

CALIFORNIA COASTAL COMMISSION

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Filed: February 22, 2002
Hearing Opened: April 11, 2002
Staff: Randall Stemler
Staff Report: August 29, 2002
Hearing Date: September 11, 2002
Commission Action:

STAFF REPORT: APPEALDE NOVO HEARING

APPEAL NO.: A-1-MEN-02-014

APPLICANT: Robert B. & Ann E. Spies

AGENT: Bud Kamb

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

PROJECT LOCATION: Approximately two miles south of the town of Mendocino, approximately 400 feet west of Highway One and on the north side of Peterson Street, at 45100 Peterson Street (APN 121-260-20).

PROJECT DESCRIPTION: Construct a 1,960-square-foot single-family residence with a maximum height of 28 feet above average natural grade. Construct a 590-square-foot personal workshop attached to a 420-square-foot garage with a maximum height of 18 feet above average natural grade. Use the workshop for temporary occupancy while constructing the single-family residence. Install a new paved driveway, septic system, and temporary power pole. Develop a water supply system from an existing test well. Temporarily locate a 7-foot by 12 ½-foot tool shed adjacent to the driveway in the

southeast corner of the property, later to be relocated next to the water tank near the center of the western portion of the property after the main house is constructed. Remove one pine tree adjacent to the workshop building site, approximately 16 *Eucalyptus* trees adjacent to the residence, and all *Eucalyptus* saplings and pampas grass growing on the property.

APPELLANT:

Dr. Hillary Adams

SUBSTANTIVE FILE:
DOCUMENTS

1) Mendocino County CDP No.80-01, CDP No.85-98; and
2) Mendocino County Local Coastal Program.

STAFF NOTES:

1. Procedure.

On April 11, 2002, the Coastal Commission found that the appeal of the County of Mendocino's approval raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of the Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the County of Mendocino has a certified Local Coastal Program (LCP) and is between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the County's certified LCP and the public access and public recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Submittal of Additional Information by the Applicants.

For purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information including additional wetland analysis and delineation, and revised wetland buffer recommendations. Additionally, the applicant has amended the project description so that among other things, the proposed development would be consistent with the revised wetland buffer. The project description has also been revised to add the installation of a temporary power pole and a tool shed. The supplemental information provides clarification of the proposed project and additional information regarding issues raised by the appeal that was not part of the record when the County originally acted to approve the coastal development permit.

SUMMARY OF STAFF RECOMMENDATION DE NOVO:
APPROVAL WITH CONDITIONS

The staff recommends that the Commission approve with conditions the coastal development permit for the proposed project on the basis that, as conditioned by the Commission, the project is consistent with the County of Mendocino certified LCP and the access policies of Chapter 3 of the Coastal Act.

Since the April 11, 2002 hearing on the Substantial Issue determination, the applicant has provided considerable additional information on the effects of the proposed project on coastal resources. The previous wetland study and delineation has been updated with a new wetland delineation and an analysis and recommendation for establishing a protective buffer. Furthermore, the California Department of Fish and Game has visited the proposed project site, reviewed the revised wetland study and recommended buffer, and has determined that the recommended 50-foot buffer is acceptable to protect the wetland ESHA resources from possible significant disruption caused by the proposed development. With the analysis demonstrating that a buffer width of 50 feet in this case is sufficient to protect the wetlands on the site and the concurrence of the Department of Fish and Game, the proposed buffer is consistent with LCP requirements.

Staff is recommending special conditions to ensure the project's consistency with all applicable policies of the County's certified LCP. A condition is recommended that would place restrictions on the choice of exterior building materials, colors, and lighting elements to ensure that the exterior appearance of the development is subordinate to the character of its setting. A second condition is recommended that would impose a restriction on the garage/workshop to prevent it from serving as a second-unit residence in conformance with LCP policies limiting residential development to one unit per parcel in specified areas of the Mendocino coastal zone. Staff also recommends that the applicant record a deed restriction informing future buyers of the property of these special conditions of the permit. The fifth special condition requires removal of invasive exotic vegetation.

As conditioned, staff believes that the project is consistent with the policies contained in the County's certified LCP and the Coastal Act public access and recreation policies.

I. MOTION, STAFF RECOMMENDATION DE NOVO, AND RESOLUTION:

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-02-014 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned will be in conformity with the certified County of Mendocino LCP, is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. Design Restrictions

- A. All exterior siding of the proposed structures shall be composed of natural or natural appearing materials, and all siding and roofing of the proposed structures shall be composed of materials of dark earthtone colors only. The current owner or any future owner shall not repaint or stain the house with products that will lighten the color the house as approved. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare; and
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

2. Second Structure

- A. The following restrictions shall apply with respect to the garage/workshop.
 - 1. Any rental or lease of the garage/workshop unit separate from rental of the main residential structure is prohibited.
 - 2. Use of the garage/workshop as a residence with cooking or kitchen facilities is temporarily allowed only during construction of the main residence. The

garage/workshop shall not be subsequently converted into a residence or second unit;

3. All cooking and/or kitchen facilities must be removed upon 60 days of completion of the main residence; and

4. The garage/workshop shall be subordinate and incidental to the main building.

3. Conditions Imposed By Local Government.

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

4. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Removal of Invasive Exotic Vegetation.

All *Eucalyptus* spp. saplings with a diameter at chest height of three inches or less, and all pampas grass plants shall be cut and/or dug up and removed from the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated March 21, 2002.

B. Project History / Background.

The applicant proposes to develop a single-family residence on an approximately ¾-acre parcel located on the north side of Peterson Street, about 400 feet west of Highway One, about two miles south of the town of Mendocino and just north of Little River.

On September 18, 2001, Bud Kamb, agent-of-record for Robert B. Spies, submitted Coastal Development Permit Application No. 80-01 (CDP #80-01) to the Mendocino County Planning and Building Services Department for a coastal development permit seeking authorization to construct a single-family residence, detached garage/studio, an onsite sewage disposal system, to extend utilities to the buildings, and to construct a paved driveway on an approximately ¾-acre parcel. The applicant later revised the project description to clarify that the garage structure would only be used as a living space during the construction of the principal residence, and that after completion of the house, the bathing and cooking facility would be completely removed, and only a convenience bathroom would remain in the garage/workshop.

On January 24, 2002, the Coastal Permit Administrator for the County of Mendocino approved Coastal Development Permit No. 80-01 (CDP #80-01) with a number of special conditions including requirements that: (1) the temporary workshop residence be converted from a dwelling unit to a permitted accessory structure prior to the final building inspection or occupancy of the permanent dwelling by completely removing the bathing facilities from the bathroom (the toilet and sink can remain but the shower and/or bathtub be removed) and removing the kitchen and any cooking facilities including the kitchen plumbing, countertop and cabinets; (2) the exterior building materials and finishes for the structures be composed of unstained cedar shingles on the upper portions, with natural stained cedar horizontal clapboards below, door and window trim be painted forest green, windows be made with non-reflective glass, and a roof be composed of dark colored composition shingles; (3) an exterior lighting plan be submitted for review and approval prior to issuance of the building permit; (4) the ESHA wetlands, as delineated, be protected with a 50-foot buffer within which no development, disturbance, or tree removal occur except for placement of the water supply line from the existing well to the garage structure and temporary protective fencing be installed along the entire edge of the 50-foot ESHA buffer to ensure that no construction or equipment disturbance encroaches into the 50-foot buffer area; and (5) the garage/workshop be connected to an approved septic system prior to the temporary occupancy use.

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 on February 4, 2002, which was received by Commission staff on February 7, 2002 (Exhibit No. 5).

On February 22, 2002, the project was appealed to the Commission by Dr. Hilary Adams. The appeal cited inconsistencies between the approved development and the ESHA provisions of the certified LCP (Exhibit No. 7).

On April 11, 2002, the Commission found that a substantial issue had been raised with regard to the consistency of the project as approved by the County 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.

The Commission continued the *de novo* portion of the appeal hearing so that the applicant could provide additional information relating to the substantial issues. Additional wetland analysis and revised buffer recommendations were subsequently provided to the Commission by the applicant.

C. Project and Site Description.

1. Project Setting

The subject property is a $\frac{3}{4}$ -acre parcel located approximately two miles south of the town of Mendocino, north of the beach at Van Damme State Park, about 400 feet west of Highway One, at 45100 Peterson Street, a drive that intersects with Highway One (See Exhibits 1-2). The Assessor's Parcel Number is 121-260-20. The parcel is near the inland end of a headland that extends west from the main coastline. The parcel has views of the ocean to the south but is more than 800 feet away from the ocean, separated by Peterson Street and several intervening parcels (see Exhibit No. 3). The parcel is within a developed rural residential neighborhood. The property currently has no structures on it except for a well and a curtain (French) drain installed pursuant to Coastal Development Permit #85-98 issued by Mendocino County in 1999 (Exhibit No. 6). The seventy-foot-long, four-foot deep curtain drain was installed more than 50 feet from the edge of the delineated wetlands with the intention of intercepting "underground water from the north [upslope portion of the property] to dry out an area for placement of a future septic system."

The subject property is a rectangular "L"-shaped-parcel with the northern boundary as the longest leg of the "L" extending approximately 305 feet in an east-west direction (Exhibit No. 3). The western boundary runs in a continuous line for approximately 160 linear feet. The southern boundary runs along Peterson Street for a distance of 150 feet, before jogging north and east to complete the "L" shape. Brief views of portions of the parcel from Highway One are available across neighboring undeveloped parcels.

The property slopes gently toward Peterson Street, with a drop of a little more than 14 feet from the highest portion at the northeast corner, to the lowest portion at the southwest corner. Mapped wetlands are located generally in the northwest corner of the parcel. The predominant vegetation at the site includes one 3- $\frac{1}{2}$ foot diameter Bishop pine near the center of the parcel, and a grove of *Eucalyptus* trees clustered along the western boundary, and in the southwest corner. Monterey Cypress trees are also present along the western edge. The northwest corner of the parcel is thickly vegetated with sedge and rush. Numerous other plant species occur on the site including several types of grass, brush, and herbs. The vegetation includes pampas grass and other exotic invasive species.

The parcel is zoned Rural Residential. The parcel is subject to County Zoning Ordinance provisions for a 25-foot preservation corridor setback from Peterson Street, and to front, rear,

and side-yard setbacks. The minimum linear setback from the front and rear property lines is twenty feet, and is six feet for side-yards. The front-yard setback includes this twenty-foot distance as well as an additional twenty-five-foot corridor setback from the centerline of Peterson Street, with the result that any buildings on this lot must be set back a total of forty-five feet from the centerline of Peterson Street.

2. Project Description

The development would consist of a 3-story, 1,980-square-foot single-family residence built at a maximum height of 28 feet above the average natural grade, as well as construction of an eighteen-foot-high 1,010-square-foot garage/workshop structure (See Exhibit Nos. 4 and 5). The proposed development would include a new paved driveway, septic system and water supply system furnished from an existing test well. Approximately sixteen *Eucalyptus* trees and one pine tree would be removed. The proposed house would be located in the lower southwest corner of the property, at (or very close to) the required setback limits on the front and side yards. The rear of the house and deck would be located 50 feet from the delineated wetland, and the east side of the house would be constrained by location of the septic leach field. Similarly, the proposed 18-foot-tall single-story garage/workshop structure is constrained by the side yard setback and the previously permitted and installed curtain drain, and would be located 50 feet from the delineated wetland to the north and rear of the structure.

For purposes of *de novo* review by the Commission, the applicant has submitted a revised project description and revised project plans that address the slightly expanded wetland and recommended buffer resulting from the new wetland delineation and buffer evaluation performed by Wetlands Research Associates, Inc. in May 2002. The applicant has proposed an adjustment in the size and location of the house to accommodate the newly delineated wetland and recommended buffer. As depicted in Exhibit No. 4, the northeast, rectangular corner of the house, representing 20-square-feet of floor space, would be removed to allow the entire structural floor plan to be shifted to the northeast as close as possible to the septic leach-field, and away from the recommended 50-foot wetland buffer located at the northwest corner of the proposed residence. By this adjustment, the house footprint would not encroach on the recommended 50-foot wetlands buffer in the rear, and would still honor the required setbacks from the road and leach-field required by the County Department of Environmental Health. The applicant also revised the project description (as depicted in Exhibit No. 4) to move the garage/workshop structure forward on the lot toward the road, and slightly to the west in order to accommodate the slab-on-grade foundation for the water tank and associated equipment, which needed to be moved to accommodate the new 50-foot recommended wetland buffer. Additionally, (as depicted in Exhibit No. 4) the applicant revised the project description to include (1) a 7-foot by 12½-foot tool shed that would be located next to the driveway as a temporary structure, and would be moved after construction of the house is complete to a location next to the water tank; (2) a temporary power pole and permanent power pedestal located next to the driveway; and (3) an adjustment in the location of the paved driveway further to the east. As discussed with the Department of Fish and Game, the applicant also proposes to remove *Eucalyptus* saplings less than 3-inches in diameter at chest height and any pampas grass

on the subject property in order to help reduce the spread of invasive exotic vegetation in the neighborhood.

D. Planning and Locating New Development.

1. LCP Provisions

LUP Policy 3.9-1 of the Mendocino County Land Use Plan states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

LUP Policy 3.8-1 states that Highway 1 capacity, availability of water and sewage disposal system and other know planning factors shall be considered when considering applications for development permits.

The subject property is zoned in the County's LCP as Rural Residential, 5-Acre Minimum Parcel Size [Rural Residential, 1-Acre Minimum Parcel Size, Conditional with Proof of Water] (RR:L-5 [RR-1]), meaning that there may be one parcel for every five acres, or one parcel per acre with proof of water. Coastal Zoning Code (CZC) Chapter 20.376 establishes the prescriptive standards for development within Rural Residential (RR) zoning districts. Single-family residences are a principally permitted use in the RR zoning district. Setbacks for the subject parcel are twenty feet to the front and rear yards, and six feet on the side yards, pursuant to CZC Sections 20.376.030 and 20.376.035, respectively. Also, there is a twenty-five-foot preservation corridor setback from Peterson Street, in addition to the twenty-foot front yard setback. Because the property is within an area designated highly scenic, the maximum building height is limited to 18 feet above average natural grade, unless an increase in height is found to not affect public views or be out of character with surrounding development. CZC Section 20.376.065 sets a maximum of 20% structural coverage on RR lots of less than two acres in size.

2. Discussion

The proposed residence would be constructed within an existing developed neighborhood of similarly sized lots along the northern side of Peterson Street. As discussed above, the applicant proposes to build the garage/workshop structure first, and then to temporarily occupy it as a residence equipped with kitchen and bathing facilities while the primary residence is being constructed. The certified LCP does not allow more than one residential unit on most residential parcels in Mendocino County because of a concern that the increase in density could potentially result in cumulative adverse impacts on highway capacity, groundwater resources, and scenic values, inconsistent with LUP Policies 3.9-1 and 3.8-1. To prevent such significant cumulative adverse impacts, Special Condition No. 2 allows only temporary use of the garage/workshop as a residence with cooking and/or kitchen facilities, but requires that all cooking and/or kitchen facilities be removed upon 60 days of completion of the main residence, and requiring that the

garage/workshop be subordinate and incidental to the main building and not be rented or leased separate from the main residential structure. Special Condition No. 4 requires that a deed restriction be recorded informing future buyers of the property of the special conditions of the permit, including the limitation on use of the garage/workshop. Such notice to future buyers will better ensure that in the future, the development is not used as a second unit inconsistent with the requirements of the certified LCP.

As conditioned, the proposed residential use is consistent with the Rural Residential zoning for the site. The subject parcel is a legal parcel of approximately $\frac{3}{4}$ -acre in size. The applicants propose to construct a total of 2,970 square feet of single-family residential structural improvements, representing approximately 9% lot-coverage. The proposed lot coverage and building setbacks are consistent with the standards for the zoning district. In addition, as discussed in the Visual Resources finding below, the proposed maximum building height of 28 feet for the residence, and 18 feet for the garage/workshop is consistent with the height standards of the Coastal Zoning Code. Therefore, the proposed development would be consistent with the LUP and Zoning designations for the site and would be constructed within an existing developed area consistent with applicable provisions of LUP Policy 3.9-1.

The proposed development would be served by an existing on-site well. Sewage would be treated on-site by a septic system that has been approved by the Mendocino County Department of Public Health's Division of Environmental Health. Use of the site as a single-family residence is envisioned under the certified LCP. The significant cumulative adverse impacts on traffic capacity of development approved pursuant to the certified LCP on lots recognized in the certified LCP were addressed at the time the LCP was certified. Therefore, as conditioned, the proposed development is located in an area able to accommodate the proposed development, consistent with the applicable provisions of LUP Policy 3.9-1.

As discussed below, the proposed development has been conditioned to include mitigation measures, which will minimize all adverse environmental impacts.

Therefore, the Commission finds that the proposed development is consistent with LUP Policies 3.9-1 3.8-1, and with Zoning Code Sections 20.376 since the development will be located in a developed area, there will be adequate services on the site to serve the proposed development, and the project will not contribute to adverse cumulative impacts on highway capacity, scenic values, or other coastal resources.

E. Water Quality.

1. Summary of LCP Provisions

LUP Policy 3.1-25 states:

The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible,

restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.

3. Discussion

LUP Policy 3.1-25 calls for the protection of the biological productivity of coastal waters. Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. The proposed development, however, would not significantly adversely affect the water quality of the nearby ocean.

As discussed above, the proposed development would be constructed on very gently sloping property, approximately 800 feet from the coastal bluff edge. The property is well vegetated by plants associated with the mixed coastal terrace prairie type, including numerous species of herbs, forbs, grass, and brush. Drainage for the property runs gently west and southwest through this vegetation toward Monterey Cypress trees growing along the western boundary of the property, and then toward a stand of *Eucalyptus* trees growing in the lower southwest corner of the parcel. The ground under the forested area is thick with leaf litter and forest-debris mulch. Water originating from impervious surfaces resulting from the proposed development would have ample opportunity to infiltrate into vegetated areas and deposit any entrained sediment before leaving the property. Therefore, the Commission finds that the proposed development would be consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained as storm water runoff from the proposed development would be controlled on site by infiltration into vegetated areas and the project would not significantly adversely affect the water quality and consequently the biological productivity of nearby coastal waters.

F. ESHA.

1. Summary of LCP Provisions

LUP Policy 3.1-2 in applicable part states:

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 [emphasis added].

