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49 <sup>th</sup> Day:	November 24, 2005
Staff:	Tiffany S. Tauber
Staff Report:	September 30, 2005
Hearing Date:	October 14, 2005

**STAFF REPORT: APPEAL****SUBSTANTIAL ISSUE**

APPEAL NO.:	<b>A-1-MEN-05-047</b>
APPLICANTS:	<b>Rudolph &amp; Ann Sacks</b>
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	Approximately 1.5 miles south of Caspar, approximately ½ mile west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, Mendocino County (APN 118-190-38).
PROJECT DESCRIPTION:	(1) Demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank.
APPELLANTS:	Commissioners Meg Caldwell and Sara Wan
SUBSTANTIVE FILE DOCUMENTS:	1) Mendocino County CDP No. 103-04 and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed and that the Commission hold a de novo hearing, because the appellant has raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP).

The development, as approved by the County, consists of (1) demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank.

The project site is a bluff top parcel located approximately 1.5 miles south of Caspar, approximately ½ mile west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, Mendocino County (APN 118-190-38).

The Appellants raise a contention that the project as approved is inconsistent with the Mendocino County LCP provisions regarding development adjacent to environmentally sensitive habitat areas (wetlands), which (1) do not allow for an ESHA buffer to be reduced to less than 50 feet, and (2) do not allow residential use within a wetland buffer.

Staff recommends that the Commission find that the contention is valid grounds for an appeal, and that the contention raises a substantial issue of conformity of the approved development with the certified LCP.

Staff recommends that the Commission find that the contention raises a substantial issue because the County's approval of the residential development would locate it less than 50 feet away from environmentally sensitive habitat areas (ESHA), inconsistent with LCP policies which do not allow for an ESHA buffer to be reduced to less than 50 feet, and do not allow residential use within a wetland buffer.

Staff further recommends that the Commission continue the de novo portion of the hearing because the Commission does not have sufficient information to determine what development can be approved consistent with the LCP. Continuing the hearing would enable the applicant to provide additional information regarding alternatives for providing a greater setback and whether denial of the project would result in an unconstitutional taking of private property for public use. Such information is needed to enable the staff to complete its analysis of the development and develop a de novo recommendation.

**The motion to adopt the staff recommendation of Substantial Issue is found on Page No. 4.**

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STAFF NOTES:

1. Appeal Process

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to both 30603(a)(1) and (a)(2) of the Coastal Act because the approved development involves development located (1) within 100 feet of a wetland, (2) between the first public road paralleling the sea, and (3) within three hundred feet of the top of a seaward facing coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

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

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

2. Filing of Appeal

One appeal was filed by Commissioners Meg Caldwell and Sara Wan (Exhibit No. 7). The appeal was filed with the Commission in a timely manner on September 26, 2005 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 8) on September 12, 2005.

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I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-05-047 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-05-047 presents a substantial issue with respect to the grounds on which the appeal has been filed

under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. APPELLANTS' CONTENTIONS**

The Commission received one appeal of the County of Mendocino's decision to conditionally approve the development from Commissioners Meg Caldwell and Sara Wan. The project as approved by the County involves (1) demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank. The development would be located as close as ten feet from a wetland. (See Exhibit Nos. 3-6.)

The approved project is located on a bluff top parcel approximately 1.5 miles south of Caspar, approximately ½ mile west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, in Mendocino County (APN 118-190-38).

The appeal raises a contention alleging inconsistency of the approved project with the County's certified LCP. The appellants' contention is summarized below, and the full text of the contention is included as Exhibit No. 7.

#### **1. Development Near Environmentally Sensitive Habitat Areas (ESHA)**

The Appellants contend that the approval of the residential development is inconsistent with the environmentally sensitive habitat area (ESHA) policies of the certified LCP, which (1) do not allow for an ESHA buffer to be reduced to less than 50 feet, and (2) do not allow residential use within a wetland buffer area.

### **B. LOCAL GOVERNMENT ACTION**

On August 25, 2005, the Mendocino County Coastal Permit Administrator conditionally approved the coastal development permit for the project (CDP 103-04) (Exhibit No. 8). The permit approved (1) demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an

existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank. The development would be sited approximately 10 feet from a wetland.

The approved permit imposed several special conditions pertaining to the appeal's contention, including Special Condition No. 5 requiring four mitigation measures outlined in the County staff report be implemented to protect the wetland ESHA on site. These measures include (1) correcting on-site drainage to allow water to flow through an existing culvert into the wetland, (2) placing temporary fencing along the edge of the wetland before and during construction activities, (3) minimizing mowing of wetland vegetation, and (4) installing permanent split rail fencing along the edge of the wetland habitat.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by the Commission staff on September 12, 2005 (Exhibit No. 8). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

The County's approval of the project was appealed to the Coastal Commission in a timely manner on September 26, 2005, within 10-working days after receipt by the Commission of the Notice of Final Local Action.

### **C. PROJECT AND SITE DESCRIPTION**

The approved development is located on a bluff top lot approximately 1.5 miles south of Caspar, approximately ½ mile west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, Mendocino County (APN 118-190-38). (See Exhibit Nos. 1-2.)

The project as approved by the County includes: (1) demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank. The development would be sited approximately 10 feet from a wetland. (See Exhibit Nos. 3-6.)

A wetland survey was prepared by William Maslach dated April 2005 and determined that the subject property contains a 0.5-acre wetland on the northern portion of the parcel. The wetland is fed by subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction. The existing wetland vegetation is predominately native plants associated with saturated prairie soils and a slow moving seep. The biological report recommended installing temporary fencing during

construction, redirecting water to follow the natural wetland swale, and enhancing wetland and other native vegetation to protect the ESHA. (See Exhibit No. 9.)

In addition to the wetland habitat associated with the swale bisecting the property, two California Native Plant Society (CNPS) List 4 species were identified on the parcel including corn-lily (*Veratrum fimbriatum*) and coastal lotus (*Lotus formosissium*). Although CNPS List 4 plants are not considered ESHA by the County's LCP, the biologist reviewing the site recommended that the populations be protected by various mitigation measures that were included by the County as special conditions.

**D. SUBSTANTIAL ISSUE ANALYSIS.**

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

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

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

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

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

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

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

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

The contention raised in this appeal presents potentially valid grounds for appeal in that it alleges the project's inconsistency with policies of the certified LCP. The contention alleges that the approval of the project by the County is inconsistent with LCP provisions regarding development adjacent to environmentally sensitive habitat areas (ESHA). In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation concerning the consistency of the project as approved with the provisions of the certified LCP regarding development adjacent to ESHA, the appeal raises a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP.

**Allegations Raising Substantial Issue:**

**a. Development adjacent to Environmentally Sensitive Habitat Areas**

The Appellants contend that the approval of the residential development is inconsistent with the environmentally sensitive habitat area (ESHA) policies of the certified LCP, which (1) do not allow for an ESHA buffer to be reduced to less than 50 feet, and (2) do not allow residential use within a wetland buffer area.

**LCP Policies**

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

*Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Coastal Zoning Code Section 20.496.010 "Environmentally Sensitive Habitat and other Resource Areas—Purpose" states (emphasis added):

*...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.*



LUP 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. (See Glossary)*

*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.*

LUP Policy 3.1-7 states: (emphasis added)

A buffer area 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 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 and the adjacent upland transitional habitat function of the buffer 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. 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.*

Coastal Zoning Code Section 20.496-020 "Environmentally Sensitive Habitat and other Resource Areas—Development Criteria" states (emphasis added):

*(A) Buffer Areas. A buffer area 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 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. 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.*

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...*

**(2) Configuration.** *The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*

**(3) Land Division.** *New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

**(4) Permitted Development.** *Development permitted within the buffer area shall comply at a minimum with the following standards:*

*(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*

*(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*

*(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of*

*drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*

*(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*

*(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

*(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*

*(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*

*(h) Aboveground structures shall allow peak surface water flows from a one hundred*

*(100) year flood to pass with no significant impediment.*

*(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*

*(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*

*(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)*

### Discussion

The project as approved by the County raises a substantial issue of conformance with provisions of the certified Mendocino County LCP, including provisions regulating

development near Environmentally Sensitive Habitat Areas (ESHA), and the establishment of appropriate buffer areas.

