, proper identification of wetlands will require the skills of a qualified professional.

The United States Fish and Wildlife Service has officially adopted a wetland classification system* which defines and classifies wetland habitats in these terms. Contained in the classification system are specific biological criteria for identifying wetlands and establishing their upland limits. Since the wetland definition used in the classification system is based upon a feature identical to that contained in the Coastal Act definitions, i.e., soil or substrate that is at least periodically saturated or covered by water, the Commission will use the

* "Classification of Wetlands and Deep-Water Habitats of the United States." By Lewis M. Cowardin, et al, United States Department of the Interior, Fish and Wildlife Service, December 1979.

classification system as a guide in wetland identification. Applying the same set of biological criteria consistently should help avoid confusion and assure certainty in the regulatory process. This appendix discusses the adaptation of this classification system to the Coastal Act definition of "wetland" and other terms used in the Act, and will form the basis of the Commission's review of proposals to dike, fill or dredge wetlands, estuaries or other wet habitat areas.

I. U.S. Fish and Wildlife Classification System: Upland/Wetland/Deep-water Habitat Distinction

The United States Fish and Wildlife Service classification is hierarchical, progressing from systems and subsystems, at the most general levels, to classes, subclasses, and dominance types. The term "system" refers here to a complex of wetland and deep-water habitats that share the influence of one or more dominant hydrologic, geomorphologic, chemical, or biological factors.

The Service provides general definitions of wetland and deep-water habitat and designates the boundary between wetland and deep-water habitat and the upland limit of a wetland. The following are the Services' definitions of wetland and deep-water habitats:

A. Wetlands

"Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

Wetlands as defined here include lands that are identified under other categories in some land-use classifications. For example, wetlands and farmlands are not necessarily exclusive. Many areas that we define as wetlands are farmed during dry periods, but if they are not tilled or planted to crops, a practice that destroys the natural vegetation, they will support hydrophytes.*

* For the purposes of identifying wetlands using the technical criteria contained in this guideline, one limited exception will be made. That is, drainage ditches as defined herein will not be considered wetlands under the Coastal Act. A drainage ditch shall be defined as a narrow (usually less than 5-feet wide), manmade nontidal ditch excavated from dry land.

Drained hydric soils that are now incapable of supporting hydrophytes because of a change in water regime are not considered wetlands by our definition. These drained hydric soils furnish a valuable record of historic wetlands, as well as an indication of areas that may be suitable for restoration.

The upland limit of wetland is designated as (1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; (2) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or (3) in the case of wetlands without vegetation or soil, the boundary between land that is flooded or saturated at some time each year and land that is not."

Wetlands should be identified and mapped only after a site survey by a qualified botanist, ecologist, or a soil scientist (See section III. B. of the guideline for a list of required information)*.

B. Deepwater Habitats

"Deepwater habitats are permanently flooded lands lying below the deepwater boundary of wetlands. Deepwater habitats include environments where surface water is permanent and often deep, so that water, rather than air, is the principal medium within which the dominant organisms live, whether or not they are attached to the substrate. As in wetlands, the dominant plants are hydrophytes; however, the substrates are considered nonsoil because the water is too deep to support emergent vegetation (U. S. Soil Conservation Service, Soil Survey Staff 1975)."

* Further details regarding the standards and criteria for mapping wetlands using the Service's classification system may be found in the following, "Mapping Conventions of the National Wetland Inventory," (undated), published by the U.S.F.W.S. The document may be obtained from the U.S.F.W.S., Regional Wetland Coordinator, Region 1, Portland, Oregon.

"The boundary between wetland and deep-water habitat in the Marine and Estuarine Systems (i.e., areas subject to tidal influence) coincides with the elevation of the extreme low-water of spring tide (ELWS); permanently flooded areas are considered deep-water habitats in these systems. The boundary between wetland and deep-water habitat in the Riverine, Lacustrine and Palustrine Systems lies at a depth of 2m (6.6 ft.) below low-water; however, if emergents, shrubs or trees grow beyond this depth at any time, their deep-water edge is the boundary."

II. Wetland/Estuary/Open Coastal Water Distinction

For the purposes of mapping "wetlands" under the Coastal Act's definition of wetlands, and of mapping the other wet environmentally sensitive habitat areas referred to in the Act, including "estuaries," "streams," "riparian habitats," "lakes" and "open coastal water," certain adaptations of this classification system will be made. The following is a discussion of these adaptations.