Policy 3.1-4 states:

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

- 1. Port facility construction or expansion, Section 30233(a)(1).*
- 2. Energy facility construction or expansion, Section 30233(a)(1).*
- 3. Coastal-dependent industrial facilities such as commercial fishing facilities, construction or expansion, section 30233 (a) (1).*
- 4. Maintenance or restoration of dredged depths or previously dredged depths in: navigational channels, turning basins, vessel berthing and mooring areas, and associated with boat launching ramps.*
- 5. In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that in a degraded wetland, other boating facilities may be permitted under special circumstances, Section 30233(a)(3). New or expanded boating facilities may be permitted in estuaries, Section 30233(a)(4).*
- 6. Incidental public services purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- 7. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- 8. Nature study purposes and salmon restoration projects.*
- 9. Aquaculture, or similar resource dependent activities excluding ocean ranching.*

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

Policy 3.1-7 in applicable part states:

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.

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

(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 Code in applicable part states:

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.*

Section 20.496.025 in applicable part states:

(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.*

2. Discussion

A wetland delineation study for the subject property was performed in August 1998, by Wetlands Research Associates, Inc.. Wetland indicators were found in a swale along the northern property boundary and in association with a drainage area that runs along the western property boundary, and a protective buffer width of 50 feet was proposed. The wetlands study was based on the definition of wetlands contained in the federal Clean Water Act and not on the definition of wetlands contained in the certified LCP, which is more inclusive.

The Mendocino County certified Local Coastal Program includes the same definition of wetlands as is found in the California Coastal Act. LUP Policy 3.1-2 states: "*the 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.*" Appendix 8 consists of a copy of a portion of the 1981 Coastal Commission Interpretive Guidelines dealing with technical criteria for identifying and mapping wetlands and other ESHA (Exhibit No. 8). The guidelines indicate that a site can be a wetland if the hydrological criteria are present alone, or if hydrology and either hydrophytic vegetation or hydric soils are present. Thus, the LCP definition of wetlands includes more lands as wetlands than the definition in the federal Clean Water Act used by the Army Corps of Engineers.

The presence of wetlands is often delineated based upon the three-fold criteria contained within the 1987 U.S. Army Corps of Engineers *Wetlands Delineation Manual* (i.e., occurrence of hydric soils, presence of surface or near-surface hydrology, hydrophyte prevalence). Although appropriate for designating "jurisdictional wetlands" subject to the federal permitting requirements of Section 404 of the Clean Water Act, the presence of all three wetland indicators is not similarly required for purposes of establishing the presence of wetlands pursuant to the California Coastal Act and the certified Mendocino County LCP. Therefore, because the wetland survey performed for the site in 1998 only identified wetlands based on the Clean Water Act definition and not on the LCP definition, for purposes of the Commission's *de novo* hearing of the appeal, the Commission requested a new wetland survey examining current conditions using the LCP definition of wetlands to ensure that all areas requiring protection as wetlands under the LCP are identified.

A new revised wetland delineation and analysis of buffer issues dated May 10, 2002, was performed by Wetlands Research Associates, Inc., and was received by the Commission on May 15, 2002 (Exhibit No. 9). The revised wetland delineation identified an area slightly larger than previously indicated in the 1998 wetland determination. The methods used for determining the extent of wetlands on the subject parcel included an examination of all areas within the site that had a preponderance of wetland plant species. The determination of "preponderance" was based on the presence of greater than 50% cover of plant species ranked as either obligate or facultative wet by the National Wetland Indicator Plant List maintained by the U.S. Fish and Wildlife Service. Within those areas determined to have a preponderance of wetland species, ten observation pits were dug (each to a depth of greater than 12 inches) to determine the presence of either hydrologic indicators or saturated soils as indicated by a free water surface. Pits were positioned on either side of a presumed wetland boundary as indicated by transitional plant communities, and allowed to fill with water for 3 hours before taking measurements. The new wetland boundary was adjusted and finalized based on information derived from each of these test sites, and resulted in an expanded wetland area from that determined in 1998.

As set forth above, LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 require that buffer areas shall be established adjacent to all environmentally sensitive habitat areas, including wetlands, to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from new development. 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) the use of existing cultural features such as roads and dikes to buffer habitat areas, (f) the 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.

Consistent with the standards contained within CZC Section 20.496.020(A)(1)(a) through (g), the applicant provided a supplemental evaluation of the width of the wetland buffer needed to protect the wetland ESHA as requested by the Commission for purposes of the Commission's *de novo* review of the proposed project (Exhibit No. 9).

Wetlands Research Associates, Inc. (WRA) performed the supplemental evaluation of the buffer width, and considered the following seven standards in arriving at their recommendation of a 50-foot buffer.

(1) Biological Significance of Adjacent Lands.

In order to assess the biological significance of lands adjacent to the delineated wetland, WRA conducted a sensitive plant survey and wildlife survey on the subject property. No listed or sensitive plants were found within any portion of the property. No fish or migratory waterfowl use the wetland area. One would expect the primary inhabitants of the wetland and adjoining area to be insects, passerine bird species, and mammals. Terrain adjoining the wetland swale is heavily vegetated, and surface water is generally not present. The herbaceous nature of the vegetation limits nesting opportunities for birds, and during the daylong visit to the property on April 5, 2002, WRA did not detect any birds actually using the wetlands. The density of the vegetation on the site provides sufficient cover for those animals that do utilize this area such that visual disturbances associated with the proposed residential use of the property would not present a significant impact. For these foregoing reasons, WRA believes that the biological relationship of the adjoining terrain is not significant, and the habitat requirements of species likely to use the delineated wetland and adjoining areas are consistent with a reduced buffer.

(2) Sensitivity of Species to Disturbance.

WRA also examined the distance necessary to ensure that the most sensitive species of plants and animals would not be disturbed by the permitted development in a significant way. In considering the nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species, WRA noted that no resident or migratory fish are present. Although wildlife may forage in the wetland area, nesting and breeding habitat is limited given the herbaceous structure of the wetland. Because no resident or migratory fish are present on the subject property, there will be no impact on the nesting, feeding, breeding, resting or other habitat requirements resulting from the proposed reduction of wetland buffer to 50 feet. The impact to wildlife species would be less than significant because as discussed above, the density of the vegetation in the area provides sufficient cover for those animals that utilize the wetland and adjoining terrain, and nesting and breeding habitat is limited given the herbaceous structure of the wetland area. Additionally, in evaluating the adequacy of the proposed 50-foot wetland buffer, WRA assessed the short-term and long-term adaptability of various species to human disturbance, and found that since the subject property is the last lot to be developed within an existing residential development, the type of wildlife that may use this area are likely to be adapted to human presence. Non-native, invasive species including *Eucalyptus* and pampas grass have been present on the property for many years. Because the proposed development would be located between existing residential structures on adjacent properties, and on the southern portion of the subject property near the road, and because the northern portion of the property would be protected as delineated wetland, the impacts of development would be located near areas already subject to human disturbance. Finally, in order to further assess the sensitivity of species to disturbance, WRA evaluated the impact and activity levels of the proposed development. The proposed development is limited to two buildings for the purpose of constructing and maintaining a single-family residence. Activities that would occur within this residence are similar to the existing residential homes in this neighborhood. This use would not result in any significant change in land use practices nor would there be any significant change in use patterns for the neighborhood. WRA concluded that in relation to potential significant adverse impacts resulting from increased activity levels, the proposed 50-foot wetland buffer would be adequate to protect the wetland.

3) Susceptability of Parcel to Erosion.

WRA considered the susceptibility of the subject parcel to erosion in determining that a 50-foot wetland buffer would be sufficient to protect the delineated wetland from impacts resulting from the proposed development. The proposed house and garage/workshop would be developed downslope from the delineated wetland. No erosion is anticipated on this relatively flat parcel as a result of constructing the development associated with the proposed single-family residence. Therefore, WRA believes that significant adverse impacts to the delineated wetland from erosion resulting from the proposed development is very unlikely.

4) Use of Natural Topographic Features to Locate Development.

WRA evaluated natural topographic features located on the property in recommending the 50-foot wetland buffer. WRA recognized that the property is relatively flat. The property slopes gently toward Peterson Street, with a drop of a little more than 14 feet from the highest portion at the northeast corner, to the lowest portion at the southwest corner. The wetland is generally contained by a swale uphill and to the north and west of the proposed buildings. Along the property boundary to the west, the swale is separated from the proposed residential structures by a slight topographic rise. The garage/workshop would be located in the southern downhill-portion of the property, and the driveway would be located in the southeastern downhill-corner of the property nearest the road. Therefore, the natural topography would cause storm water runoff from the proposed development to flow away from the wetlands. Therefore, the proposed 50-foot wetland buffer conforms to natural topographic features of the property, and would use natural topographic features in a way that would avoid significant adverse impacts to the delineated wetland from the proposed development.

5) Use of Existing Cultural Features to Locate Buffer Zones.

In evaluating the adequacy of the buffer width, WRA considered whether any existing cultural features within the proposed 50-foot buffer could be utilized to protect the wetlands and thus support use of the proposed 50-foot buffer width. The subject property is located along Peterson Street. There are no other roads located within or adjacent to the applicant's approximately $\frac{3}{4}$ -acre parcel. The proposed development would occur adjacent to neighboring structures that exist on parcels to the east and to the west. On the subject parcel there is an existing well, and an existing curtain drain. There are no other cultural features that occur on or near the subject property, which could be used to better ensure protection for the delineated wetland.

6) Lot Configuration and Location of Existing Development.

WRA evaluated the width of the proposed buffer in relation to the subject parcel configuration and to the proximity of existing development in the vicinity. As discussed above, the proposed development would be within an existing residential development. The subject parcel would be the last to be developed in the neighborhood. Because the area on the parcel available for development is constrained by front and side yard setbacks, the existence of a curtain drain, and the presence of the delineated wetland, the lot configuration and the location of existing development on the parcel is significant. The rear of the house and deck would be within 50 feet from the delineated wetland, and the east side of the house would be constrained by the location of the septic leach field. The house and garage structures would be located very close to the required setback limits for side yards. The front yard setback includes a 20-foot distance, as well as an additional 25-foot preservation corridor setback from Peterson Street, for a total 45-foot front yard setback. The location of the delineated wetland along the north and northwest portions of the property, the recommended 50-foot wetland buffer, the front and side yard setbacks, and the presence of the existing curtain drain, all serve to limit the possible locations of development on the

property. The applicant has revised the project description to conform to the new expanded wetland delineation and proposed buffer. WRA believes that the proposed 50-foot buffer would be adequate to protect the delineated wetland in relation to the configuration of the parcel, to all existing development located on the parcel, and to the proposed development, and would not result in significant adverse impacts to the delineated wetland.

7) Type and Scale of Development.

WRA considered the nature of the delineated wetland resources involved, the fact that adjacent properties have been developed, and the type of development in the vicinity in order to arrive at the recommended 50-foot buffer. As discussed previously, the development would be limited to a single-family residence and a garage/workshop. All of the other lots in the residential area are completely developed with homes, including expansive driveways, garages, and lawns. Two parcels to the east, the property is developed with a 5-unit bed and breakfast inn and manager's apartment. For the applicant's parcel, the intensity of use is limited and within the character of the existing residential community. The delineated wetland and protective buffer-width effectively limit development to the southern portion of the subject property, on about 1/3 of the parcel in a location closest to the road and to other existing structures in the neighborhood. The actual area proposed for structures on the approximately 3/4-acre parcel is a modest 2,970 square feet, and would represent only about 9% lot-coverage. The remaining 2/3 of the parcel would remain undeveloped. In considering the type and scale of development proposed, WRA determined that a 50-foot buffer would be adequate to protect the delineated wetland.

The foregoing analysis of the proposed buffer width in relation to the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) provide a basis for determining whether the buffer proposed by WRA would be adequate to protect wetland resources as delineated. The particular facts of this site and the proposed development suggest that some of the standards should be weighed more in the evaluation of buffer width than other standards. For instance, the fact that a sensitive plant survey and wildlife survey conducted on the subject property identified no listed or sensitive plants, and no resident or migratory fish or migratory waterfowl use of the property, weighs more heavily than does the fact that no cultural features could be identified to better ensure protection of the delineated wetland.

Those factors that support the establishment of a 50-foot buffer as adequate to protect the delineated wetland include (1) the lack of listed or sensitive plants on the property, (2) the lack of resident or migratory fish or migratory waterfowl, (3) the fact that no birds were seen using the delineated wetland during site visits, (4) the fact that terrain adjoining the wetland is heavily vegetated and lacks the presence of surface water, (5) the herbaceous nature of the vegetation adjacent to the wetland and its limited nesting opportunity for birds, (6) the fact that the adjoining vegetation is of sufficient density to provide sufficient cover for animals that do use the area, (7) the fact that the subject property is the last lot to be developed in the neighborhood and the type of wildlife most likely to use the area have adapted to human presence, (8) the fact that the parcel is relatively flat and well vegetated so no erosion is anticipated, and (9) the fact

that the delineated wetland is contained in a swale uphill of the proposed development, which will prevent storm water runoff from the development degrading the wetlands.

One factor that does not weigh as heavily in considering the adequacy of this particular recommended 50-foot buffer includes the presence of cultural features. No cultural features could be used to better ensure protection of the delineated wetland.

To conform to the need to provide an adequate ESHA buffer, the applicant has revised the project description to relocate and reduce the size of the proposed development. The proposed residence would be of modest size, located near existing development, leaving more than 2/3 of the parcel undeveloped. When considering the totality of all the factors as discussed above, the Commission finds that the applicant's evaluation of the width of the delineated wetland buffer as provided by WRA, sufficiently demonstrates that no significant adverse impacts will result from the 50-foot recommended buffer width.

Staff of the California Department of Fish and Game (DFG) has reviewed the revised wetland delineation and buffer width analysis, and determined that the recommended 50-foot buffer would be an acceptable wetland buffer for this particular project (Exhibit No. 10). DFG noted that the buffer analysis report stated: "no fish, migratory waterfowl, or passerine nesting birds were observed using the wetland." DFG also noted that during their own site visit conducted on May 3, 2002, "[d]epartment personnel did not observe active bird nest sites or rare plants present." Additionally, DFG requested that the applicant cut and remove from the property all *Eucalyptus* spp. with a diameter at chest height of three inches or less, as well as all pampas grass plants. The removal of exotics from the buffer area would enhance the value of the buffer as a transitional zone from wetland ESHA to developed area by allowing native plants of greater habitat value to wildlife that use both wetlands and adjoining lands to become reestablished. The applicant has amended the application *de novo* to incorporate the recommended removal of exotic vegetation. To ensure that the ESHA buffer is established consistent with the terms under which DFG determined that the 50-foot buffer would be adequate, the Commission attaches Special Condition No. 5, which requires the applicant to perform the removal of invasive exotic vegetation as recommended by DFG and proposed by the applicant.

Based on the foregoing, and as conditioned, the Commission finds that the proposed development is consistent with LUP Policy 3.1-2, which establishes the criteria to be used for determining the extent of wetlands, and with LUP Policy 3.1-7, and CZC Section 20.496.020, which require 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 that one hundred feet is not necessary to protect the habitat resources.

G. Public Access and Recreation.

1. Coastal Act Access Policies

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the

Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

2. LCP Provisions

The Mendocino County LUP includes a number of policies regarding standards for providing and maintaining public access. Policy 3.6-9 states that offers to dedicate an easement shall be required in connection with new development for all areas designated on the land use plan maps. Policy 3.6-28 states that new development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement.

LUP Policy 3.6-27 states:

No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's 'Manual on Implied Dedication and Prescriptive Rights.' Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner that minimizes risks to life and property, or (3) such siting is necessary for consistent with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site.

Note: This policy is implemented verbatim in Section 20.528.030 of the Coastal Zoning Code.

3. Discussion

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The subject property is adjacent to and south of the Spring Ranch state park property. The Spring Ranch park property encompasses more than 300 coastal acres. A public trail through Spring Ranch is located within a few hundred feet northwest of the applicant's property, but not within view of the proposed development. Although the subject site is located next to state park lands, the site is approximately 800 feet from the steep coastal bluffs south of the property and separated from the shoreline by other parcels on the headland. The County's land use maps do not designate the subject parcel for public access. According to the County, there is no evidence of public prescriptive use of the subject site, and thus the County did not instigate a prescriptive rights survey. Since the proposed development would not increase significantly the demand for public access to the shoreline and would have no other adverse impacts on existing or potential public access, and because sufficient public coastal access already exists in the immediate vicinity, the Commission finds that the proposed project, which does not include provision of public access, is consistent with the public access policies of the Coastal Act and the County's LCP.

H. Visual Resources.

1. Summary of LCP Provisions

LUP Policy 3.5-1 states in applicable part:

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.

LUP Policy 3.5-3 states in applicable part:

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

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

In addition to other visual policy requirements, new development west of Highway One in designated 'highly scenic areas' is limited to one story (above natural grade) unless an increase in height would affect public views to the ocean or be out of character with surrounding structures... New development should be with visual resource policies and shall not be allowed if new development should be subordinate to natural setting and minimize reflective surfaces...

LUP Policy 3.5-4 states:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open area shall be avoided if an alternative site exists... Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms.

Coastal Zoning Ordinance Section 20.504.015 states, in applicable part:

- (C) *Development Criteria.*
- (1) *Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...*
 - (2) *In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen feet (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*
 - (3) *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials shall be selected to blend in hue and brightness with their surroundings...*
 - (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area...*

- (7) *Minimize visual impacts of development on terraces by the following criteria: (a) avoiding development in large open areas if alternative site exists; (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms...*
- (10) *Tree planting to screen buildings shall be encouraged, however new development shall not allow trees to interfere with coastal/ocean views from public areas...*

2. Discussion.

The proposed development includes a 28-foot-high, 1,960-square-foot single-family residence, with a detached, 18-foot-high, 1,010-square-foot garage/workshop. The subject property is located just north of the beach at Van Damme State Park. The approximately $\frac{3}{4}$ -acre parcel is in an area designated highly scenic, and is located about 400 feet west of Highway One.