A. Development Near Environmentally Sensitive Habitat Areas (ESHA)

A wetland analysis was prepared for the project site and submitted to the County as part of the application. The analysis identifies an approximately 0.5-acre wetland that is fed from subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction. The wetland vegetation is predominately native plants associated with saturated prairie soils and a slow-moving seep. The wetland report supported a buffer of 10 feet from the closest point of the driveway and approximately 15 feet from the western edge of the new residence. The report further recommends mitigation measures to protect the wetland habitat including installing temporary fencing during construction, redirection of water to follow the natural wetland swale, and enhancement of wetland and other native vegetation. The buffer width is 40 feet less than the minimum 50-foot buffer area allowed only in prescribed circumstances as described in the County's LCP ESHA policies. The County used the 10-foot buffer in its approval of the project, even though the approved development did not meet the prescribed circumstances.

As noted above, Coastal Zoning Code Section 20.496.010 states that environmentally sensitive habitat areas (ESHA) include wetlands. Therefore, as ESHA, wetlands are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) 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 policies state that in that event, the buffer shall not be less than 50 feet in width. Coastal Zoning Code Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed.

The County's approval raises a substantial issue of conformance with the LCP because the policies do not allow for (1) an ESHA buffer to be reduced to less than 50 feet, and (2) residential use within a wetland buffer.

As noted above, a buffer width of 100 feet is required unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development.

Coastal Zoning Code Section 20.496.020 requires that a determination to reduce a buffer from 100 feet to a minimum of 50 feet must be based on seven particular criteria. The County found that due to the location of existing development, the size/shape of the parcel, the location of the coastal bluff edge, septic system, water well, and vehicular access to the site from Mar Vista Drive, the normally required 100-foot ESHA buffer is neither necessary or feasible. The applicant's biologist provided a buffer analysis per Section 20.496.020(A)-4(k) of the MCCZC and recommended mitigation measures that would reduce the potential impacts of the project. The County's staff report also indicates that DFG reviewed the project and the proposed mitigation measures and concurred with a reduced ESHA buffer.

In approving the reduced wetland buffer width, the County relied on Section 20.496.020 (A)(1)(f) which states that 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 and additional mitigation measures shall be provided for a buffer width less than 100 feet. The County claims that because: (1) the project is in-fill development situated in an existing largely built out subdivision; (2) the setback is similar to what other structures observe to ESHAs in the vicinity; and (3) consultation and mitigation recommended by DFG and the applicant's biologist has been required, the 10-foot-wide buffer is consistent with the LCP. However, subsection (f) of Coastal Zoning Code Section 20.496.020(A)(1) that the County relied on to approve the development is just one of the seven criteria in the LCP that must be applied in determining whether a potential reduction of the ESHA buffer is warranted. As discussed previously, even if the criteria for reducing the buffer from 100 feet to 50 feet are met, Coastal Zoning Code Section 20.496.020 (A)(1) and LUP Policy 3.1-7 state that a buffer shall not be less than 50 feet in width.

In its approval, the County discusses why, with mitigation measures, a buffer width less than 100 feet may be appropriate, but fails to analyze how less than the minimum required 50-foot buffer is allowable. The County did not acknowledge that at 10 feet from the wetland, the residential development would be considered to be located within the wetland buffer area.

LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 (A)(1) regarding the reduction of an ESHA (wetland) buffer width does allow for development to be permitted within a buffer area if the development is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. LUP Policy 3.1-4 sets forth the types of development allowable within a wetland, and thus those types of development potentially allowable in a wetland buffer. The allowable uses include those uses prescribed by Coastal Act Section 30233 such as port and energy facilities, boating facilities, incidental public service purposes, etc. Residential development is clearly not an allowable use within a wetland as enumerated by LUP Policy 3.1-4 and thus, is not an allowable use in a wetland buffer. Therefore,



even if the County had approved the proposed single-family residence consistent with the standards prescribing the minimum width of wetland buffers, the approved development would raise a substantial issue of conformance with LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 regarding allowable development within ESHA buffer areas.

Further, even if residential use were considered allowable development in a wetland buffer, LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020(A)(4)(a)-(k) require permitted development within an ESHA buffer to comply with several standards. These standards include that structures be allowed within a buffer area only if there is no other feasible site available on the parcel, and that it be sited and designed to prevent impacts that would significantly degrade the ESHA. Subsection (c) of CZC Section 20.496.020(A)(4) requires that the determination of the "best site" consider drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels and have the least impact on the maintenance of the biological and physical integrity of the buffer strip. The County indicates that the applicant's biologist prepared an analysis based on the criteria outlined in CZC Section 20.496.020(A)(4)(a)-(k), but there is no evidence in the County's findings that alternative sites or project designs were analyzed to demonstrate that the project as approved was sited and designed in a manner that would best protect the ESHA. While the information submitted to the County as part of the application includes some discussion of site constraints (e.g., septic system location, bluff setback, existing access drive, etc.) and existing ESHA buffers at and adjacent to the site, the information does not evaluate alternative development options that may provide for a greater wetland buffer than that approved by the County and thus, potentially provide greater protection of the wetland habitat. For example, the findings do not discuss alternatives such as reducing the size of the proposed residence, eliminating the accessory structures, or reconfiguring the design of the residence and its layout on the site in a manner that would provide a greater setback from the wetland.

Therefore, for all of the above reasons, the project as approved by the County raises a substantial issue of conformance with LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020.

Thus, because ESHA buffers are not allowed to be reduced to less than 50 feet, and because residential use is not a permitted development in wetland buffers pursuant to the LCP ESHA and ESHA buffer policies, the degree of legal and factual support for the local government's decision is low. Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.1-7, and Coastal Zoning Code Section 20.496.020.

### **Conclusion**

The foregoing contention raised by the appellants has been evaluated against the claim that it raises a substantial issue in regard to conformance of the local approval with the

certified LCP. The Commission finds that the project as approved raises a substantial issue of conformance with the certified LCP with respect to all the contentions raised.

**E. INFORMATION NEEDED FOR *DE NOVO* REVIEW OF APPLICATION**

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

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

**1. Alternatives Analysis**

As discussed above, the LCP requires a minimum 50-foot wetland buffer from new development. For permitted development within an ESHA buffer, the LCP requires that structures be sited and designed to prevent impacts that would degrade adjacent habitat areas. Although residential uses are not a permitted development type within ESHA buffers, an analysis of alternative siting locations and residence designs is necessary to fully evaluate the project's consistency with the LCP and its potential impact on the wetland habitat.

The alternatives analysis should quantify the potential setback from the wetland associated with each alternative and include a biological assessment of the potential direct and indirect impacts to the wetland for each alternative. The analysis should evaluate alternatives such as, but not limited to, (1) reducing the size of the residence and accessory structures, (2) eliminating the accessory structures from the project (e.g. workshop, garage), (3) reconfiguring the design of the residence and site layout to provide a greater setback from the wetland, (4) utilizing portions of the existing residence, and (5) repairing and utilizing the existing residence in its current location/configuration. The analysis should discuss whether these and other alternatives are feasible and whether they are more or less protective of the wetland habitat than the preferred alternative. The

discussion of these alternatives should also take into account all other site constraints, including those noted above and identified in Coastal Zoning Code Section 20.496.020(A)(4), as well as the seven standards of subsections (a) through (g) of Coastal Zoning Code Section 20.496.020(A)(1).