"Wetland," as defined in Section 30121 of the Coastal Act, refers to land covered by "shallow water," and the examples given in this section include fresh, salt and brackish water marshes, mudflats and fans. A distinction between "wetland" and the other habitat areas in the Act, for example, "estuary," must be made because the Act's policies apply differently to these areas, and because the Act does not define some of these terms (such as "estuary"). A reasonable distinction can be made between "wetland" and "estuary" on the basis of an interpretation of the phrase "shallow water." Using the service's classification system, "shallow water" would be water that is above the boundary of deep-water habitat, which would be the line of extreme low-water of spring tide* for areas subject to tidal influence and 2 meters for non-tidal areas. Therefore, wetland begins at extreme low-water of spring tide and "estuary" or "open coastal water" is anything deeper. The Coastal Act definition of "wetlands" would include the wetland areas of Estuarine, Palustrine, and Lacustrine ecological systems defined by the Fish and Wildlife classification system.

* While the Service's classification system uses "extreme low-water of spring tide" as the datum to distinguish between "shallow-water" and "deep-water habitat," such datum is not readily available for the California coast. Therefore, the lowest historic tide recorded on the nearest available tidal bench mark established by the U. S. National Ocean Survey should be used as the datum.

Data for such bench marks are published separately for each station in loose-leaf form by the National Ocean Survey, Tideland Water Levels, Datum and Information Branch, (C23), Riverdale, MD 20840. These compilations include the description of all bench marks at each tide station (for ready identification on the ground), and their elevations above the basic hydrographic or chart datum for the area, which is mean lower low-water on the Pacific coast. The date and length of the tidal series on which the bench-mark elevations are based are also given.

For the purposes of the Coastal Act, an "estuary" is a coastal water body usually semi-enclosed by land, but which has open, partially obstructed, or intermittent exchange with the open ocean and in which ocean water is at least occasionally diluted by fresh water runoff from the land. The salinity may be periodically increased above that of the open ocean by evaporation.

"Open coastal water" or "coastal water" as used in the Act refers to the open ocean overlying the continental shelf and its associated coastline with extensive wave action. Salinities exceed 30 parts per thousand with little or no dilution except opposite mouths of estuaries.

III. Wetland/Riparian Area Distinction

For the purpose of interpreting Coastal Act policies, another important distinction is between "wetland" and "riparian habitat." While the Service's classification system includes riparian areas as a kind of wetland, the intent of the Coastal Act was to distinguish these two areas. "Riparian habitat" in the Coastal Act refers to riparian vegetation and the animal species that require or utilize these plants. The geographic extent of a riparian habitat would be the extent of the riparian vegetation. As used in the Coastal Act, "riparian habitat" would include the "wetland" areas associated with Palustrine ecological systems as defined by the Fish and Wildlife Service classification system.

Unfortunately, a complete and universally acceptable definition of riparian vegetation has not yet been developed, so determining the geographic extent of such vegetation is rather difficult. The special case of determining consistent boundaries of riparian vegetation along watercourses throughout California is particularly difficult. In Southern California these boundaries are usually obvious; the riparian vegetation grows immediately adjacent to watercourses and only extends a short distance away from the watercourse. In Northern California, however, the boundaries are much less distinct; vegetation that occurs alongside a stream may also be found on hillsides and far away from a watercourse.

For the purposes of this guideline, riparian vegetation is defined as that association of plant species which grows adjacent to freshwater watercourses, including perennial and intermittent streams, lakes, and other freshwater bodies. Riparian plant species and wetland plant species either require or tolerate a higher level of soil moisture than dryer upland vegetation, and are therefore generally considered hydrophytic. However, riparian vegetation may be distinguished from wetland vegetation by the different kinds of plant species. At the end of this appendix, lists are provided of some wetland hydrophytes and riparian hydrophytes. These lists are partial, but give a general indication of the representative plant species in these habitat areas and should be sufficient to generally distinguish between the two types of plant communities.

The upland limit of a riparian habitat, as with the upland limit of vegetated wetlands, is determined by the extent of vegetative cover. The upland limit of riparian habitat is where riparian hydrophytes are no longer predominant.

As with wetlands, riparian habitats should be identified and mapped only after a site survey by a qualified botanist, freshwater ecologist, or soil scientist.* (See pp. 6-9 of the guideline for a list of information which may be required of the applicant).

IV. Vernal Pools

Senate Bill No. 1699 (Wilson) was approved by the Governor on September 13, 1980 and the Bill added Section 30607.5 to the Public Resources Code to read:

30607.5. Within the City of San Diego, the commission shall not impose or adopt any requirements in conflict with the provisions of the plan for the protection of vernal pools approved and adopted by the City of San Diego on June 17, 1980, following consultation with state and federal agencies, and approved and adopted by the United States Army Corps of Engineers in coordination with the United States Fish and Wildlife Service.