The property slopes gently toward Peterson Street to the southwest, with coastal views to the south. The predominant vegetation at the site includes one 3 1/2-foot diameter Bishop pine near the center of the parcel (proposed to be removed), and a grove of *Eucalyptus* trees clustered along the western boundary, and in the southwest corner. Monterey Cypress trees are also present along the western edge. The northwest corner of the parcel is thickly vegetated with sedge, rush, and other water-loving plants. Numerous other plant species occur on the site including several types of grass, brush, and herbs. The parcel is located approximately 800 feet from the nearest coastal bluff behind two other parcels. Brief views of portions of the property that are not proposed to be developed are available across neighboring undeveloped parcels from Highway One to the east. However, development on the site would not block views of the ocean from any public vantage point and would not be visible from Highway One. In addition, State Parks reviewed development plans for this proposed project, visited the site and determined that the proposed development would have no significant adverse impacts to the viewshed from Van Damme State Park to the south, or from Spring Ranch park property to the north. Due to the parcel's location and vegetation, no views to and along the ocean through the project site are available to the public.

The primary residence is proposed at a 28-foot height above average natural grade. LUP Policy 3.5-3 and CZO 20.504.015(C)(2) require that new development west of Highway One in designated highly scenic areas be limited to one-story above natural grade and 18 feet in height unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. As discussed previously, no public views of the ocean are afforded through the subject property. Therefore, the proposed development would not affect public views to the ocean. Furthermore, other structures in the neighborhood are all two-story or higher and many approach 28 feet in height, including a 5-unit bed and breakfast inn east of the site at the corner of Peterson Street and Highway One. The third level of the residence is not a full third story, but rather a diminutive 100-square-foot room that would serve as a study as depicted in the site plans contained in Exhibit 5. Accordingly, the proposed three-story, 28-foot high

structure is in character with surrounding structures. Therefore, the Commission finds that the proposed three-story, 28-foot height of the structure is consistent with the height limitations of LUP Policy 3.5-3 and CZO 20.504.015(C)(2).

Although a brief glimpse of the northeast corner of the "L"-shaped subject property is available to the public from Highway One, it is not the part of the property where the proposed development would be constructed. The location of the 28-foot-high house—in the southwest corner of the property—would be shielded by topography and other structures and vegetation in the neighborhood, and, as noted, would not interfere with public views to the ocean. The parcel is one of five similarly sized properties located on the north side of Peterson Street. It is the center vacant parcel, with two already developed parcels on either side. The proposed residence, a modestly sized house of only 1,960-square-feet, would fit within the character of the other structures developed in the neighborhood that exceed 18 feet in height, some of which are very large. For all of the above reasons, the development would be both compatible with the surrounding area, and subordinate to the character of its setting consistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015. The proposed development would protect views to and along the coast consistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015, and be consistent with the visual resource protection policies of LUP Policy 3.5-3, and CZO 20.504.015(C)(2). Furthermore, the building sites for the proposed development would: (a) avoid placement within open areas on the terrace; (b) be situated both near the edge of a wooded area; and (c) be clustered near existing vegetation consistent with CZC Sections 20.505.015(C)(5) and (7).

Coastal Zoning Code Section 20.504.015(C)(3) requires that the building materials used for new development permitted in highly scenic areas must be found to blend in hue and brightness with its surroundings. The applicant has indicated that the exterior building materials and finishes for the residence and garage/workshop would be composed of unstained cedar shingles on the upper portions, with natural stained cedar horizontal clapboards below. Door and window trim would be painted forest green. The double-glazed, metal-clad, wood windows would be made with non-reflective glass. The roof would be dark colored composition shingles. To ensure that the materials and colors of the exterior surfaces of the proposed house would be compatible with the character of the area, the Commission attaches Special Condition No. 1A. This condition imposes design restrictions, including a requirement that all exterior siding and roofing of the proposed structure shall be of natural or natural-appearing materials of dark earthtone colors only, such as those chosen by the applicants; that all exterior materials, including the roof and the windows, shall be non-reflective to minimize glare; and that all exterior lights, including any lights attached to the outside of the house, shall be low-wattage, non-reflective, and have a directional cast downward. Special Condition No. 4 requires that a deed restriction be recorded informing future buyers of the property of the special conditions of the permit, including the color limitations. Such notice to future buyers will better ensure that in the future, the development is not painted an inappropriate color that would not be consistent in brightness and hue with its surroundings. These requirements will ensure the project is consistent with the provisions of Coastal Zoning Code Sections 20.504.010 and 20.504.035(A)(2).

In conclusion, the visual resource impacts of the development have been minimized by a combination of existing site conditions, the design of the structures, and by the attachment of special conditions to the project approval. Public views to the ocean would not be affected by the project and the project would not be out of character with surrounding structures. Lighting restrictions imposed by special condition will further protect views to and along the coast, ensure compatibility with surrounding areas, and assure that the development would be subordinate to the character of its setting. Further, in requiring dark earthtone colors for the structure, the development's building materials will blend in hue and brightness with those of its surroundings. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with LUP Policies 3.5-1, and with Zoning Code Sections 20.376.045, 20.504.010, and 20.504.035, as the project has been sited and designed to minimize visual impacts, will be visually compatible with the character of surrounding areas, and will provide for the protection of coastal views.

I. California Environmental Quality Act (CEQA).

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

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

V. **EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Assessor's Parcel Map
4. Site Plan
5. Notice of Final Action and Staff Report
6. Curtain Drain Permit CDP #85-98
7. Appeal
8. LUP Appendix 8 – California Coastal Commission Statewide Interpretive Guidelines
9. Revised Wetland Delineation and Buffer Evaluation
10. Department of Fish and Game Concurrence

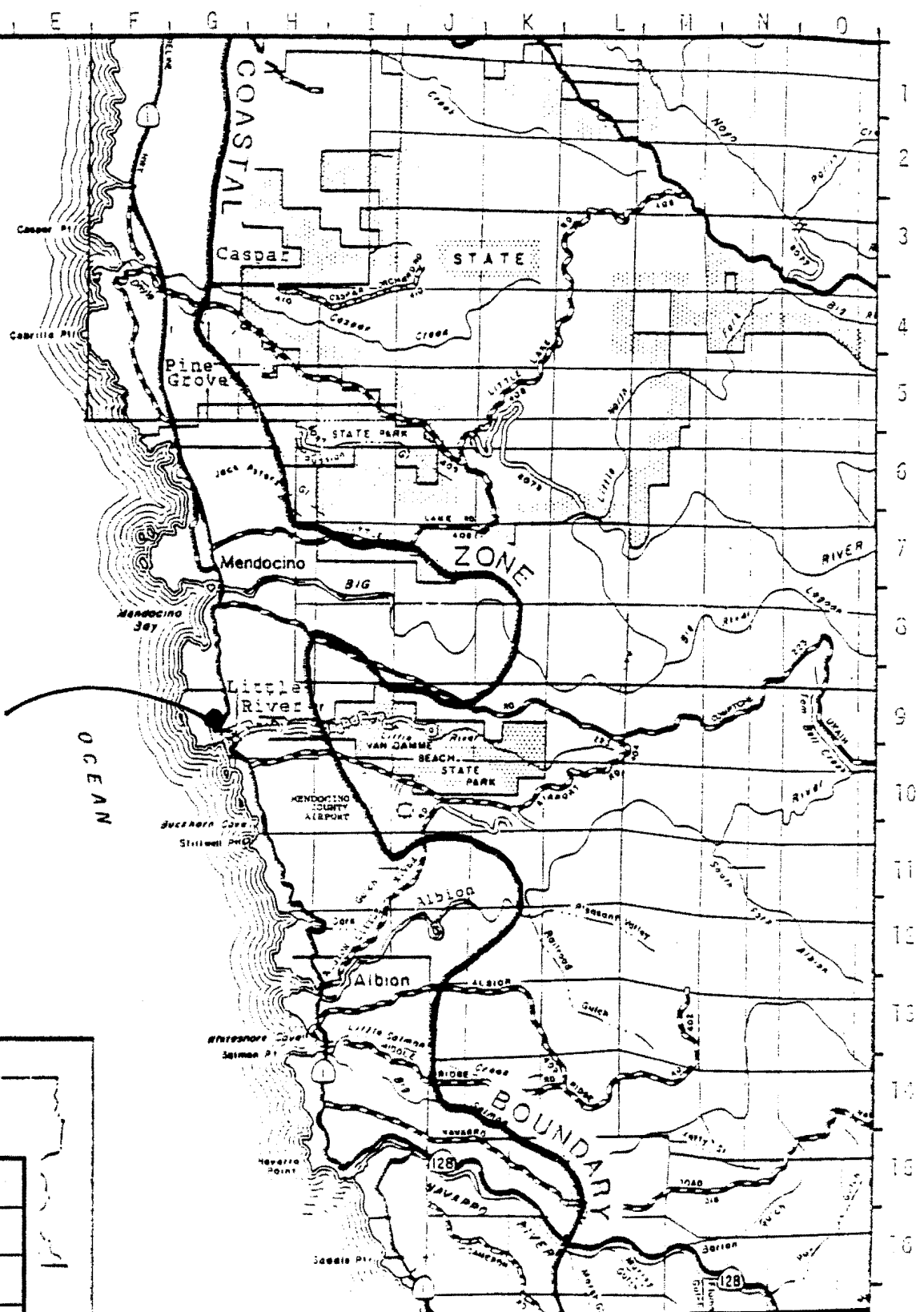
ATTACHMENT A:

STANDARD CONDITIONS

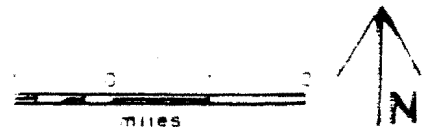
1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration.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

PROJECT
SITE

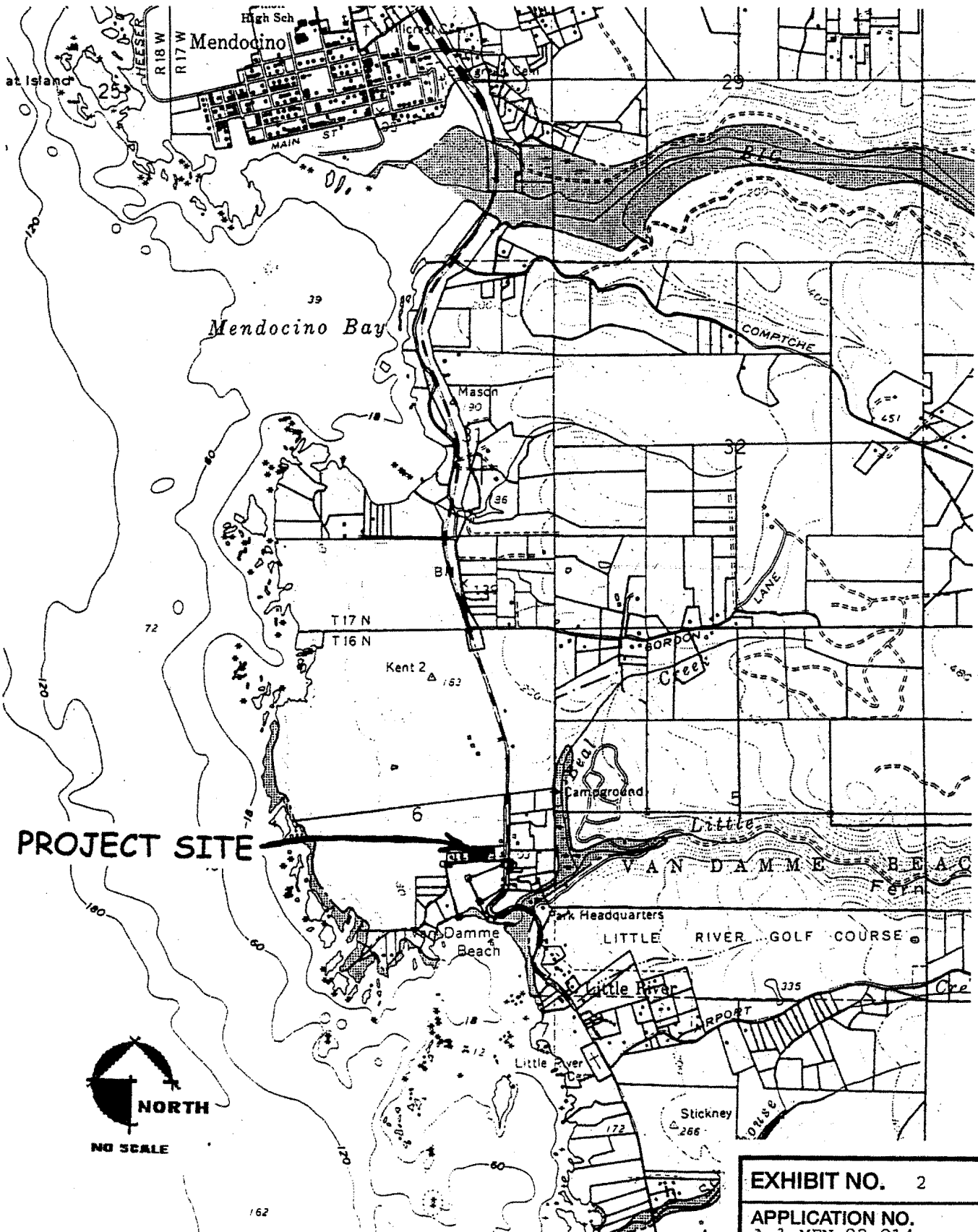
EXHIBIT NO. 1
APPLICATION NO. A-1-MEN-02-014
SPIES
REGIONAL LOCATION MAP



LOCATION MAP



County of Mendocino



PROJECT SITE



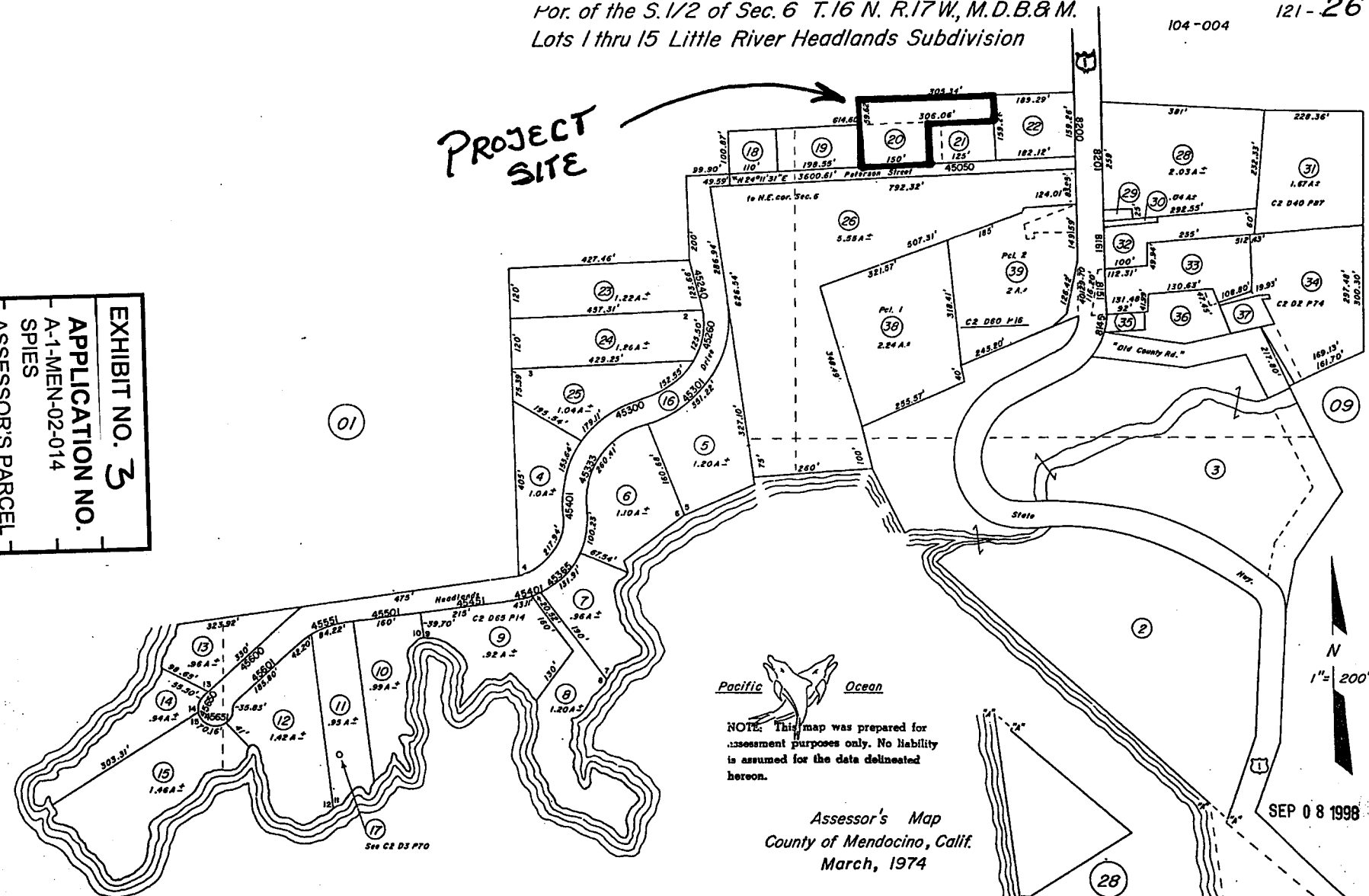
EXHIBIT NO.	2
APPLICATION NO.	A-1-MEN-02-014
SPIES	
VICINITY MAP	

Por. of the S. 1/2 of Sec. 6 T. 16 N. R. 17 W., M.D.B. & M.
 Lots 1 thru 15 Little River Headlands Subdivision