**2. Information Needed to Evaluate Project Consistency with Coastal Act Section 30010**

If the information derived from the requested alternatives analysis indicates that the project cannot be found consistent with the ESHA and ESHA buffer policies of the certified Mendocino Local Coastal Program, the Commission will need to evaluate whether an alternative proposal could be approved, and if not, whether denial of the project would result in an unconstitutional taking of private property for public use. In order to make that evaluation, the Commission will need to request additional information from the applicant concerning alternative proposals and the applicant's reasonable investment-backed expectations to make such determinations prior to holding a *de novo* hearing on the project. The landowner of the property that is the subject of A-1-MEN-05-047 must provide the following information for the property that is subject to A-1-MEN-05-047 as well as all property in common contiguous ownership, i.e. any immediately adjacent property also owned by the applicant:

1. When the property was acquired, and from whom;
2. The purchase price paid for the property;
3. The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;
4. Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s);
5. At the time the property was purchased, or at any subsequent time, whether the project been subject to any development restriction(s) (e.g., restrictive covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;
6. Whether the size or use of the property changed in any way since it was purchased. If so, identify the nature of the change, the circumstances and the relative date(s);
7. Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;

8. A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);
9. The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property;
10. The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:
  - property taxes
  - property assessments
  - debt service, including mortgage and interest costs; and
  - operation and management costs; and
11. Whether apart from any rent received from leasing all or a portion of the property (see question #7 above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the LCP provisions regulating development near Environmentally Sensitive Habitat Areas (ESHA), the establishment of appropriate buffer areas, and the project's consistency with Coastal Act Section 30010. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

#### EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Existing Site Plan
4. Proposed Site Plan
5. Proposed Floor Plan & Elevations
6. Wetland Survey Map
7. Appeal
8. Notice of Final Local Action
9. Excerpts of Wetland Survey



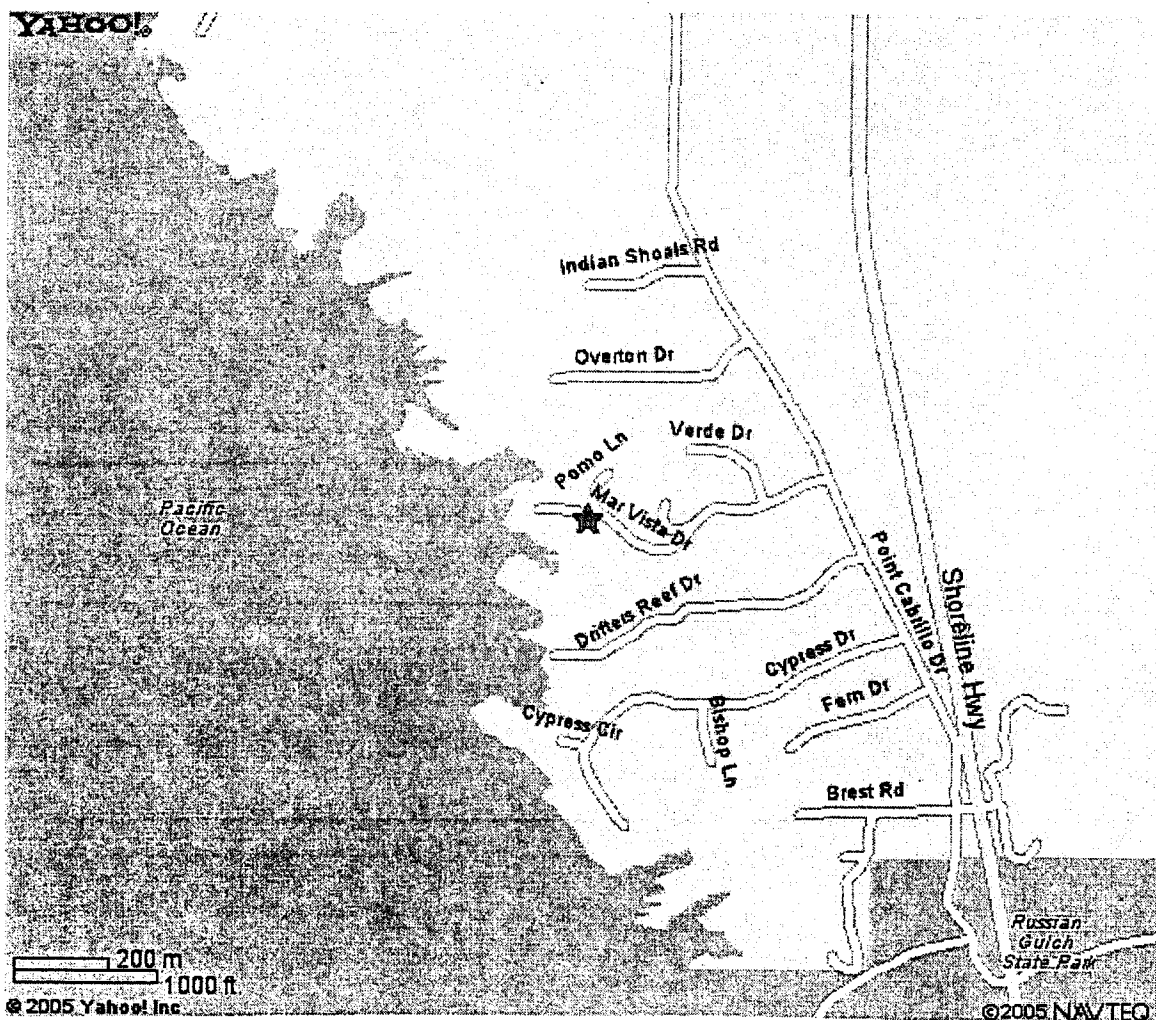
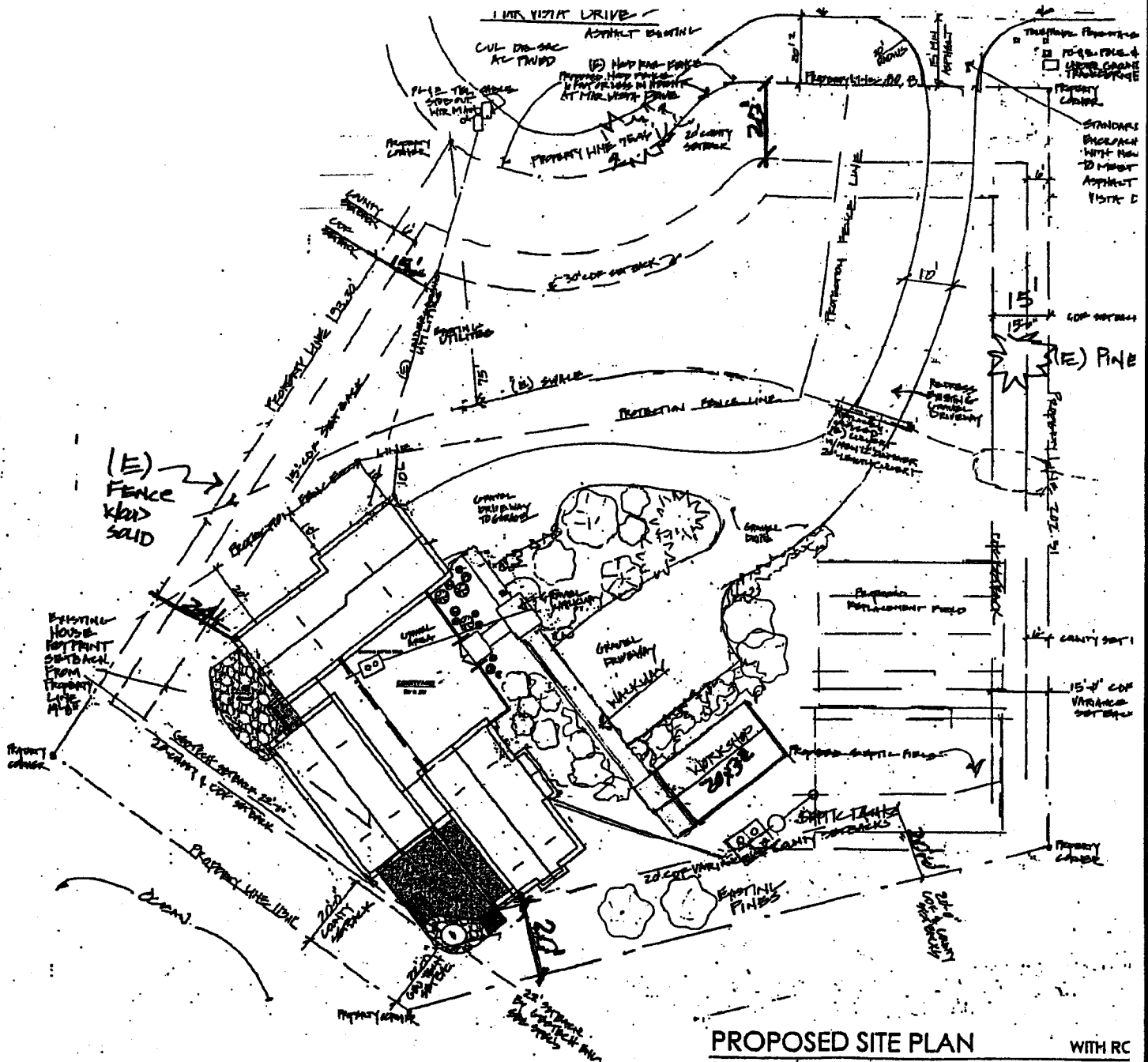