The Commission shall adhere to Section 30607.5 of the Public Resources Code in all permit and planning matters involving vernal pools within the City of San Diego.

All vernal pools located within the city of San Diego in the coastal zone are depicted on a map attached as Exhibit 1 to a letter from Commission staff to Mr. James Gleason, City of San Diego (4/29/80). While "vernal pool" is a poorly defined regional term, all information available to the Commission suggests that all vernal pools in the coastal zone are located in the City of San Diego. It is important to point out, however, that vernal pools are distinct from vernal ponds and vernal lakes, which exist in other parts of the coastal zone (e.g. Oso Flaco Lakes in San Luis Obispo County). The Commission generally considers these habitat areas to be wetlands for the purposes of the Coastal Act, and therefore all applicable sections of the Coastal Act will be applied to these areas.

* Identification of riparian habitat areas in Northern California presents peculiar difficulties. While in Southern California riparian vegetation generally occurs in a narrow band along streams and rivers, along the major rivers in Northern California it may be found in broad floodplains, abandoned river channels and the bottoms adjacent to the channels. In forested areas, the overstory of riparian vegetation may remain similar to the adjacent forest but the understory may contain a variety of plant species adapted to moist or wet substrates. For example, salmonberry, bayberry, willow, twinberry and lady fern, may all be more common in the understory of riparian habitat areas than in other types of forest habitat areas.

V. Representative Plant Species in Wetlands and Riparian Habitat Areas

This is a list of "representative" species that can be expected to be found in the various habitat areas indicated. Not all of them will be found in all areas of the State, and there are numerous others that could be included. However, this list should suffice to generally distinguish between these types of plant communities.

A. Salt Marsh

Pickleweed (Salicornia virginica)
Glasswort (S. subterminalis)
Saltgrass (Distichlis spicata)
Cordgrass (Spartina foliosa)
Jaumea (Jaumea carnosa)
Saltwort (Batis maritima)
Alkali heath (Frankenia grandifolia)
Salt cedar (Monanthocnloe littoralis)
Arrow grass (Triglochin maritimum)
Sea-blite (Suaeda californica var pubescens)
Marsh rosemary (Limonium californicum var mexicanum)
Gum plant (Grindelia stricta)
Salt Marsh fleabane (Pluchea purpurescens)

B. Freshwater Marsh

Cattails (Typha spp.)
Bulrushes (Scirpus spp.)
Sedges (Carex spp.)
Rushes (Juncus spp.)
Spikerush (Eleocharis palustris)
Pondweeds (Potamogeton spp.)
Smartweeds (Polygonum . .)
Water lilies (Nuphar spp.)
Buttercup (Ranunculus aquatilis)
Water-cress (Nasturtium officinale)
Bur-reed (Sparganium eurycarpum)
Water parsley (Vernanthe sarmentosa)
Naiads (Na .)

C. Brackish Marsh

Alkali bulrush (Scirpus robustus)
Rush (Juncus balticus)
Brass buttons (Cotula coronopifolia)
Fat-hen (Atriplex patula var hastata)
Olney's bulrush (Scirpus olneyi)
Common tule (Scirpus acutus)
Common reed (Phragmites communis)

D. Riparian

Willows (Salix spp.)
Cottonwoods (Populus spp.)
Red alder (Alnus rubra)
Box elder (Acer negundo)
Sycamore (Platanus racemosa)
Blackberry (Rubus vitifolia)
So. Black walnut (Juglans californica) (So. Calif.)
California Bay (Umbellularia californicum) (So. Calif.)
Bracken fern (Pteris aquilinum) (Gen. Calif.)
Current (Ribes spp.)
Twinberry (Lonicera involucrata) (No. Calif.)
Lady fern (Athyrium filix-terre)
Salmonberry (No. Calif.)
Bayberry (No. Calif.)

E. Vernal Pools

Downingia (Downingia sp.)
Meadow-foxtail (Alopecurus howellii)
Hair Grass (Deschampsia danthonioides)
Quillwort (Isoetes sp.)
Meadow-foam (Limnanthus sp.)
Pogogyne (Pogogyne sp.)
Flowering Quillwort (Lilaea scilloides)
Cryptantha (Cryptantha sp.)
Loosestrife (Lythrum hyssopifolium)
Skunkweed (Navarretia sp.)
Button-celery (Eryngium sp.)
Orcutt-grass (Orcuttia sp.)
Water-starwort (Callitriche sp.)
Waterwort (Elatine sp.)
Woolly-heads (Psilocarpus sp.)
Brodiaea (Brodiaea sp.)
Tillaea (Crassula aquatica)