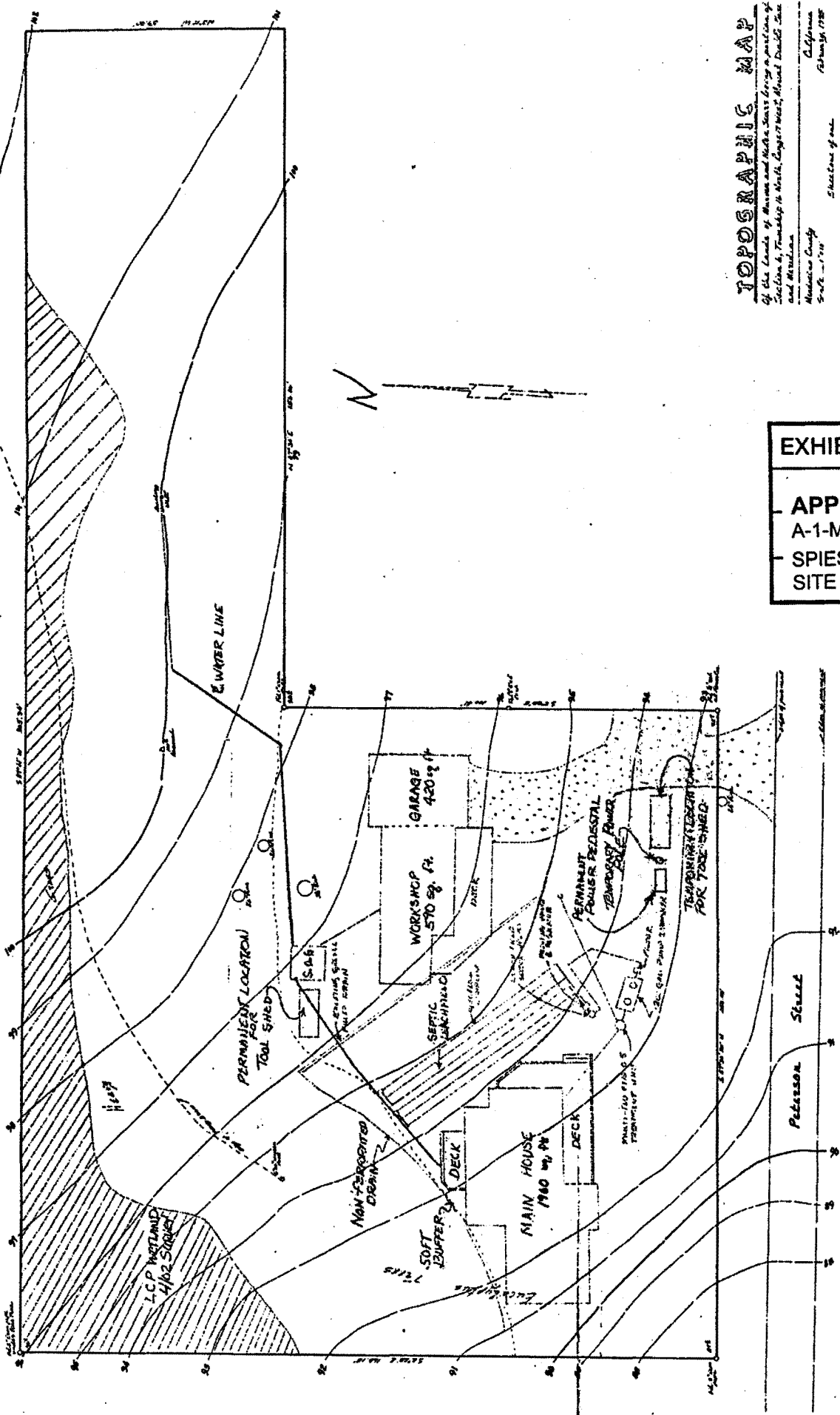
104-004 121-26

PROJECT
 SITE

EXHIBIT NO. 3
 APPLICATION NO.
 A-1-MEN-02-014
 SPIES
 ASSESSOR'S PARCEL
 MAP



R. Spies
A-1-MEN-02-014

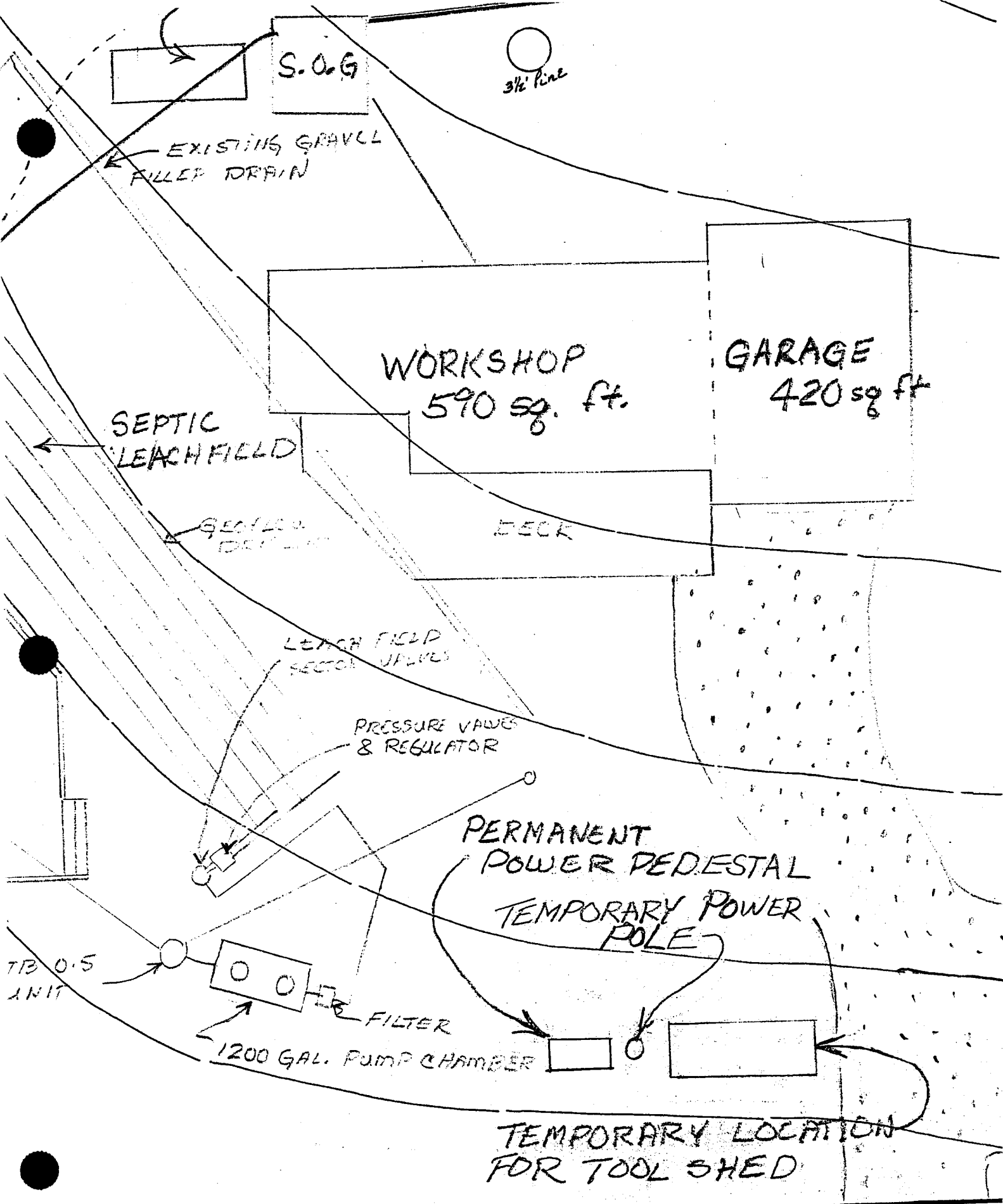


TOPOGRAPHIC MAP

Of the Lands of Maroon and McLean, Santa Clara County, California, Section 4, Township 14 North, Range 17 West, Mount Diablo Zone and Meridian
 Modoc County
 Scale - 1" = 100'
 Sheet No. of 10
 California
 February 1988

Map prepared by: Richard A. Smith, L.S. 1288

EXHIBIT NO. 4
APPLICATION NO. A-1-MEN-02-014
SPIES SITE PLAN (1 of 3)



S 87°30'30" W 150.00'

24" Pine

HEAVY

PERMANENT LOCATION
FOR
TOOL SHED

26" Pine

26" Pine

3 1/2" Pine

S.O.G.

EXISTING GRAVEL
FILLED DRAIN

WORKSHOP
590 sq. ft.

SEPTIC
LEACH FIELD

GEOFLOW
DRAIN LINE

DECK

LEACH FIELD
SECTOR 1/4/01

PERFORATED

DECK

HOUSE

303



RAYMOND HALL
DIRECTOR

TELEPHONE
(707) 964-5379

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

February 4, 2002

EXHIBIT NO. 5

APPLICATION NO.
A-1-MEN-02-014
NOTICE OF FINAL
ACTION & STAFF
REPORT (1 of 21)

NOTICE OF FINAL ACTION

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

CASE#: CDP #80-01
OWNER: Robert & Ann Spies
AGENT: Bud Kamb
REQUEST: Construct a 1,980 square foot single-family residence with a maximum height of 28 feet above average natural grade. Construct a 590 square foot personal workshop attached to a 420 square foot garage, workshop/garage structure to have a maximum height of 18 feet above average natural grade. The applicant proposes to use the workshop for temporary occupancy while constructing the single-family residence. Install a new driveway, septic system and water supply system from an existing test well. Remove approximately 16 eucalyptus trees adjacent to the residence building site and 1 pine tree adjacent to the workshop building site.
LOCATION: Approximately 2 miles S of the town of Mendocino, W side of Highway One, N side of Peterson Street (private) approximately 400 feet W of its intersection with Highway One at 45100 Peterson Street (APN 121-260-20).
PROJECT COORDINATOR: Rick Miller

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 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

RECEIVED

FEB 07 2002

CALIFORNIA
COASTAL COMMISSION

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#:

CDP 80-01

HEARING DATE:

1/24/02

OWNER:

Spier

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt

☐ Negative Declaration

☐ EIR

FINDINGS:

☐ Per staff report

☒ Modifications and/or additions

Add: Due to constraints of property (slope, ESHA, visual considerations) and given the previous permit action to authorize a certain drain on-site at a distance 50 ft. of identified wetland, it is found that development of this building site ACTION: would not cause any significant environmental impact, and is consistent with the L.C.P.

☒ Approved

☐ Denied

☐ Continued

CONDITIONS:

☒ Per staff report

☐ Modifications and/or additions

Signed: Coastal Permit Administrator

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-1

OWNER: Robert B. & Ann E. Spies
PO Box 824
Livermore, CA 94550

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

REQUEST: Construct a 1,980 sq. ft. single family residence with a maximum height of 28 feet above average natural grade. Construct a 590 sq. ft. personal workshop attached to a 420 sq. ft. garage, structure to have a maximum height of 18 feet above average natural grade. The applicant proposes to utilize the workshop for temporary occupancy while constructing the single family residence. Install a new driveway, septic system and water supply system from an existing test well. Remove approximately 16 eucalyptus trees adjacent to the residence building site and 1 pine tree adjacent to the workshop building site.

LOCATION: Approximately 2 miles south of the Town of Mendocino, on the west side of Highway One, on the north side of Peterson Street (Pvt.) approximately 400 feet west of its intersection with Highway One at 45100 Peterson Street (AP# 121-260-20).

APPEALABLE AREA: Yes (highly scenic area & west of 1st public road).

PERMIT TYPE: Standard

TOTAL ACREAGE: $\frac{3}{4} \pm$ acres

ZONING: RR: L-5 [RR]

GENERAL PLAN: RR-5 [RR-1]

EXISTING USES: Vacant (curtain drain installed per CDP 85-98).

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically Exempt. Class 3 (a)

OTHER RELATED APPLICATIONS: Coastal Development Permit #85-98 (PAC 3-98) authorized the installation of a curtain drain up slope of a proposed septic system. The curtain drain was intended to intercept underground water from the north to dry out an area for placement of a future septic system. Natural resources were reviewed under this permit including a wetland delineation and rare plant survey. See the natural resources section of this staff report for a complete discussion.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-2

PROJECT DESCRIPTION: The applicant proposes to construct a 1,980 sq. ft. single family residence with a maximum height of 28 feet above average natural grade in the southwest corner of a $\frac{3}{4}$ acre parcel. In addition, a 590 sq. ft. personal workshop attached to a 420 sq. ft. garage would be constructed east of the main residence. The workshop/garage structure would have a maximum height of 18 feet above average natural grade. The applicant proposes to utilize the workshop as a residence for temporary occupancy while constructing the proposed single family residence. Therefore, the workshop would be constructed with a full bathroom and a temporary kitchen and prior to occupancy of the main residence the kitchen would be removed and the bathroom would be converted to a convenience bathroom with a sink and toilet only (see Special Condition #1). When the project is completed the site would contain a 1,980 sq. ft. single family residence and a personal workshop/garage accessory structure. A new driveway and culvert would be installed onto Peterson Street to serve the development. An on-site septic system would be installed between the residence and workshop/garage. A water supply system would be developed utilizing an existing test well located northeast of the workshop/garage structure. A grove of approximately 16 eucalyptus trees adjacent to the residence building site and one pine tree adjacent to the workshop building site would be removed in order to site the proposed structures.

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

Land Use. The proposed development is compatible with the Rural Residential zoning district and is designated as a principal permitted use per Section 20.376.010(A) of the MCC. The maximum building height at this location is 18 feet above average natural grade unless an increase in height would not affect public views, in which case it would be limited to 28 feet above average natural grade. The minimum setback from the front and rear property lines is 20 feet and 6 feet on the side property lines. In addition, a corridor preservation setback of 25 feet is required from the centerline of Peterson Street for a total of 45 feet in the "front" yard. The maximum height of the proposed residence is 28 feet above average natural grade. The maximum building height of the proposed garage/workshop building would be 18 feet above average natural grade. All proposed improvements meet the setback requirements stated above. Therefore, the proposed project complies with the maximum building height and setback requirements of the Rural Residential zoning district.

Temporary occupancy of the proposed personal workshop as a residence while constructing the primary dwelling is permitted as a temporary use per Chapter 20.460 of the MCC and Special Condition #1.

Public Access. The project site is located west of Highway 1, but is not a blufftop site and is not designated as a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the site.

The Planning Division received a memorandum by Ron Munson, California Department of Parks and Recreation Mendocino District Chief Ranger, dated October 4, 2001. The memo states:

"State Parks would be supportive of any efforts on the part of the owner and the adjacent landowner to the west to establish public easement for a trail through the eucalyptus grove to provide connectivity between Van Damme State Park and the Spring Ranch, but the granting of the building permit is not intended to be conditional on this trail provision."

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-3

The Planning Division is not recommending any exaction for public access across the subject parcel in conjunction with this development proposal for two main reasons. First, more analysis of the potential impact to the identified wetland on the parcel would need to be conducted prior to establishing an access easement. Second, the immediate area supports a large amount of public access at both the Van Damme State Park and the Spring Ranch. The proposed development would not interfere with the existing public access in the project area.

Hazards. The project site is less than one acre in size and is exempt from CDF's fire safety regulations. Fire safety issues are addressed as part of the building permit process. The proposed development would be located on slopes which are less than 20% and the development does not present any issues relative to erosion and/or slope failure. There are no known faults, landslides or other geologic hazards in close proximity to the proposed development.

Visual Resources. The project site is located within a designated "highly scenic area" but is only visible from Highway One for a few seconds and is screened by existing vegetation and neighboring structures. The proposed development would not be visible from Van Damme State Beach. Although the main residence would have a maximum height of approximately 28 feet above average natural grade, exceeding the 18 feet height limit in a designated "highly scenic area" west of Highway One, the increase in height would not have a significant impact on public views to or along the ocean. The garage/workshop building has a maximum height of 18 feet above average natural grade. At staff's request story poles were erected from the main residence to verify that the development would not be visible from the state beach. In regard to any visual impact of the development on the State Park, Ron Munson, State Parks' Chief Ranger, states in a memo dated October 4, 2001:

"...The Monterrey Cypress to the north of the project provide sufficient vegetative screening to mitigate any viewshed concerns from the Spring Ranch park property to the north. If the 28 foot height conforms with Planning Department zoning restrictions, State Parks has no issue with the height of the proposed residence, since it is lower than the surrounding tree line and does not substantially exceed the height of neighboring buildings."

It is worth noting that further west of the project site when Peterson Street turns into Headlands Drive development does become visible from the state beach and for a greater stretch along Highway One. Development on Headlands Drive has a greater potential visual impact to public views than on the subject parcel. The subject parcel is located approximately 400 feet west of Highway One and is surrounded by other two story structures such as Rachel's Inn. Nonetheless, due to the project location in a designated highly scenic area, the following policies apply.

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."

5921

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-4

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".

"...In addition to other visual policy requirements, new development west of Highway One in designated highly scenic areas is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures...New development shall be subordinate to the setting and minimize reflective surfaces. Variances from this standard may be allowed for planned unit development(s) that provides clustering and other forms of meaningful mitigation."

3.5-15 *"...No lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible."*

Sec. 20.504.015 (C) of the Coastal Zoning Code states in part:

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

The proposed structures would have the following exterior materials and finishes: Both the residence and the garage/workshop building would be clad with unstained cedar shingles on the upper portions and natural stained cedar horizontal clapboards below. The roof would be a dark composition shingle. The windows are to be double glazed metal clad wood windows. The window and door trim would be painted forest green. These natural finishes and materials should help the project blend in with the surrounding environment. Special Condition #2 is added to ensure the exterior building materials and finishes specified in this permit would not be changed without an amendment to the permit for the life of the project.

The submitted exterior lighting fixtures are not customarily approved because they are not shielded and downcast. However, the number of exterior lighting fixtures proposed is the minimum required for safety. Special Condition #3 requires that the applicant submit new lighting specifications to ensure compliance with exterior lighting requirements of Section 20.504.035 of the MCC. This Section of the MCC requires that the exterior lights shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel.

Staff finds that the increase in height above 18 feet for the main residence would be consistent with the highly scenic area policies in this case. Staff finds the project to be consistent with the requirements for development in a "highly scenic area."

Natural Resources. The subject parcel is only 1/4 acre in size. In conjunction with coastal development permit #85-98, a botanical survey and a wetlands delineation report were submitted and analyzed by the Planning Division to allow for the installation of a curtain drain up slope of the proposed septic system. Gordon McBride Ph.D. prepared the rare plant survey dated August 10, 1998. The results of the survey were that no rare plant species were discovered on the subject parcel. Wetlands Research Associates, Inc. prepared a delineation of jurisdictional wetlands and waters of the United States report dated September 1998 for the subject parcel. The report states:

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-5

"Potential jurisdictional wetlands occur along the northern and western property boundaries. Wetland indicators were found in a swale along the northern property boundary and in association with a drainage area that runs along the western property boundary."