EXHIBIT NO. 2
APPEAL NO. (SACKS)
A-1-MEN-05-047
PROJECT
VICINITY MAP





## PROPOSED SITE PLAN

**WITH RC**



**NO SCALE**

EXHIBIT NO. 4
APPEAL NO. (SACKS)
A-1-MEN-05-047
PROPOSED
SITE PLAN

## Exhibit C

## Proposed Site Plan



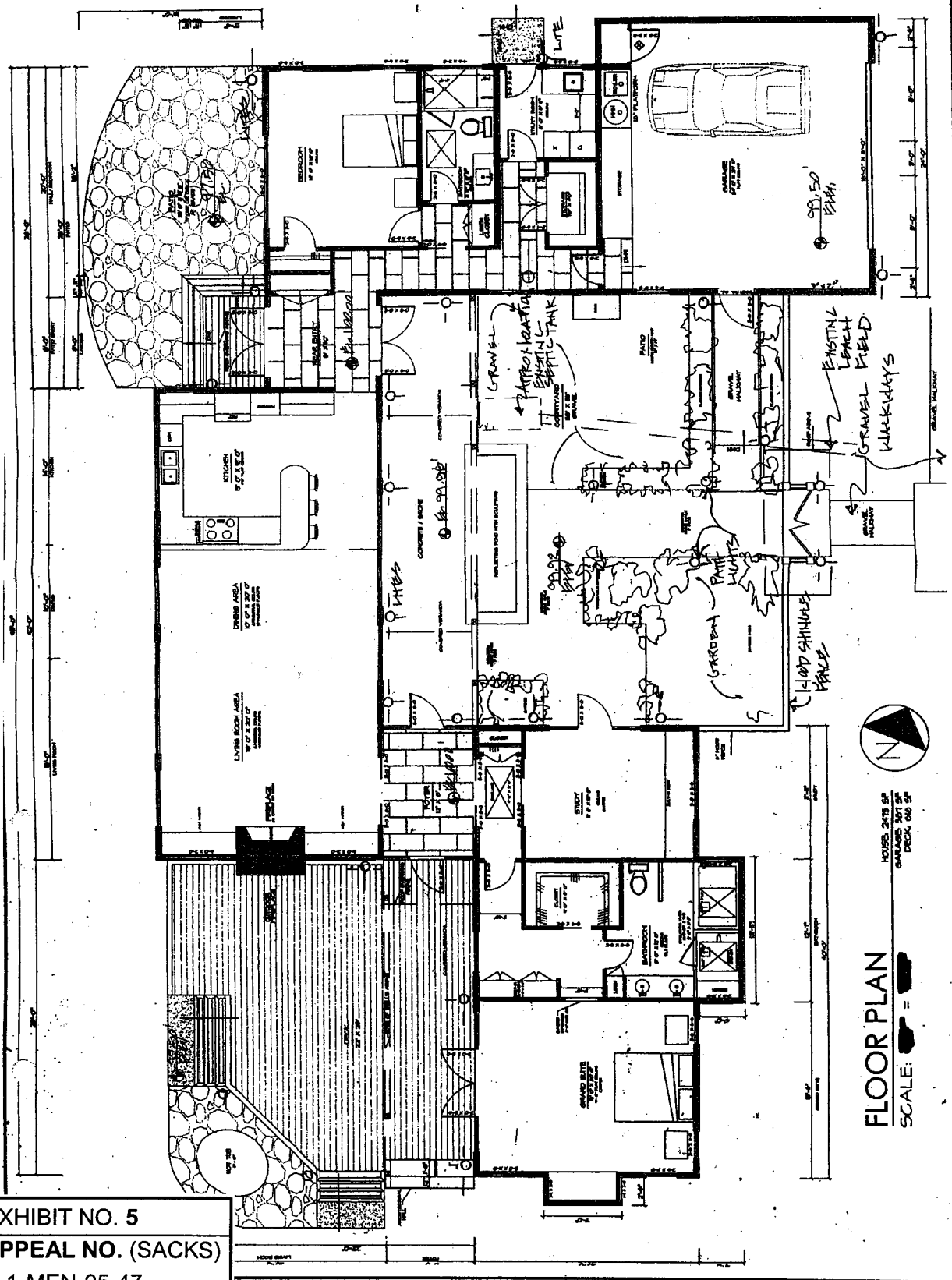
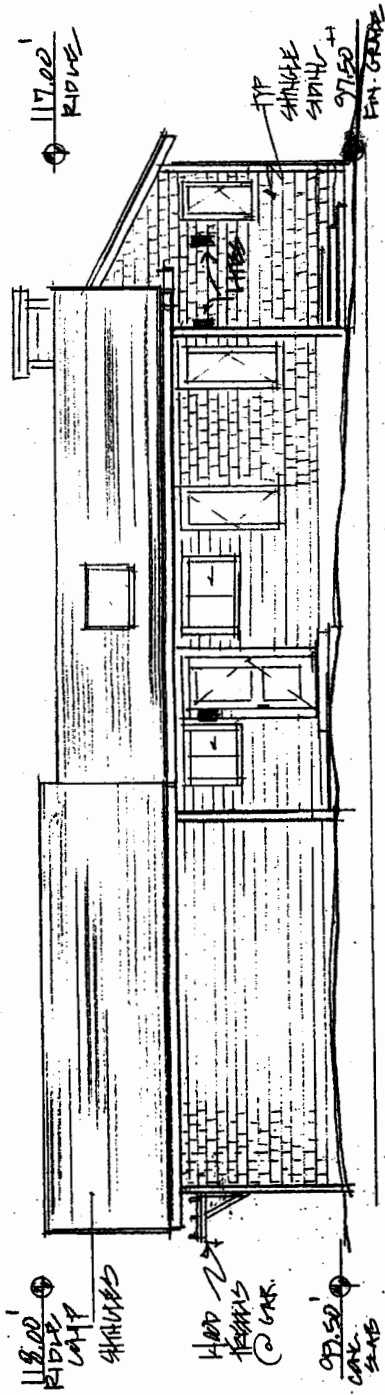
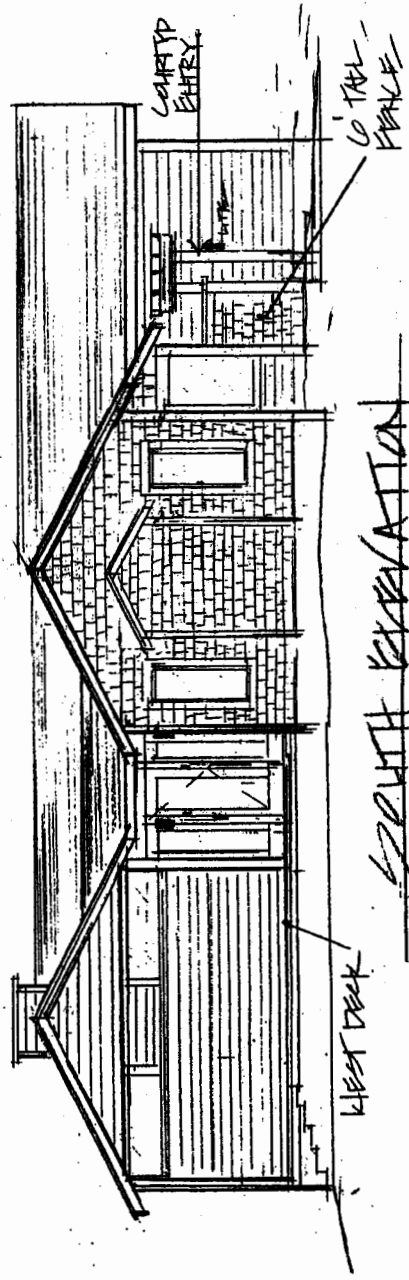