The report determined there was 0.05 acres of Section 404 Wetlands and no Section 404 Waters on the property. The wetlands represent an environmentally sensitive habitat area (ESHA) which must be protected. When CDP #85-98 was approved a 50-foot buffer was established to protect and maintain the identified ESHA. The proposed structures proposed under this permit would also be outside the previously established 50-foot buffer area. However, the existing test well is located outside of the upland extent of the wetland area but is within the 50-foot buffer area. The existing well was drilled in November 1985 and was permitted by the Environmental Health Division under permit #2476. This well is the only possible on-site water source for the property due to the parcel size and septic system requirements. Therefore, the applicant needs to place a water supply line from the well to the garage for a domestic water source through the buffer area. Staff asked the applicant to have a botanist address this water line extension through the buffer area. Gordon McBride Ph.D. prepared a supplemental report dated April 12, 2001 to determine the potential impact to the environmentally sensitive habitat area. He states:

"In my opinion the proposed waterline would not negatively impact the wetland if it is installed in the buffer area. A waterline ditch, either hand dug or excavated by a machine, would at most be of eight to ten inches wide, and as soon as the waterline and electric wiring to supply the pump were installed the soil would be backfilled. The vegetation adjacent to the backfilled ditch would, in only a portion of a growing season, reestablish itself over the waterline and would soon obliterate all evidence of the installation process."

Chapter 20.496 and Section 20.532.060, et. seq. of the Coastal Zoning Code contain specific requirements for protection of ESHA's and development within the buffer area of an ESHA. A sufficient buffer area is required to be established and maintained to protect ESHA's from disturbances related to proposed development. Section 20.496.020 requires that:

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (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 fifty (50) feet in width.

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.*

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-6

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.

Staff concurs that 50 feet would be sufficient to protect the resource values of the ESHA. Protecting the ESHA with temporary fencing during construction and maintaining the 50 foot non-disturbance buffer will maintain the functional capacity of the ESHA. Further, staff recommends allowing the water supply line extension through the buffer area. Findings 8, 9 and 10 are added to address the legal requirements for approval of the project with regard to the ESHA. Special Condition #4 requires that the 50 foot non-disturbance buffer measured from the edge of the environmentally sensitive habitat area remain in effect in perpetuity and that the edge of the buffer be fenced during construction so that disturbance does not occur. These conditions will ensure that human intrusion and disturbance of the habitat is avoided. If properly implemented, there should be no loss of habitat on the project site.

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 probability of containing archaeological resources and further investigation was recommended. The Mendocino Archaeological Commission responded that a survey was not required prior to commencement of project activities at their November 14, 2001 hearing. 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 site is located within an area mapped as Marginal Water Resources area. Domestic water would be provided by an existing well located in the northeastern portion of the subject parcel. A county approved septic system would be installed between the proposed residence and workshop/garage structures to serve the proposed development. Darla Pimlott, Environmental Health Division, stated her Division would approve the project with two conditions. First, the garage/workshop must be connected to an approved septic system for the temporary occupancy use and is to remain connected for the convenience bathroom. Second, the garage/workshop is to be converted to nonresidential use after the completion of the single family residence. Special Conditions #1 and #5 are added to address the Environmental Health Division's concerns. The proposed project would have an incremental, but not significant, effect on groundwater resources.

Transportation/Circulation. The applicant would install a new paved driveway encroachment and drainage culvert along Peterson Street, a private road. While the project would contribute incrementally to traffic volumes on local and regional roadways, such incremental increases were considered when the LCP land use designations were assigned to the site.

Zoning Requirements. The project complies with the zoning requirements for the Rural Residential District set forth in Section 20.376.005, et. seq., and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

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

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-7

FINDINGS:

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

9221

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-8

3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
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.

10421

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-9

SPECIAL CONDITIONS:

1. An administrative permit is hereby granted for temporary occupancy of the proposed workshop as a residence while constructing the proposed single family residence, subject to the following conditions of approval:
 - (a) The term of this administrative permit is valid for the period required to complete construction of the primary dwelling, but shall not exceed two years unless renewed. The administrative permit shall be effective on the effective date of CDP #80-01 and shall expire two years henceforth.
 - (b) The temporary residence shall be converted to a permitted accessory structure (i.e., personal workshop) prior to the final building inspection or occupancy of the permanent dwelling, whichever comes first. The required conversion shall include completely removing the bathing facilities from the bathroom (toilet and sink can remain but the shower or bathtub shall be removed) and removing the kitchen and any cooking facilities including kitchen plumbing, countertop and cabinets.
2. 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.
3. Prior to issuance of the building permit, the applicant shall submit an exterior lighting plan and design details or manufacturer's specifications for all the exterior lighting fixtures. Exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded in compliance with Sec. 20.504.035 of the MCC.
4. The wetlands (ESHA) as indicated on the site plan shall be protected with a 50-foot buffer. No development, disturbance, or tree removal shall occur within the 50-foot buffer except for the water supply line from the existing well to the garage structure. Prior to start of construction, the applicant shall install temporary protective fencing located along the edge of the 50-foot buffer. Special attention and care shall be taken during construction of the residence to assure no disturbance occurs due to the close proximity of the house footprint and the 50-foot buffer line. No construction or equipment shall encroach into the 50 foot buffer area. The temporary fence shall extend the entire length of the 50-foot buffer (west and east lot line) and shall remain in place until the final building inspection of the main residence.
5. The garage/workshop shall be connected to an approved septic system prior to the temporary occupancy use.

11421

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 80-01
January 24, 2002
CPA-10

Staff Report Prepared By:

1/15/2002

Date

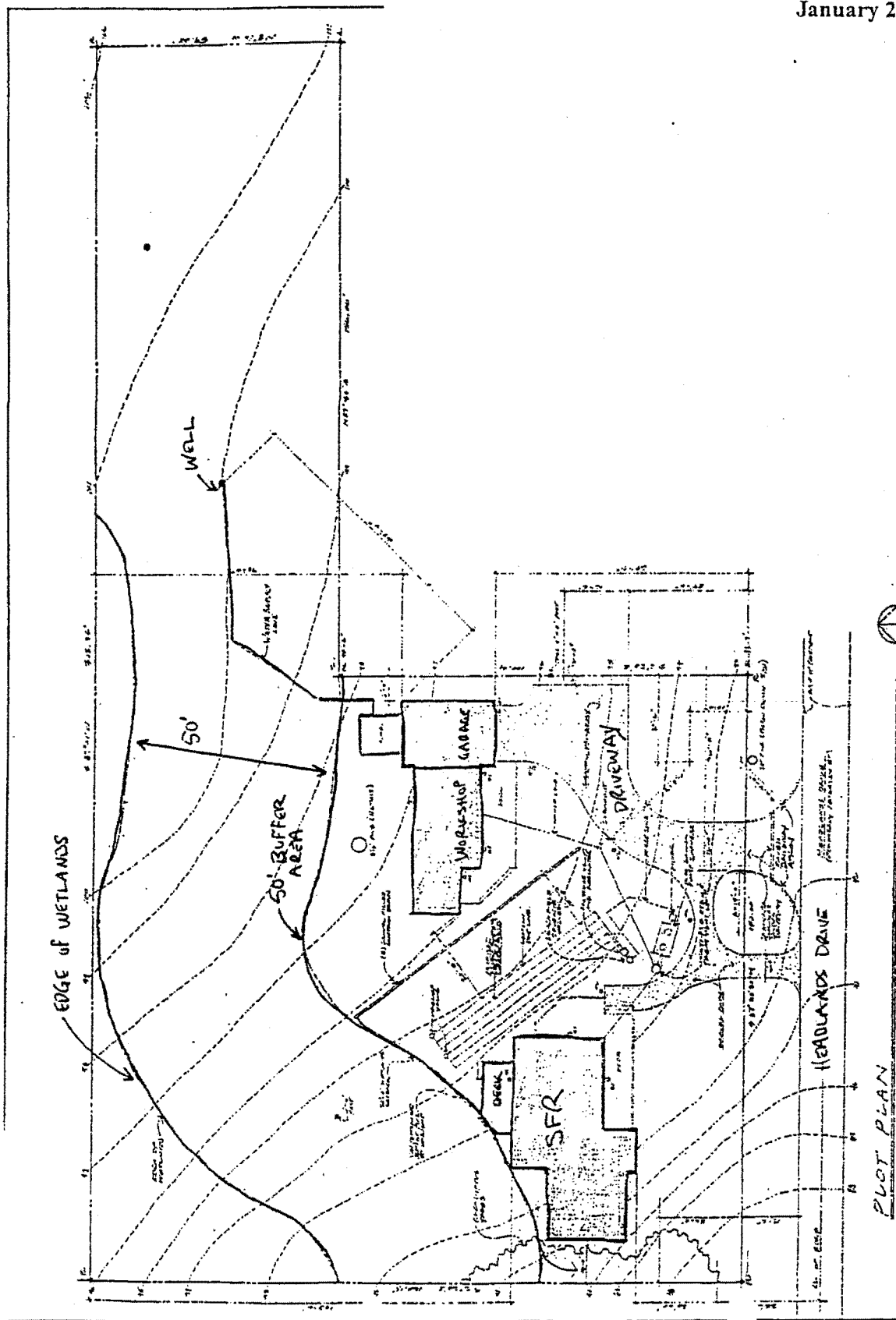
Rick Miller

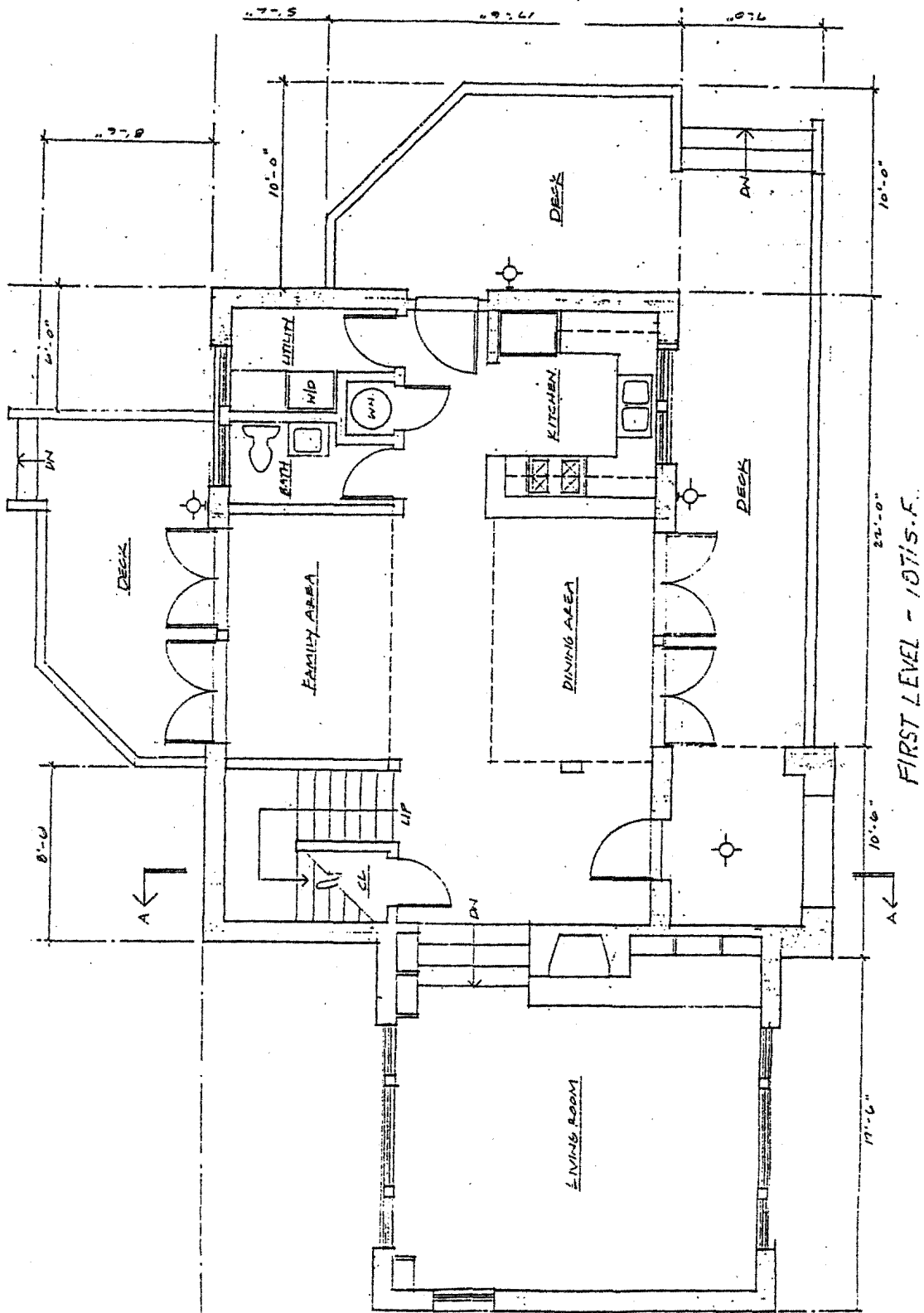
Rick Miller
Coastal Planner

Attachments: Exhibit A- Location Map
Exhibit B- Site Plan
Exhibit C- Residence Floor Plan
Exhibit D- Residence Floor Plan
Exhibit E- Residence Elevation
Exhibit F- Residence Elevation
Exhibit G- Residence Elevation
Exhibit H- Residence Elevation
Exhibit I- Workshop/Garage Floor Plan & Elevation
Exhibit J- Workshop/Garage Elevations