EXHIBIT NO. 5  
APPEAL NO. (SACKS)  
A-1-MEN-05-47  
PROPOSED FLOOR  
PLAN & ELEVATIONS  
(Page 1 of 5)

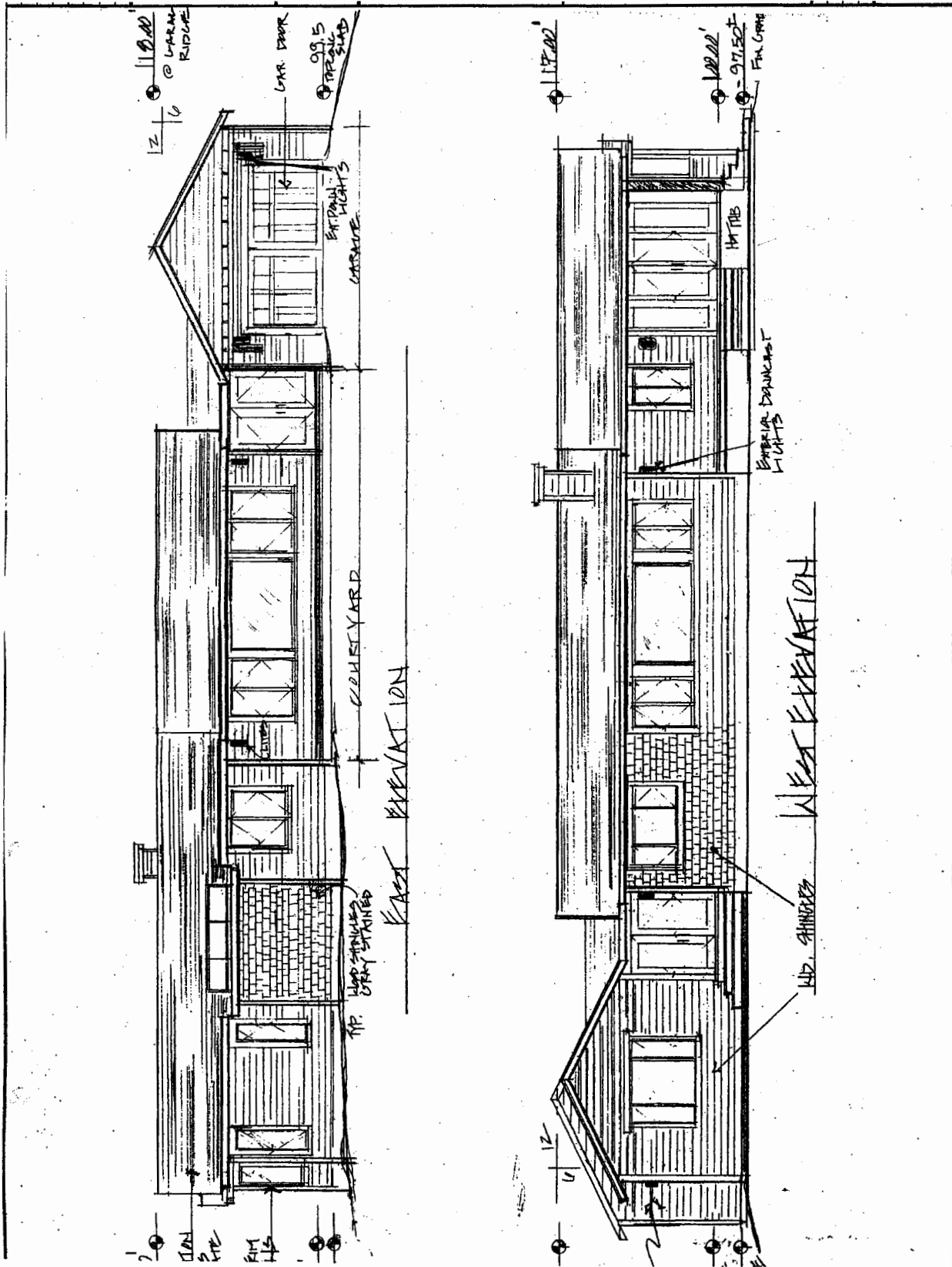
Proposed Residence Floor Plan

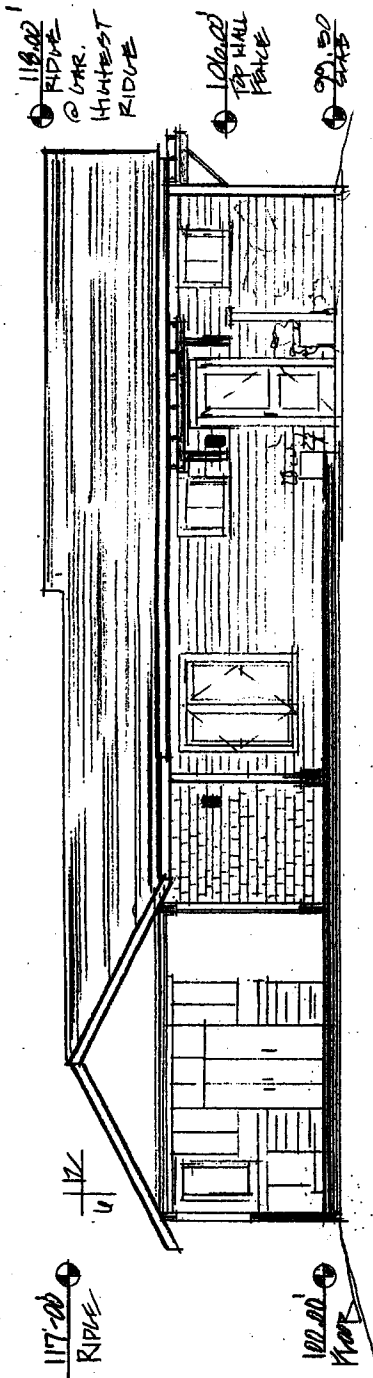


NORTH ELEVATION

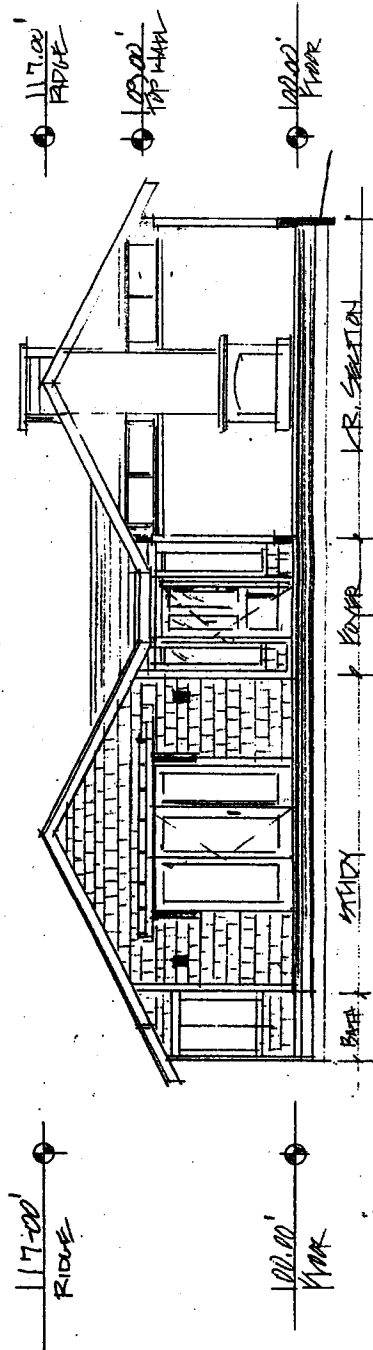


SOUTH ELEVATION

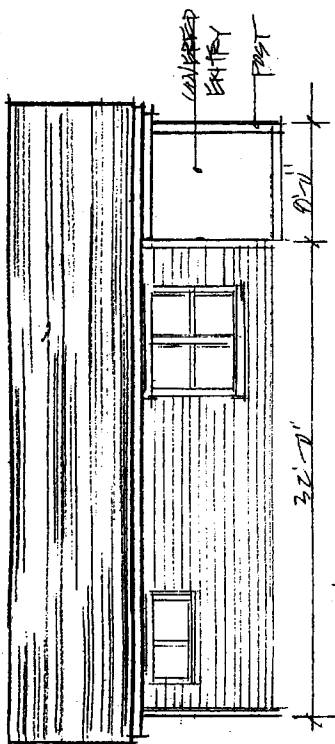




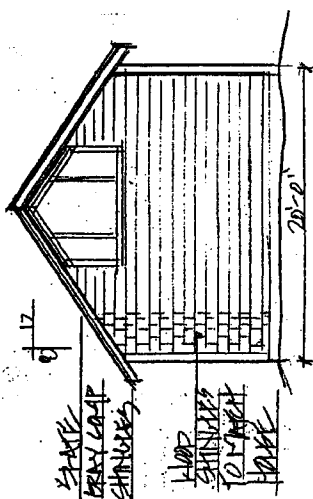
South Elevation @ Courtyard



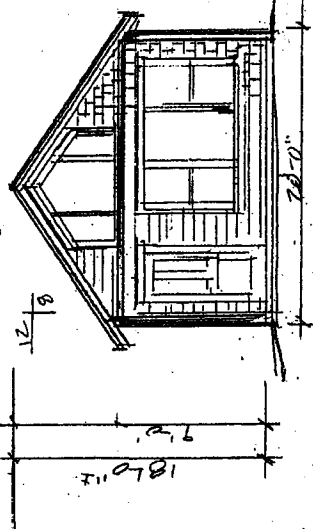
North Elevation @ Courtyard



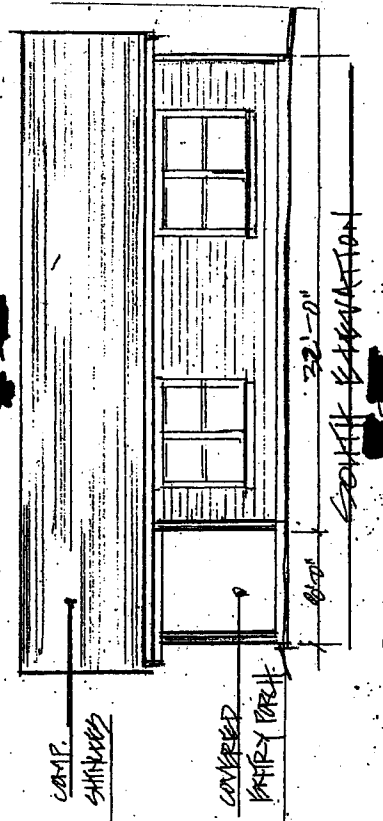
# ART EVALUATION



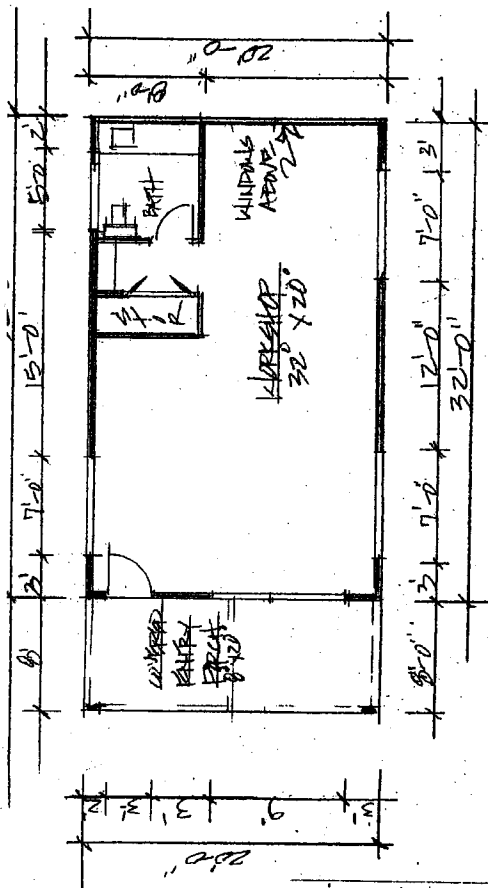