Appeal Period: 10 days
Appeal Fee: \$555

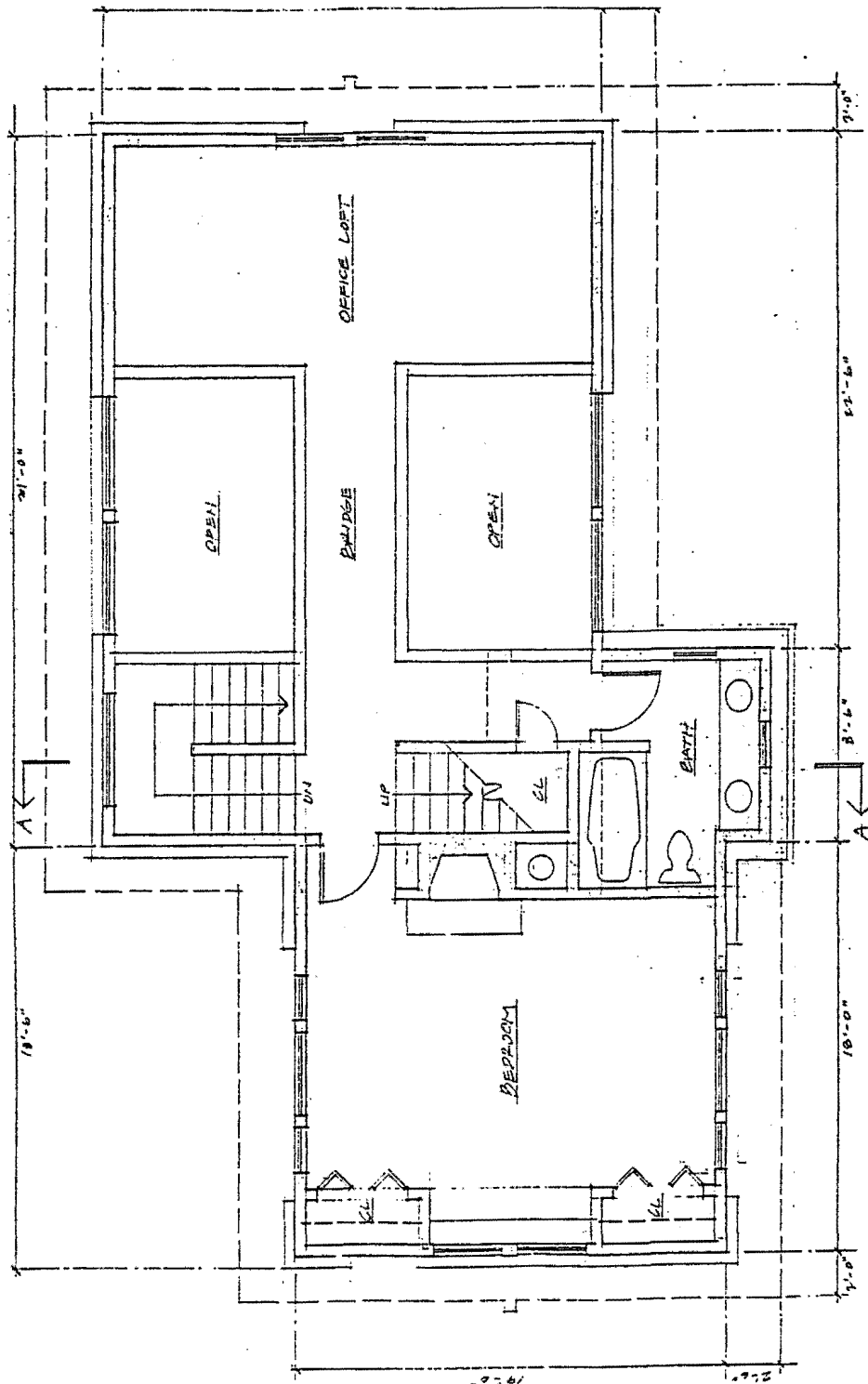
12 of 21



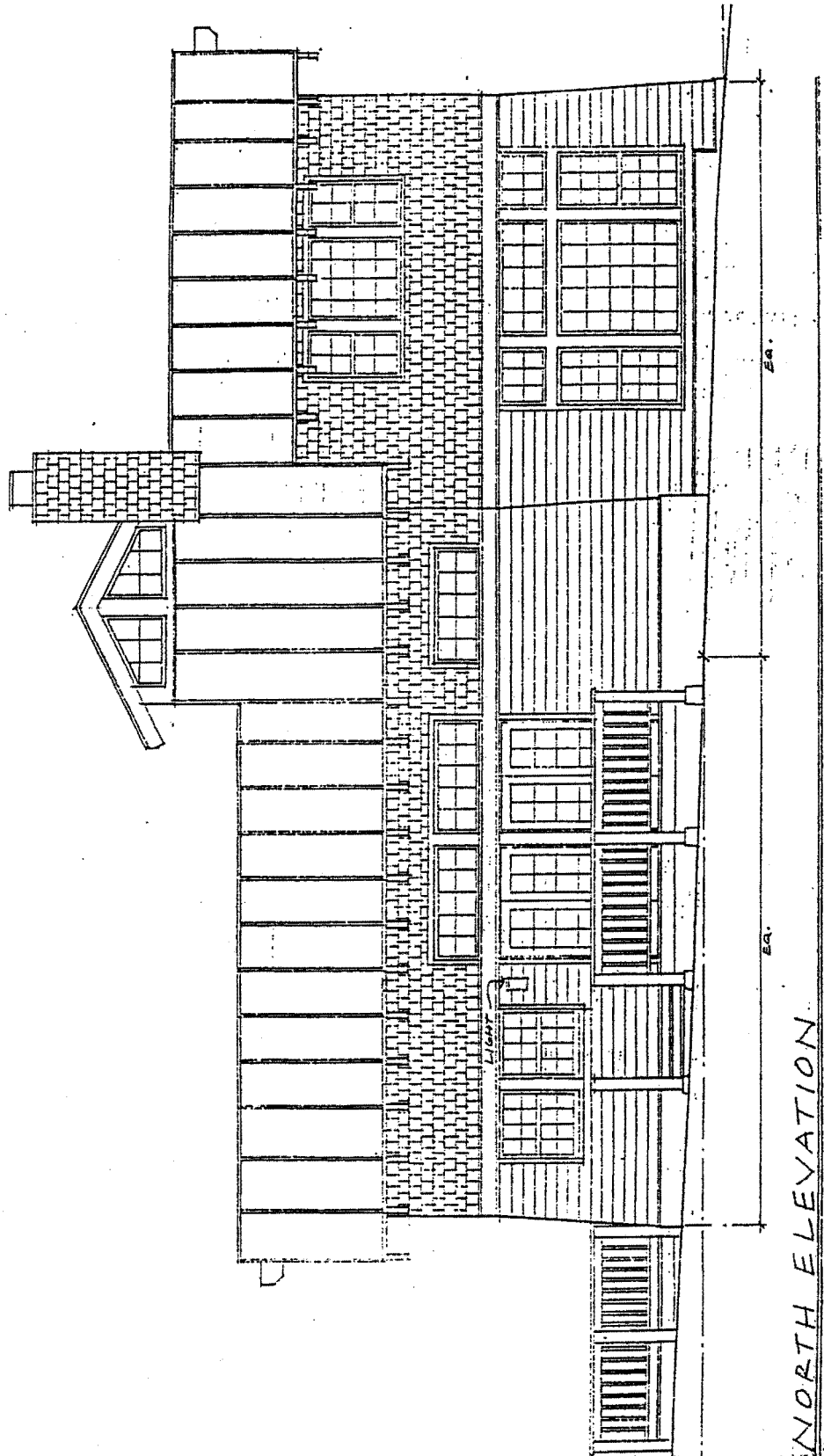


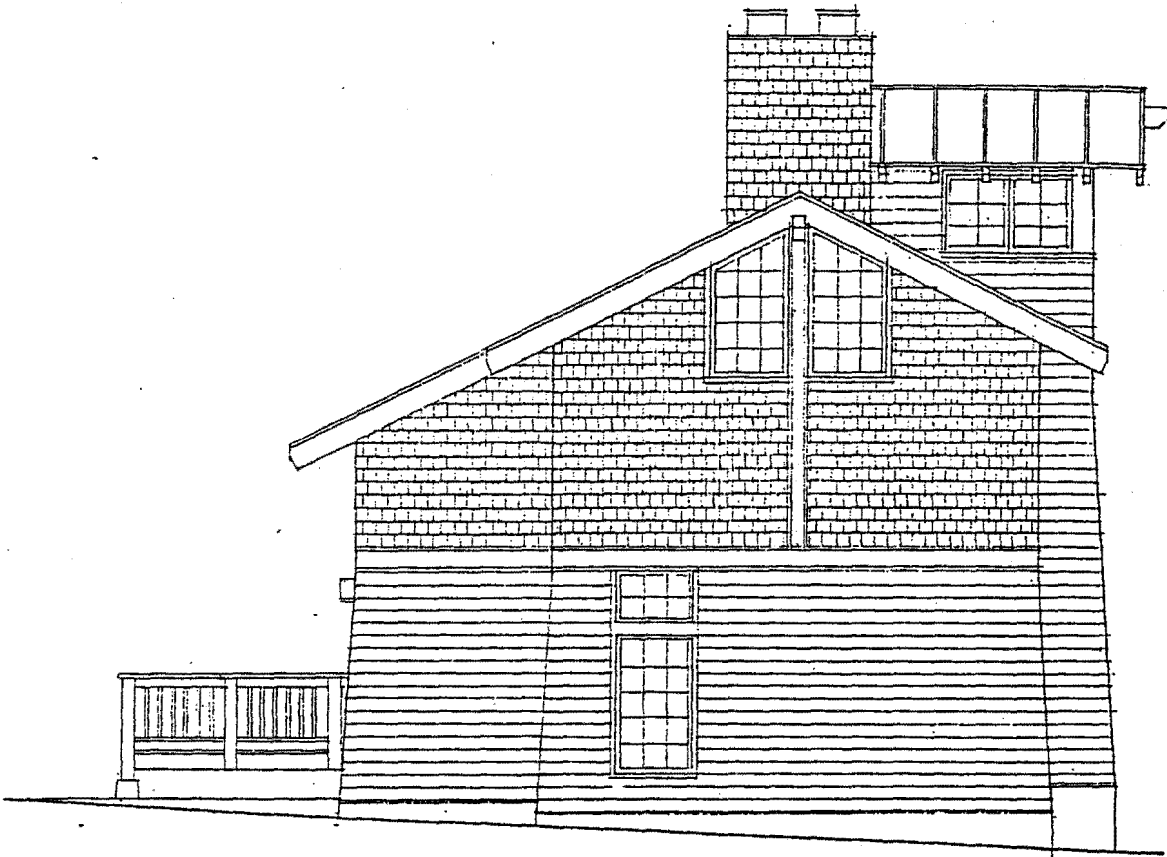
FIRST LEVEL - 1071 S.F.

14 of 21

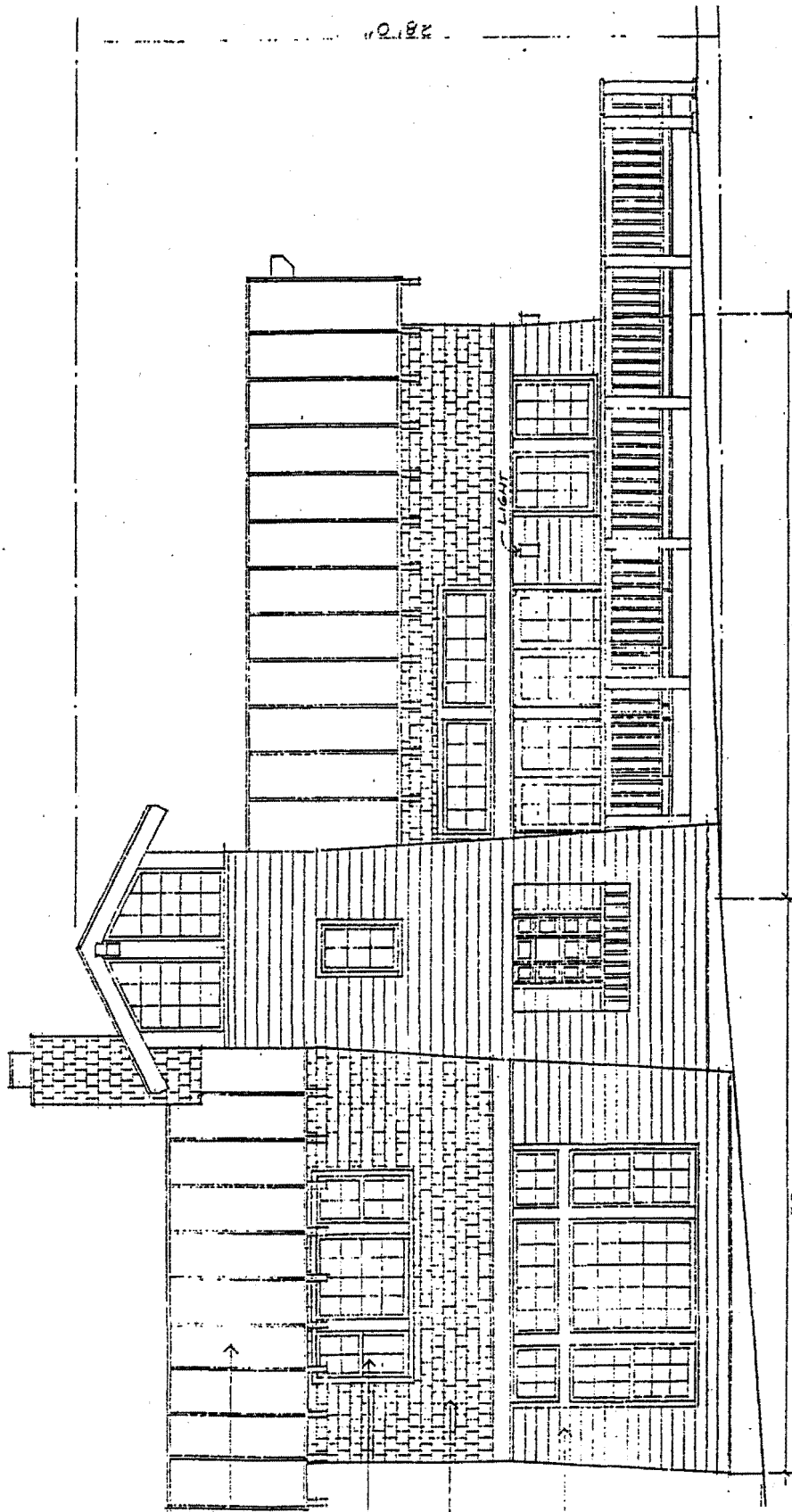


SECOND LEVEL PLAN - 823 G.F.

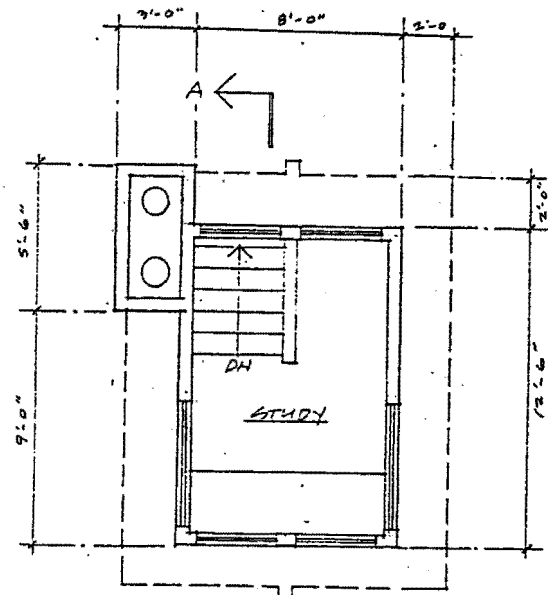




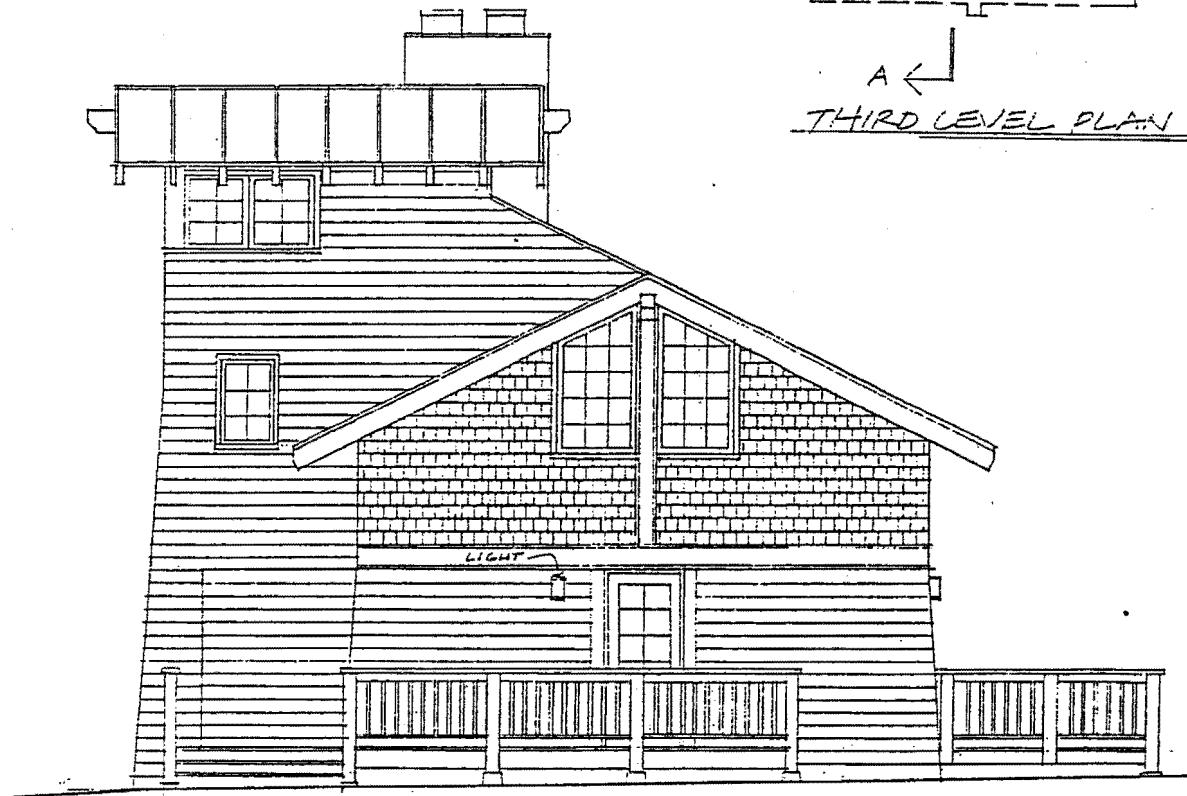
WEST ELEVATION



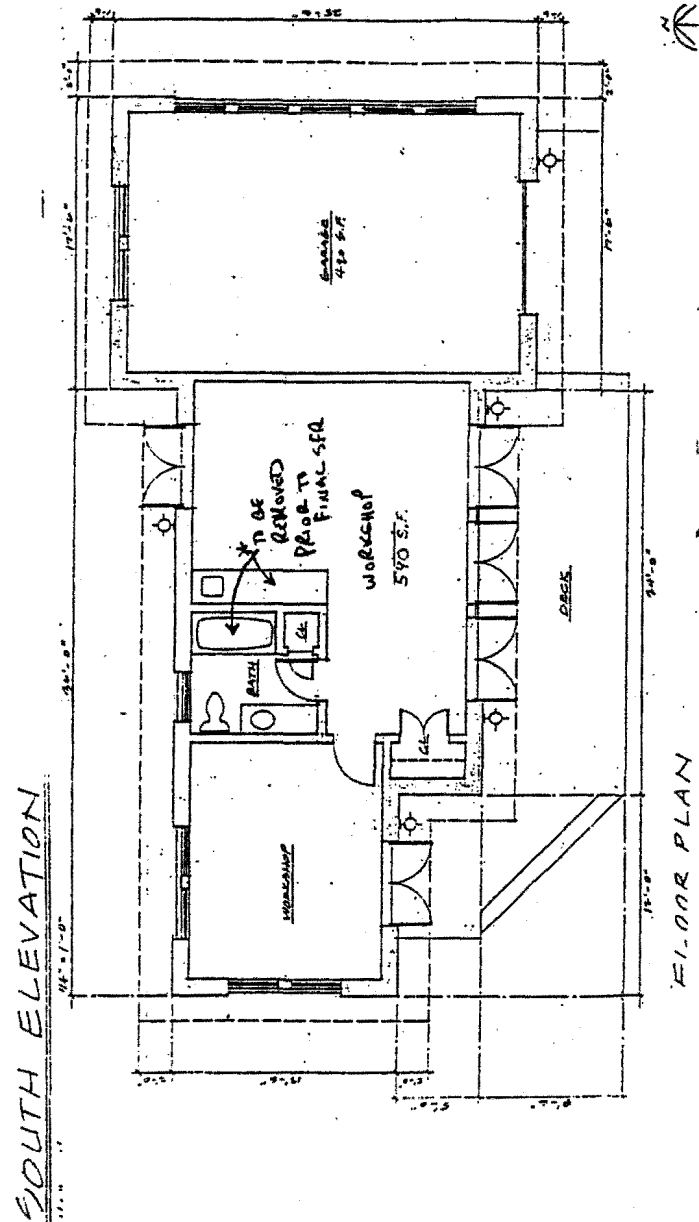
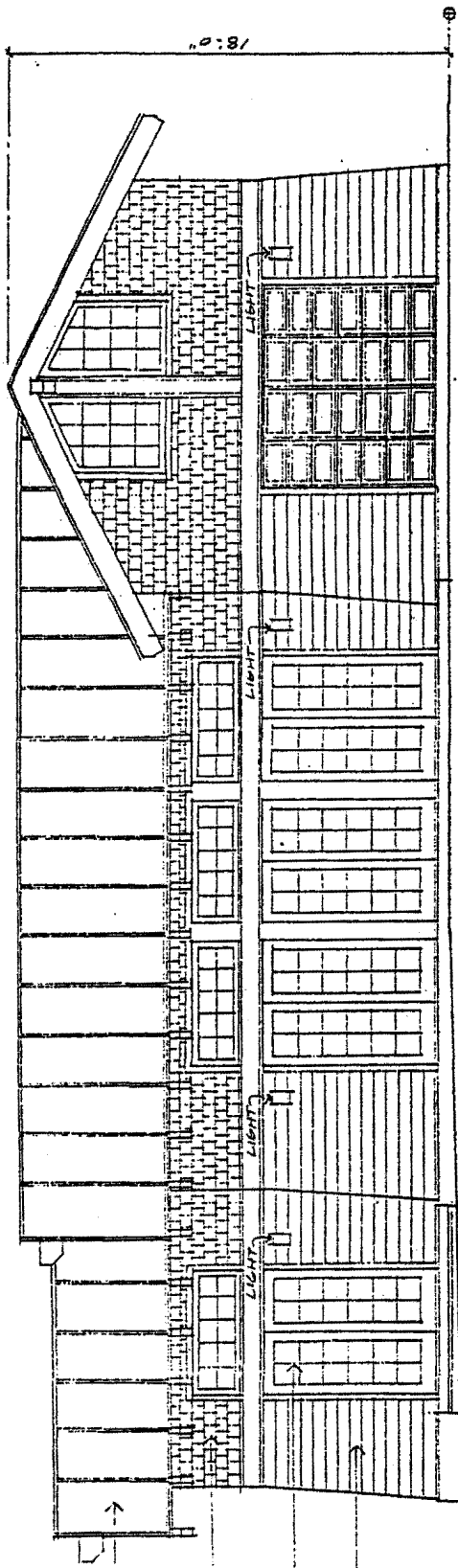
SOUTH ELEVATION