## Kant Evaluation



Best Value/Action



~~South Kensington~~



ADKSTOP YOUR FLAT 640 S.F.

**Figure 1. Wetland Survey Map  
Showing Rare Plants**

Area "A" and Area "B" are wetlands and considered ESHA's. Area "A" is the wet swale and Area "B" is the adjacent area that does not have a dominance of wetland vegetation, although it is still considered a wetland.

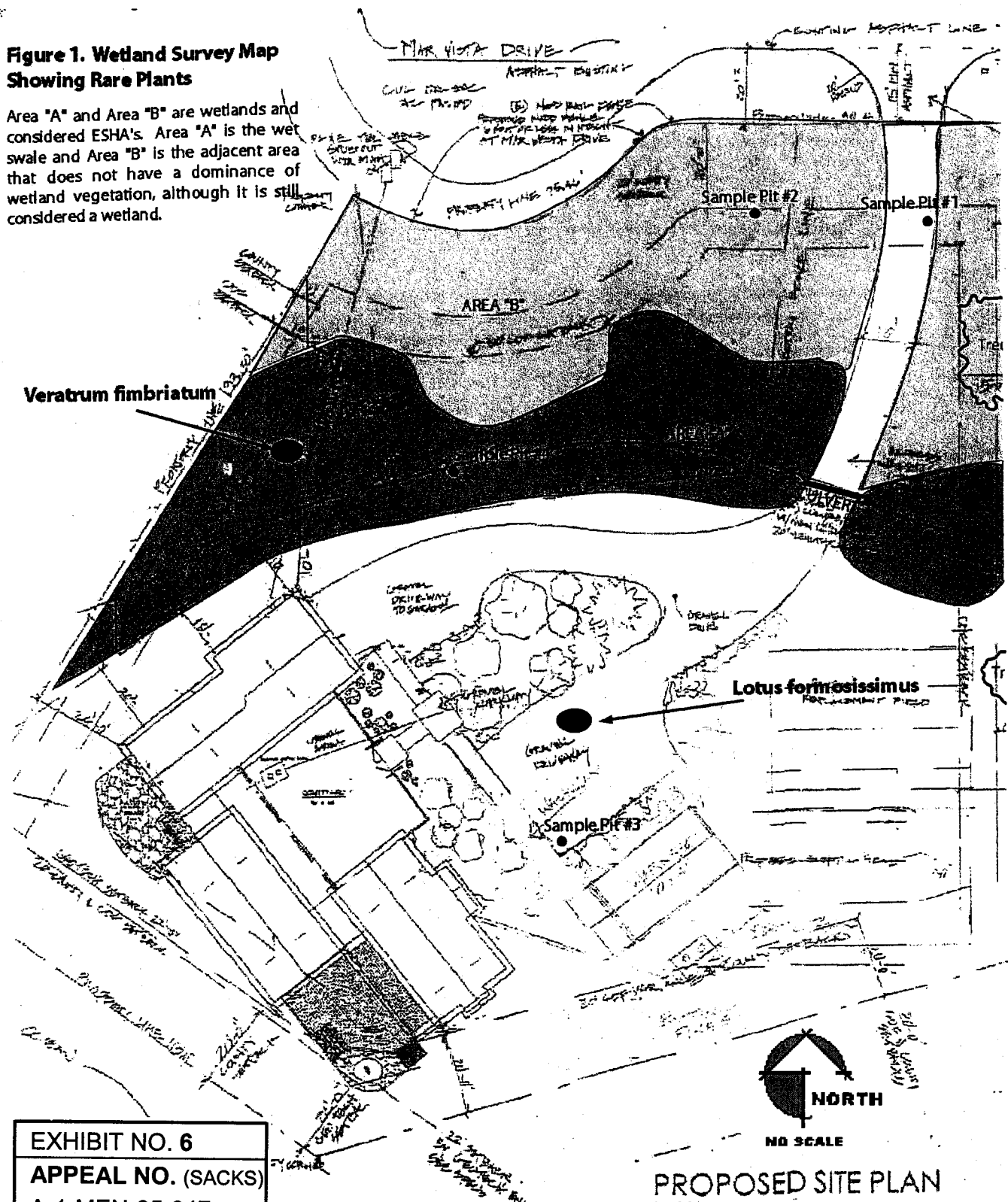


EXHIBIT NO. 6  
APPEAL NO. (SACKS)  
A-1-MEN-05-047  
WETLAND  
SURVEY MAP

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name:

Mailing Address: SEE ATTACHMENT 1

City:

Zip Code:

Phone:

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

(1) Demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (5) improvements to an existing driveway, (6) construction of new fencing, and (7) installation of an LPG tank. Development is sited 10 feet from an existing wetland.

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

Approximately 1.5 miles south of Caspar, approximately 1/2 mile west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, Mendocino County (APN 118-190-38).

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

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

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

TO BE COMPLETED BY COMMISSION:

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

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

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

EXHIBIT NO. 7

APPEAL NO. (SACKS)

A-1-MEN-05-047

APPEAL

(Page 1 of 16)

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

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

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

6. Date of local government's decision: August 25, 2005

7. Local government's file number (if any): CDP #103-04

**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:

Rudolph & Ann Sacks  
406 Botolph Lane, Suite 1  
Santa Fe, NM 87505

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)

Diana Wiedemann, Architect  
PO Box 395  
Albion, CA 95410

(2)

William Maslach  
32915 Nameless Lane  
Fort Bragg, CA 95437

(3)

(4)

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

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

SECTION V. Certification

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

Signed: Meg Caldwell  
Appellant or Agent

Date: September 26, 2005

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

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

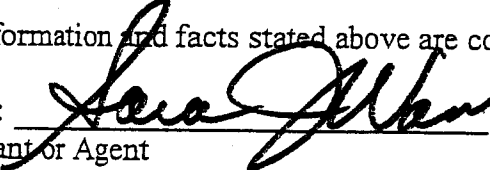
Date: \_\_\_\_\_

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

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

SECTION V. Certification

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

Signed:   
Appellant or Agent

Date: September 26, 2005

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

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

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

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

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

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

See Attachment 2

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

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

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

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

**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: \_\_\_\_\_

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Attachment 1

1. Commissioner Meg Caldwell, Chair  
Director, Environmental and Natural Resources Law & Policy Program  
Stanford Law School, 559 Nathan Abbott Way,  
Owen House Room 6,  
Stanford, CA 94305-8610  
email: [megcoastal@law.stanford.edu](mailto:megcoastal@law.stanford.edu)  
(650) 723-4057
  
2. Commissioner Sara Wan  
22350 Carbon Mesa Rd.  
Malibu, CA 90265  
(310) 456-6605

## ATTACHMENT 2

### 1. Appealable Project

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because it is located (1) within 100 feet of a wetland, (2) between the sea and the first public road paralleling the sea, and (3) within three hundred feet of the top of a seaward face of a coastal bluff.

### 2. Reasons for Appeal

The County of Mendocino approved Coastal Development Permit # 103-04 for (1) demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank. The development would be sited approximately 10 feet from a wetland. The Mendocino County LCP includes wetlands as Environmentally Sensitive Habitat Areas (ESHAs). The approval of this development is inconsistent with the certified LCP Policies, including, but not limited to, LCP policies concerning the protection of Environmentally Sensitive Habitat Areas (ESHAs), including, but not limited to, the ESHA policies concerning wetlands and ESHA buffers that state buffer areas shall not be less than 50-100 feet in width.

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### 3. LCP PROVISIONS

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

*Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Coastal Zoning Code Section 20.496.010 "Environmentally Sensitive Habitat and other Resource Areas—Purpose" states (emphasis added):

*...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.*

LUP 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. (See Glossary)*

*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.

LUP Policy 3.1-7 states: (emphasis added)

*A buffer area 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 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 and the adjacent upland transitional habitat function of the buffer 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. 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.*

Coastal Zoning Code Section 20.496-020 "Environmentally Sensitive Habitat and other Resource Areas—Development Criteria" states (emphasis added):

*(A) **Buffer Areas.** A buffer area 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 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. New land division shall not be allowed*

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*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.*

*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...

*(2) Configuration.* The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).

*(3) Land Division.* New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.

*(4) Permitted Development.* Development permitted within the buffer area shall comply at a minimum with the following standards:

*(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*

*(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*

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

*hydrological processes, either terrestrial or aquatic, shall be protected.*

*(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*

*(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)*

#### 4. DISCUSSION

The project as approved by the County is inconsistent with provisions of the certified Mendocino County LCP, including, but not limited to, LCP provisions regulating development near Environmentally Sensitive Habitat Areas (ESHA), and the establishment of appropriate buffer areas.

##### A. Development Near Environmentally Sensitive Habitat Areas (ESHA)

The approved project allows development within 10 feet of a wetland located at the northern portion of the property. A wetland analysis was prepared and submitted to the County as part of the application. The analysis identifies an approximately 0.5-acre wetland that is fed from subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction. The wetland vegetation is predominately native plants associated with

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saturated prairie soils and a slow-moving seep. The wetland report supported a buffer of 10 feet from the closest point of the driveway and approximately 15 feet from the western edge of the new residence. The report further recommends mitigation measures to protect the wetland habitat including installing temporary fencing during construction, redirection of water to follow the natural wetland swale, and enhancement of wetland and other native vegetation. The buffer width is 40 feet less than the minimum 50-foot buffer area allowed only in prescribed circumstances as described in the County's LCP ESHA policies. The County used the 10-foot buffer in its approval of the project, even though the approved development did not meet the prescribed circumstances.

As noted above, Coastal Zoning Code Section 20.496.010 states that environmentally sensitive habitat areas (ESHA) include wetlands. Therefore, as ESHA, wetlands are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) 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 policies state that in that event, the buffer shall not be less than 50 feet in width. Coastal Zoning Code Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed.

The County's approval is inconsistent with the LCP because (1) the policies do not allow for an ESHA buffer to be reduced to less than 50 feet, and (2) residential use is not an allowable use within a wetland buffer.

As noted above, a buffer width of 100 feet is required unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. Coastal Zoning Code Section 20.496.020 requires that a determination to reduce a buffer to a minimum of 50 feet must be based on seven particular criteria. The County's staff report indicates that DFG reviewed the project and the proposed mitigation measures and concurred with a reduced ESHA buffer. In approving the reduced wetland buffer width, the County relied on Section 20.496.020 (A)(1)(f) which states that 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 and additional mitigation measures shall be provided for a buffer width less than 100 feet. The County notes that because the project is in-fill development situated in an existing largely built out subdivision, the setback is similar to what other structures observe to ESHAs in the vicinity, and consultation and mitigation recommended by DFG and the applicant's biologist has been required, the 10-foot-wide buffer is consistent with the LCP. However, subsection (f) of Coastal Zoning Code Section

20.496.020(A)(1) that the County relied on to approve the development is just one of the seven criteria in the LCP that must be applied in determining whether a potential reduction of the ESHA buffer is warranted. As discussed previously, even if the criteria for reducing the buffer are met, Coastal Zoning Code Section 20.496.020 (A)(1) and LUP Policy 3.1-7 state that a buffer shall not be less than 50 feet in width.