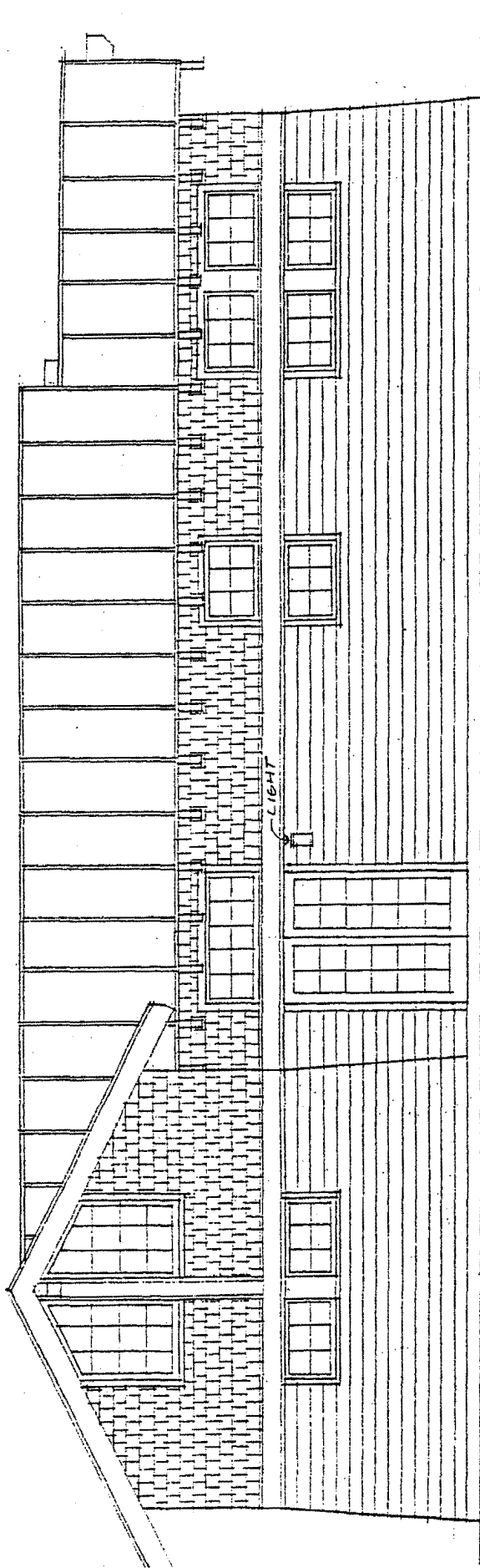


A ←
THIRD LEVEL PLAN - 66 SF.

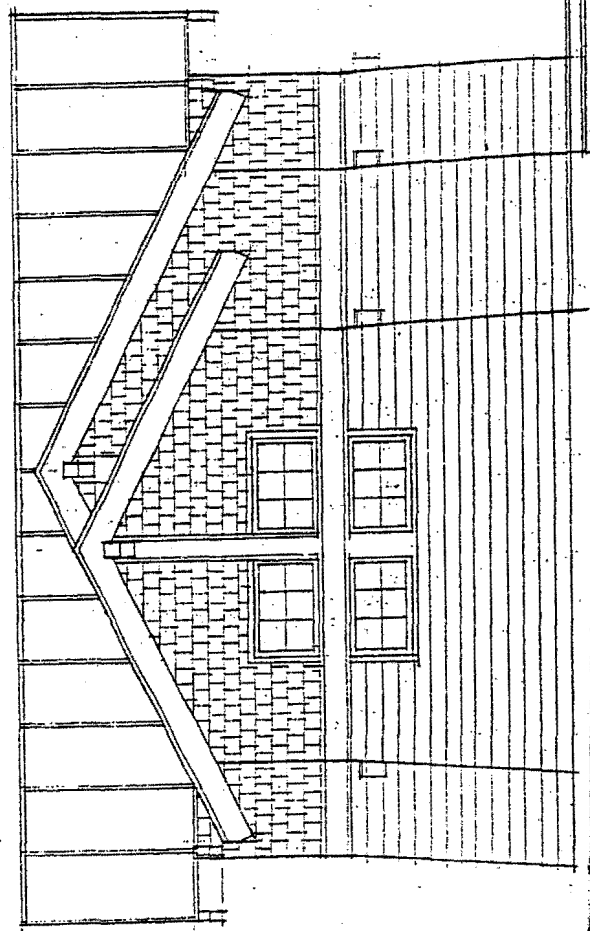


EAST ELEVATION

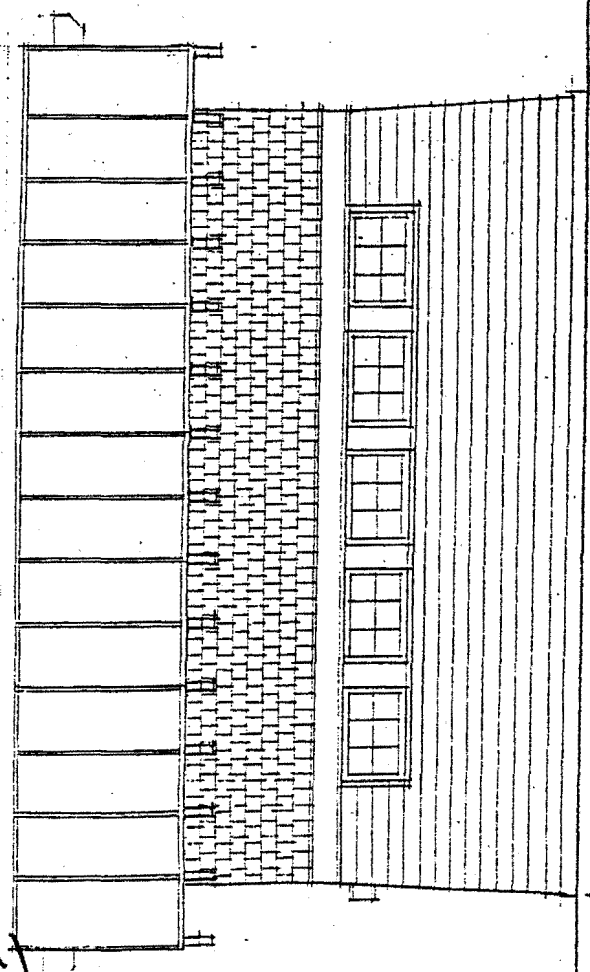




NORTH ELEVATION



WEST ELEVATION



EAST ELEVATION

21 of 21

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP #85-98

HEARING DATE: 1/28/99

OWNER: Sears

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt☐ Negative Declaration☐ EIR

FINDINGS:

☒ Per staff report☐ Modifications and/or additions

RECEIVED

MAR 14 2002

CALIFORNIA
COASTAL COMMISSION

ACTION:

☒ Approved☐ Denied☐ Continued _____

CONDITIONS:

☒ Per staff report☐ Modifications and/or additions

Signed: Coastal Permit Administrator

EXHIBIT NO. 6

APPLICATION NO.

A-1-MEN-02-014

CURTAIN DRAIN

PERMIT - CDP 85-98

(1 of 8)

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMITCDP# 85-98
January 28, 1999
CPA-1

OWNER: Murven & Helen Sears
136 Hahola Street
Makawao, Maui, HI 96768

AGENT: Bob & Ann Spies
P.O. Box 824
Livermore, CA 94550

REQUEST: Installation of a curtain drain 70 feet long and 4 feet deep with a ¾" washed drain rock, filter fabric, 8 mil plastic and 4" perforated drain pipe. Ditch to be 12"-18" wide to be used to test the feasibility of a future septic system.

LOCATION: In the coastal zone, on the north side of Headlands Drive (Peterson Street), approximately 400 feet west of its intersection with Highway One at 45100 Headlands Drive (APN 121-260-20).

APPEALABLE AREA: Yes (within 300 feet of the bluff).

PERMIT TYPE: Standard

TOTAL ACREAGE: .75 acres

ZONING: RR:L-5 [RR]

GENERAL PLAN: RR-5 [RR-1]

EXISTING USES: Vacant (well)

SUPERVISORIAL DISTRICT: 5

GOV'T CODE 65950 DATE: May 11, 1999

ENVIRONMENTAL DETERMINATION: Categorical Exemption, Class 4(f)

OTHER RELATED APPLICATIONS: None

PROJECT DESCRIPTION: The applicant proposes to install a curtain drain up slope of a potential future septic system. The curtain drain is intended to intercept underground water from the north to dry out an area for placement of a future septic system.

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.

2 of 8

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMITCDP# 85-98
January 28, 1999
CPA-2Land Use

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

Public Access

- ☒ The project site is located west of Highway 1, but is not a blufftop site and is not designated as a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the site.

Hazards

- ☒ The project site is less than one acre in size and is exempt from CDF's fire safety regulations. Fire safety issues are addressed as part of the building permit process.
- ☒ The proposed development would be located on slopes which are less than 20% and the development does not present any issues relative to erosion and/or slope failure.
- ☒ There are no known faults, landslides or other geologic hazards in close proximity to the proposed development.

Visual Resources

- ☒ The project site is located within a highly scenic area, however all improvements would be placed underground. Therefore there will not be an impact to visual resources.

Natural Resources

- ☒ A rare plant survey was prepared by Gordon McBride Ph.D. No rare plant species were discovered.
- ☒ A delineation of jurisdictional wetlands and waters of the United States was prepared by Wetlands Research Associates, Inc. The report states: *"Potential jurisdictional wetlands occur along the northern and western property boundaries. Wetland indicators were found in a swale along the northern property boundary and in association with a drainage area that runs along the western property boundary."*

According to the plans, the curtain drain would be installed more than 50 feet from the edge of the wetlands. It is not anticipated that the project would have a substantial impact on the wetlands as the curtain drain simply redirects the groundwater around the potential septic area. Because the drain is placed a minimum of fifty feet from the delineated wetland, the probability of a siphoning effect on the wetland area is minimal. Therefore the size and quality of the identified wetland area should not be affected.

Archaeological/Cultural Resources

- ☒ The project site is not located in an area where archaeological and/or cultural resources are likely to occur. The applicant is advised by Standard Condition #8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearched during project.

3 of 8

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMITCDP# 85-98
January 28, 1999
CPA-3Groundwater Resources

- ☒ The project will affect the direction of the flow of the uppermost four feet of groundwater in the proximity of the drain. However, overall groundwater quality or quantity should not be affected. To reduce the alteration to the existing groundwater flows, staff is recommending special condition #1 to require that in the event the curtain drain is unsuccessful, the site would be restored to its previous condition.

Transportation/Circulation

- ☒ 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 complies with all of the zoning requirements of Division II of Title 20 of the Mendocino County Code.

Other Issues

The placement of the curtain drain in the proposed location leaves little room to site a residence which meets the required setbacks from the wetlands, property lines, the road, septic system, replacement area and the park. Analysis of a complete residential project may reveal site constraints that would further limit development of this site for residential purposes. Approval of this project does not create a vested right to residentially develop this site nor does it prejudice the County in future actions relating to the development of this site.

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

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and

4 of 8

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMITCDP# 85-98
January 28, 1999
CPA-4

6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

STANDARD CONDITIONS:

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

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMITCDP# 85-98
January 28, 1999
CPA-5

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.

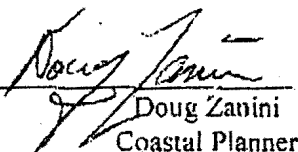
SPECIAL CONDITIONS:

1. At the conclusion of testing the curtain drain, it shall be determined by the soil scientist in consultation with County Department Environmental Health whether a septic system is feasible. If it is determined that the curtain drain is inadequate to facilitate a septic system, the applicant shall remove all improvements and restore the site to its pre-construction condition within 45 days of the conclusion of testing.

Staff Report Prepared By:

12-28-98

Date


Doug Zanini
Coastal PlannerAttachments: Exhibit A: Location Map
Exhibit B: Site PlanAppeal Period: 10 days
Appeal Fee: \$555

6 of 8

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 85-98
January 28, 1999
CPA-6

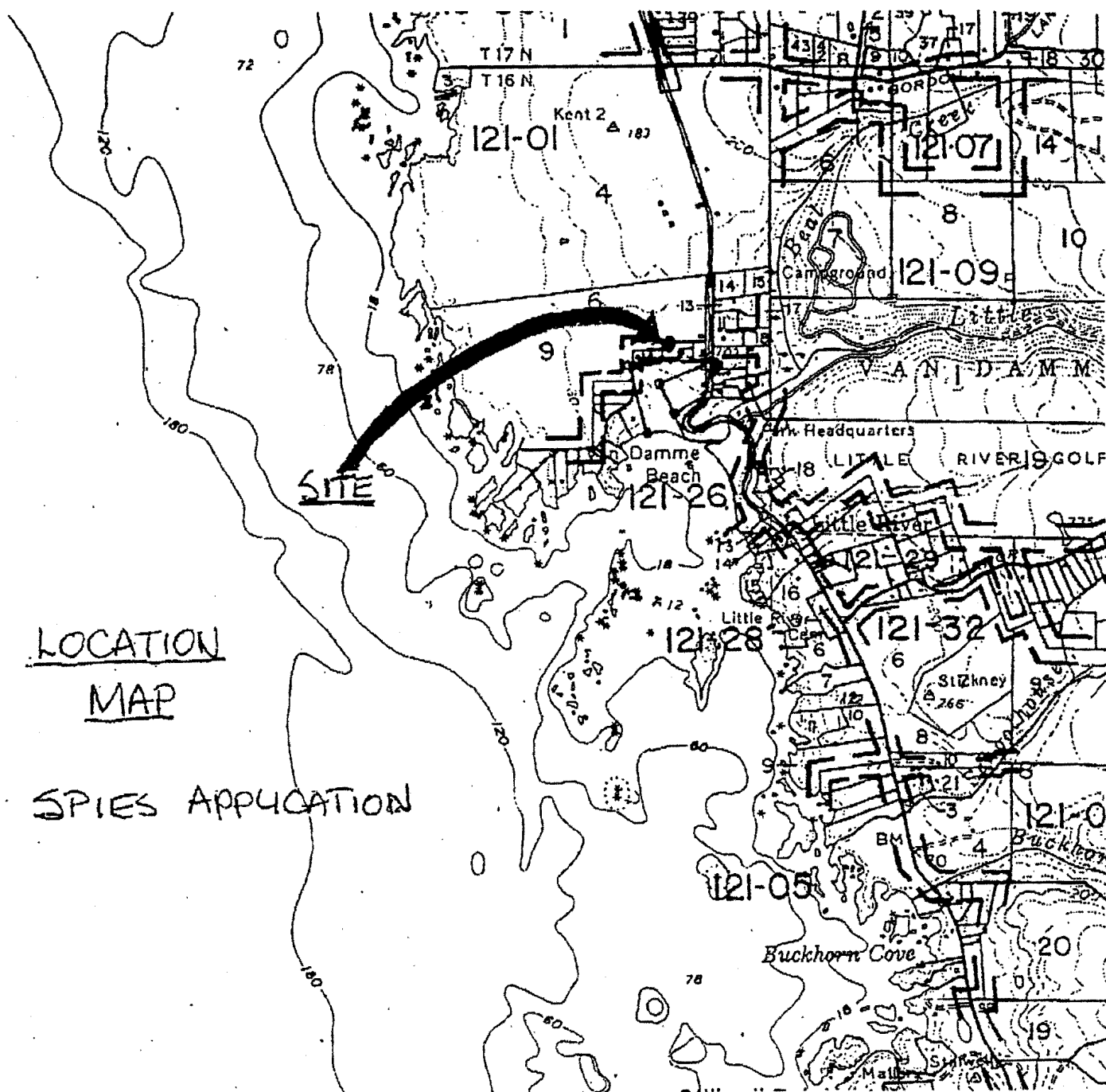


EXHIBIT A

LOCATION MAP

798



CALIFORNIA COASTAL COMMISSION

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

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

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. Planning + Building

2. Brief description of development being appealed: 1,980 sq. ft house + 1,010 sq. ft second building
called workshop/garage in which applicants will live temporarily.
Design of house and second building very similar.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 45100 Peterson St. Little River
APN 121-260-20

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-02-014

DATE FILED: 2/22/02

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 7

APPLICATION NO.
A-1-MEN-02-014
SPIES
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: January 24, 2002

7. Local government's file number (if any): CDP 80-01
and related CDP 85-98 (PAC 3-98) contain drain in 50' wetland setback

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:

Robert B and Ann E. Spies
P.O. Box 824
Livermore, CA 94550

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. Bud Kamb
P.O. Box 616
Little River, CA 95456
- (2) Sierra 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.

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: 30 231 (wetlands + streams); 3 0240

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)

The 100' buffer min. requirement was dropped to 50' without scientific reasons given either for COP 85-98 (curtain drain) or 80-01 (buildings). Applicant claims 85-98 created buffer for 80-01.

I disagree. Curtain drain is within 50' setback and appears to would be draining ESHA/wetland into stream bed on north side. Only one building should be permitted, not two. No Dept. Fish + Game statement.
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 will be submitted.

SECTION V. Certification

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

Hillary de N. Hame
(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. 8
APPLICATION NO.
A-1-MEN-02-014
APPENDIX 8 - CALIF.
COASTAL COMM.
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. Cawardin, 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. 3. 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 (Monanthocloe 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 (Heleocharis 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-nen (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) (Can. Calif.)
Current (Ribes spp.)
Twinberry (Lonicera involucrata) (No. Calif.)
Lady fern (Athyrium filix-femina)
Salmonberry (No. Calif.)
Bayberry (No. Calif.)

E. Vernal Pools

Downingia (Downingia sp.)
Meadow-foxtail (Alopecurus howellii)
Hair Grass (Deschampsia danthonioides)
Quillwort (Isaetes 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 (Psilocarpos sp.)
Brodiaea (Brodiaea sp.)
Tillaea (Crassula aquatica)

8 of 8

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MAY 15 2002

CALIFORNIA
COASTAL COMMISSION

LCP WETLAND DETERMINATION

45100 Peterson Street, Little River, CA
Appeal No. A-1-MEN-02-014 (Spies)

May 10, 2002

EXHIBIT NO. 9
APPLICATION NO. A-1-MEN-02-014
REVISED WETLAND
DELINEATION &
BUFFER EVALUATION
(1 of 8)

Introduction

On April 29, 2002, the California Coastal Commission requested that a supplemental wetland survey be completed "by a qualified professional...that uses the LCP definition of wetlands and examines the current conditions of the property to ensure that all areas requiring protection as wetlands under the LCP are identified." The purpose of this report is to provide this additional information to the CCC in processing a *de novo* permit application for the above referenced property.

Section 20.308.130 (E) from the Coastal Zoning Ordinance provides the applicable wetland definition:

(E). 'Wetlands' means lands covered periodically or permanently with shallow water, including salt marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens....

A previous wetland determination (September 1998) was made using the Corps of Engineers criteria (1987 Manual). The Commission found in its evaluation of the County approval that the certified LCP references the Appendix 8 of the 1981 Coastal Commission Interpretive Guidelines that provide the technical criteria for identifying and mapping wetlands.

"The guidelines indicate that a site can be a wetland if the hydrological criteria are present alone, or if hydrology and either hydrophytic vegetation or hydric soils are present. Thus, the LCP definition of wetlands includes more lands as wetlands than the definition in the federal Clean Water Act used by the Army Corps of Engineers."

Page 19 of the Staff Report on Substantial Issue

The following report provides additional information necessary to determine the extent of LCP wetlands on the subject parcel.

Methods

On May 3, 2002, Dr. Michael Josselyn, a certified Professional Wetland Scientist, conducted a supplemental field survey that consisted of examining all areas within the site that had a preponderance of wetland plant species. The determination of preponderance was based on the presence of greater than 50% cover of plant species ranked as either obligate (OBL) or facultative wet (FACW) by the National Wetland Indicator Plant List maintained by the US Fish and Wildlife Service.

Within those areas determined to have a preponderance of wetland species, observation pits were dug to determine the presence of either hydrologic indicators or saturated soils as indicated by a free water surface. Pits were dug at 9 am and allowed to fill with water for 3 hours before making measurements. Water was also observed within wetland areas flowing on the surface as it had rained for several days preceding the observations. As a result, the water levels observed are assumed to represent normal conditions typical of the spring growing season.

To determine the LCP wetland boundary, pits were also dug on the upland side of the presumed boundary to examine water levels and any hydrologic indicators. The previous wetland boundary had been marked with white flags that were still present. Orange flagging was used to delineate the LCP boundary.

Results

The LCP determination as compared to the 1998 determination is shown in Figure 1. In general, the wetland boundary as determined in 1998 is similar to that determined in this study. This is due in part to the local topography in which the wetland area is located in a swale that drains properties that are to the north of the subject property. However, in some cases, the boundary was different based on the greater extent of vegetative cover and/or hydrologic indicators.

The stations where data were taken is also indicated in Figure 1 and is summarized in Table 1.

SITE	WATER LEVEL (INCHES FROM SURFACE)	DOMINANT PLANT SPECIES	COVER	WETLAND INDICATOR STATUS
A	6.5	<i>Rubus vitifolius</i>	50	FACW
		<i>Zantedeschia aethiopica</i>	15	OBL
		<i>Eucalyptus globus</i>	25	NI
		<i>Polystichum lonchitis</i>	10	FAC
B	12	<i>Rubus vitifolius</i>	35	FACW
		<i>Equisetum arvense</i>	15	FAC
		<i>Eucalyptus globus</i>	40	NI
		<i>Lithocarpus densiflorus</i>	10	NI
C	>12	<i>Carex obnupta</i>	45	OBL
		<i>Holcus lanatus</i>	45	FAC
		<i>Rubus vitifolius</i>	30	FACW
D	7	<i>Carex obnupta</i>	90	OBL
		<i>Rubus vitifolius</i>	10	FACW
E	8	<i>Carex obnupta</i>	70	OBL
		<i>Holcus lanatus</i>	10	FAC
		<i>Rubus vitifolius</i>	20	FACW
F	6	<i>Carex obnupta</i>	80	OBL
		<i>Holcus lanatus</i>	20	FAC

SITE	WATER LEVEL (INCHES FROM SURFACE)	DOMINANT PLANT SPECIES	COVER	WETLAND INDICATOR STATUS
G	>12	<i>Holcus lanatus</i>	45	FAC
		<i>Anthozanthm odoratum</i>	55	FACU
H	>16	<i>Carex obnupta</i>	70	OBL
		<i>Holcus lanatus</i>	15	FAC
		<i>Rubus vitifolius</i>	15	FACW
I	>16	<i>Carex obnupta</i>	70	OBL
		<i>Holcus lanatus</i>	15	FAC
		<i>Rubus vitifolius</i>	15	FACW
J	>16	<i>Carex obnupta</i>	20	OBL
		<i>Holcus lanatus</i>	30	FAC
		<i>Pinus</i> sp.	50	NI

Site A was located within a narrow swale that passes to the adjoining property. Water was observed nearby flowing on the surface. A soil pit had an obvious scent of hydrogen sulfide indicating strong anaerobic conditions. A second pit was dug at Site B and the water level was found to be at 12 inches from the surface. The soil did not have a hydrogen sulfide odor. The plant community was dominated by more upland species. It was determined that the LCP wetland boundary was between these two sample pits.

Site C was located slightly above the former wetland boundary and at the end of the LCP determined boundary. It exhibited a transitional plant community between that observed in uplands throughout the property and the wetter areas at lower topographic position. The LCP wetland boundary was drawn at Site C.

Site D, E, and F were all within LCP wetlands. Sites E and F exhibited high groundwater levels and dominance by wetland plant species. The LCP wetland boundary was drawn to encompass each of these sites and therefore expanded the wetland area from that determined in 1998.

Site G did not have a wetland dominated plant community and the soil pit was dry (water level greater than 12 inches). This site was determined to be outside the wetland boundary.

Sites H, I, and J were dug in an area dominated by *Carex obnupta*, an obligate wetland species. However, this area (see Figure 1—Area of Special Discussion) was one of the highest topographic features on the site. The presence of this species appears to be an anomaly or artifact of past conditions. Soil pits in this location were dug to 16 inches and no free water was observed, even after a full day of observation. The soil was sandy at this location and there is no confining bedrock. The roots of the *Carex* were as deep as the soil pit and probably extended deeper.

A 1985 map prepared for the site shows an existing ditch that traverses this *Carex* patch (Figure 2). This ditch can still be seen today. It is probable that this ditch effectively drained the area such that the site no longer exhibits a high ground water typically observed in wetlands. However, *Carex*, being a perennial species and capable of extending its roots deeper into the soil, has persisted. However, as the area continues to be well drained, facultative species such as velvet grass (FAC) as well as seedlings of upland species, tanbark oak, are sprouting in this area. Therefore, the patch of *Carex* appears to be an artifact of earlier conditions that do not exist any more.

Conclusion

The LCP wetlands were determined by the preponderance of wetland vegetation (OBL and FACW) in combination with saturated conditions within the root zone (the upper 12 inches of the soil profile). A revised LCP wetland map shows that the wetland area is slightly larger than indicated on the 1998 wetland determination.

FIGURE 1.

Top Secret

of the Lands of the Crown and the King's Grace as part in a
Section 6, Township 20 North, Range 17 West of the 1st Meridian
and the 1st Range.

Berkeley County Berkeley, N.C.	California February 1955
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Side Lines of Ash

Page 51 Cross property in partnership with

A-1-MEN-02-014

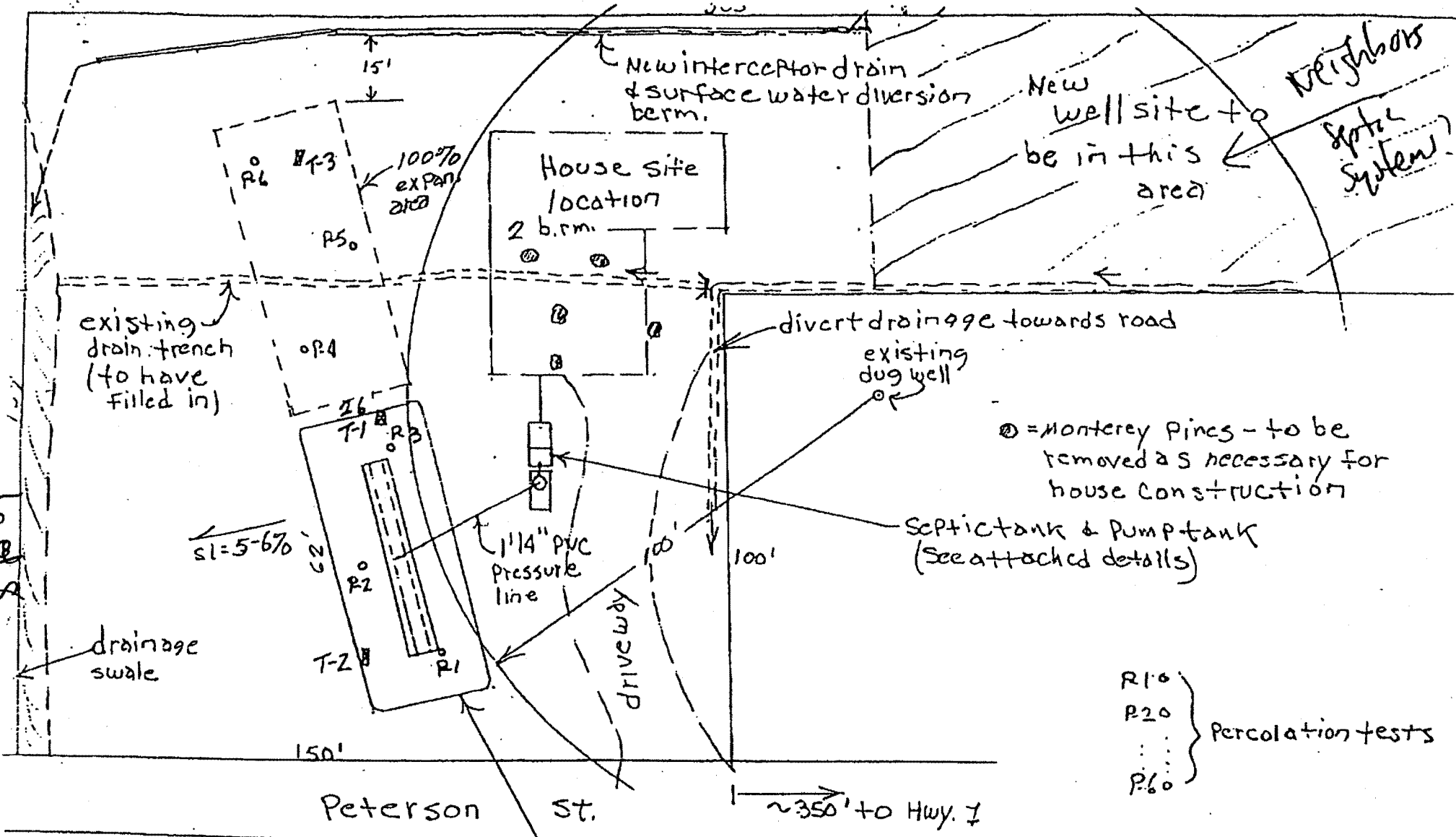
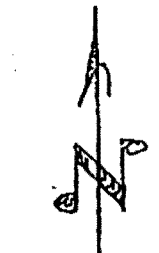


FIGURE 2. 1985 map showing "Wisconsin" Mound, see attached details
existing ditch through area of special discussion



SCALE 1" = 30'

T-1
T-2
T-3 } Soil Profiles

R10
R20
...
R60 } Percolation tests

WILLIAM G. RUMMEL, R.S.
Sanitation Consultant
P.O. Box 50
Mendocino, Ca. 95460
Date: June 20, 1995

SEWAGE DISPOSAL SYSTEM
For Murven R. Sears residence
45100 Peterson St. Little River
AP# 121-260-20, Mendocino Co.
June 20 1995 W.G. Rummel

COASTAL COMMISSION APPEAL: A-1-MEN-02-014
45100 Peterson Street, County of Mendocino

BUFFER ANALYSIS

The Mendocino County LCP contains policies related to the buffer distance from wetlands. LCP wetlands have been identified on the subject property and a proposed buffer of 50 feet was approved by the County. The California Coastal Commission has found substantial issue with this approval and has requested further information on the basis for the buffer determination. The following table summarizes the buffer decision in relation to the specific conditions on the subject property.

POLICY	BASIS FOR DETERMINATION
<i>Section 20.496.020 Coastal Zoning Ordinance</i>	
a. Biological Significance of Adjacent Lands. The degree of significance depends upon the habitat requirements of the species in the habitat area.	<p>The adjoining wetland swale is heavily vegetation and surface water is generally not present. No fish or migratory waterfowl use this wetland area. The primary inhabitants would be insects, passerine bird species, and mammals. The herbaceous nature of the vegetation limits nesting opportunities for birds. During a day-long visit on 4/5/02 no birds were sighted using the swale. The density of the vegetation also provides sufficient cover for those animals that do utilize this area such that visual disturbances associated with the residential use should not present a significant impact.</p> <p>A sensitive plant survey was conducted on the property and no listed or sensitive plants were found within any portion of the property. In fact, the presence of eucalyptus and other non-native plants may diminish the habitat value of the site.</p>
<i>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:</i>	
b(i). Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species	No resident or migratory fish are present. Wildlife may forage in the wetland area; however, as noted nesting and breeding habitat is limited given the herbaceous structure of the wetland area.
b(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance	As the property is within an existing residential development, the type of wildlife that may use this area are likely to be adapted to human presence. Non-native eucalyptus trees and pampas grass are present on the property.
b(iii) An assessment of the impact and activity levels of	The proposed development is limited to two buildings for a single family residence. Activities that would occur

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the proposed development	within this residence are similar to the existing residential homes in this neighborhood. This use would not result in any significant change in land use practices nor would there be any significant change in use patterns for the neighborhood.
c. Susceptability of Parcel to Erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development	The proposed residence is located downslope from the wetland. No erosion is anticipated on this relatively flat parcel as a result of the proposed structures.
d. Use of Natural Topographic Features to Locate Development	The property is relatively flat; however, the swale is located along the boundary of the parcel and to the north of the proposed buildings. It is separated from the proposed residential structures by a small topographic high point on the property. The buildings and driveway are positioned on the southern portion of the property.
e. Use of existing cultural features to locate buffer zones. Use of roads, dikes, etc to separate development	The property is a lot located along an existing road. There are no roads or cultural features within the 0.75 acre parcel to serve as additional buffers.
f. Lot configuration an location of existing development. Where an existing subdivision is present, similar buffer distances as existing may be used. However, mitigation measures shall be provided to provide additional protection.	The property is within an existing residential development. Other homes are located within 40 feet of drainages that pass through this residential area. The applicant is willing to establish plantings within the buffer that would screen the house and the garage areas from the wetland.
g. Type and scale of development. Such evaluations will be made on a case-by-case basis depending upon the resources involved and the degree to which adjacent lands have been developed and the type of development in the area.	The development is limited to a single family residence and a garage with attached workshop. The intensity of use is limited and within the character of the existing residential community. The wetland and buffer distance effectively limit development to 1/3 of the property closest to the primary access street. The remaining 2/3rds of the property will remain undeveloped. Many of the other lots in this residential area are completely developed with homes with expansive driveways and garages, bed and breakfast establishments, and lawns.



State of California - The Resources Agency

GRAY DAVIS, Governor

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500

June 14, 2002



Mr. Randall Stemler
California Coastal Commission
North Coast District Office
Post Office Box 4908
Eureka, CA 95502-4908
FAX (707) 445-7877

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JUN 20 2002

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 10
APPLICATION NO.
A-1-MEN-02-014
DEPT. OF FISH &
GAME CONCURRENCE
(1 of 2)

Dear Mr. Stemler:

Wetland Buffer at 45100 Peterson Street
Little River, Mendocino County

A site visit was conducted on May 3, 2002, to determine the adequacy of a less than 100-foot wetland buffer for a proposed house at 45100 Peterson Street, an area known as Little River. Little River is approximately two miles south of the town of Mendocino, in Mendocino County. Representatives attending were Liam Davis (Department of Fish and Game), Randall Stemler (California Coastal Commission), Doug Zanini (Mendocino County Department of Planning and Building Services), Michael Josselyn (Wetlands Research Associates, Inc.), and Robert Spies (property owner).

In regard to wetland buffers, pursuant to Section 20.496.020 of the Coastal Zoning Ordinance, "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 Department has reviewed the supplemental wetland survey titled "LCP Wetland Determination, 45100 Peterson Street, Little River, CA, Appeal No. A-1-MEN-02-014 (Spies)" (May 10, 2002) submitted by Wetlands Research Associates, Inc. The revised Local Coastal Permit (LCP) shows that the wetland area is slightly larger than the previous 1998 wetland determination. This revised wetland determination was demonstrated by Dr. Josselyn during the May 3, 2002 site visit.

1370

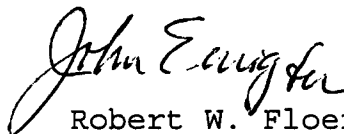
Mr. Randall Stemler
June 14, 2002
Page 2

The LCP buffer analysis also states that no fish, migratory waterfowl, or passerine nesting birds were observed using the wetland swale during an all day April 4, 2002 site visit. The rare and sensitive plant LCP survey was negative. During the approximate one hour May 3, 2002 site visit, Department personnel did not observe active bird nest sites or rare plants present.

As compensatory mitigation for the 50-foot buffer allowance, the project applicant, Robert Spies, has agreed as contingent to approval of his permit, to cut and remove all *Eucalyptus* spp., with a diameter at breast height of three inches or less, from the wetland swale area. The Department determines the 50-foot buffer as an acceptable wetland buffer for this particular project. The project applicant has also agreed, as contingent to approval of his permit, to refurbish the upland coastal scrub habitat on the property by removing all pampas grass.

If you have any comments regarding this letter, you may contact Liam Davis, Environmental Scientist, at (707) 944-5529; or Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

Sincerely,



Robert W. Floerke
Regional Manager
Central Coast Region

cc: See next page

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