In its approval, the County discusses why, with mitigation measures, a buffer width less than 100 feet may be appropriate, but fails to analyze how less than the minimum required 50-foot buffer is allowable. The County did not acknowledge that at 10 feet from the wetland, the residential development would be considered to be located within the wetland buffer area.

LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 (A)(1) regarding the reduction of an ESHA (wetland) buffer width does provide for development to be permitted within a buffer area if the development is the same as those uses permitted in the adjacent environmentally sensitive habitat area and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. LUP Policy 3.1-4 sets forth the types of development allowable within a wetland, and thus those types of development potentially allowable in a wetland buffer, and includes those uses prescribed by Coastal Act Section 30233 such as port and energy facilities, boating facilities, incidental public service purposes, etc. Residential development is clearly not an allowable use within a wetland as enumerated by LUP Policy 3.1-4 and thus, is not an allowable use in a wetland buffer. Therefore, even if the County had approved the proposed single-family residence within the wetland buffer, the approved development would not be consistent with LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 regarding ESHA buffer areas.

Therefore, for all of the above reasons, the project as approved by the County is inconsistent with LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020.



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
790 SOUTH FRANKLIN • FORT BRAGG • CALIFORNIA • 95437

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September 7, 2005

**RECEIVED**

SEP 12 2005

**NOTICE OF FINAL ACTION**

CALIFORNIA  
COASTAL COMMISSION

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

**CASE#:** CDP #103-04  
**OWNER:** Rudolph & Ann Sacks  
**AGENT:** Diana Wiedemann, Architect  
**REQUEST:** Demolish existing residence and attached garage. Construct a new 2,469± square foot single story single-family residence with an attached 588± square foot garage with a maximum average height of 18 feet above natural grade. Construct a 640± square foot single story detached workshop with a maximum average height of 18 feet above natural grade. Additional improvements include, install a new septic disposal system, improve existing driveway, construct a new fencing and install an LPG tank.  
**LOCATION:** In the coastal zone, on a blufftop parcel, approximately 1.5 miles S of Caspar, approximately ½ mile W of Highway One, on the S side of Mar Vista Drive (private), at 45321 Mar Vista Drive (APN 118-190-38).

**PROJECT COORDINATOR:** Rick Miller

**HEARING DATE:** August 25, 2005

**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.

<b>EXHIBIT NO. 8</b>
<b>APPEAL NO. (SACKS)</b>
A-1-MEN-05-47
NOTICE OF FINAL
LOCAL ACTION
(Page 1 of 12)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 103-04 HEARING DATE: 8-25-05

OWNER: Sacks

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt

☐ Negative Declaration

☐ EIR

FINDINGS:

☒ Per staff report

☐ Modifications and/or additions

ACTION:

☒ Approved

☐ Denied

☐ Continued

CONDITIONS:

☒ Per staff report

☐ Modifications and/or additions



Signed: Coastal Permit Administrator



STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 103-04  
August 25, 2005  
CPA-1

RECEIVED

OWNER:

AUG 19 2005  
CALIFORNIA  
COASTAL COMMISSION

Rudolph & Ann Sacks  
406 Botolph Lane Suite 1  
Santa Fe, NM 87505

AGENT:

Diana Wiedemann, Architect  
PO Box 395  
Albion, CA 95410

REQUEST:

Demolish existing residence and attached garage. Construct a new 2,469± square foot single story single-family residence with an attached 588± square foot garage with a maximum average height of 18 feet above natural grade. Construct a 640± square foot single story detached workshop with a maximum average height of 18 feet above natural grade. Additional improvements include, install a new septic disposal system, improve existing driveway, construct a new fencing and install an LPG tank.

LOCATION:

In the coastal zone, on a blufftop parcel, approximately 1.5 miles S of Caspar, approximately ½ mile W of Highway One, on the S side of Mar Vista Drive (private), at 45321 Mar Vista Drive (APN 118-190-38).

APPEALABLE AREA:

Yes (blufftop parcel & west of 1<sup>st</sup> public road & within 100 feet of an environmentally sensitive habitat area).

PERMIT TYPE:

Standard

TOTAL ACREAGE:

One ± acres

ZONING:

RR: L - 5 [RR: L -1]

GENERAL PLAN:

RR-5 [RR-1]

EXISTING USES:

Single family residence

SUPERVISORIAL DISTRICT:

4

ENVIRONMENTAL DETERMINATION: Categorically Exempt Class 3

**PROJECT DESCRIPTION:** The owners intend to demolish an existing 1,583± square foot residence and 400± square foot attached garage from an approximately one acre blufftop parcel approximately 1½ miles south of the village of Caspar on a private road in the Seafair Subdivision. A new 2,469± square foot single story single-family residence with an attached 588± square foot garage with a maximum average height of 18 feet above natural grade would be constructed in its place. A 640± square foot single story detached workshop with a maximum average height of 18 feet above natural grade would also be constructed. The detached workshop would contain a convenience bathroom with a sink and toilet and a covered entry porch. The two-bedroom residence includes an approximately 1,300 square foot courtyard with protected gardening areas, an approximately 500 square foot

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STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 103-04  
August 25, 2005  
CPA-2

stone or brick patio and an approximately 600 square foot deck with a hot tub. Additional improvements include the installation of a new septic disposal system on the east side of the proposed workshop, improvement of an existing gravel driveway for circulation into the proposed attached garage, construction of new perimeter fencing with a maximum height not to exceed six feet along the north and east property boundaries and installation of an LPG tank on the east side of the detached workshop.

**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 residential project is compatible with the Rural Residential zoning district. The proposed development complies with the maximum building height, setback requirements of the Rural Residential zoning district, and corridor preservation setbacks.

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

**Hazards:** The site is located in a State Responsibility Area and the Department of Forestry and Fire Protection (CDF) addresses potential hazards associated with fire protection on the subject property. The property is located in an area assigned a Moderate Fire Hazard rating and has received a preliminary fire clearance (CDF #595-04). The conditions of approval include: address, driveway, and providing and maintaining defensible space standards. CDF has approved the proposed building setbacks on the condition that fire resistive siding is used in construction.

Due to the subject property's location adjacent to the Pacific Ocean, a geotechnical investigation and subsequent report was prepared for the parcel by BACE Geotechnical, dated January 11, 2005. The BACE report describes that the subject property is situated near the southwest edge of a near-level, elevated marine terrace bordered by steep ocean bluffs. The southwest side of the property consists of an ocean bluff that descends into to a small northwest-trending cove. The ocean bluff is approximately 40 feet high and has an average slope gradient that is about one-fifth horizontal to one vertical (1/5H:1V). BACE measured the bluff edge to be approximately 29 feet to the closest point of the existing residence at the southwest corner.

There was no evidence of recent rock falls observed on the property bluffs. No landsliding was observed on the bluff and no landslides were shown within the property or in the published references that BACE reviewed. Additionally, there was no evidence of active faulting observed at the site and none of the published references that were reviewed show faults on or trending towards the property. However, the San Andreas Fault system passes offshore of the Mendocino coast about 4.5 miles west of the property.

BACE concluded that the site was suitable for the proposed residential development. The main geologic constraints that need to be considered for the development were bluff stability/retreat rate and strong seismic shaking from potential future earthquakes.

Coastal Element Policy 3.4-7 states:

*The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:*

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$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*

*All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report.*

Blufftop edge setback requirements for new structures pursuant to Coastal Element Policy 3.4-7 are codified by Section 20.500.020(B)(1) of the MCCZC. In regard to the required blufftop setback, the BACE report stated:

*Based upon the results of our reconnaissance and aerial photograph study, we have determined that the bluff is eroding at an average rate of 1.5 to 1.75 inches per year. For establishment of bluff setback criteria for the proposed new residence, an average retreat rate of 1.75 inches per year was assumed. Over a 75-year period (considered to be the economic lifespan of a house by the California Coastal Commission) times a factor of safety of two, a bluff setback of 22 feet will be appropriate.*

The southern corner of the proposed residence would be situated at the required 22-foot setback and would be the closest portion of the development to the blufftop edge.

BACE stated that ongoing erosion of the bluff edges is somewhat maintainable. Wherever possible, concentrated surface runoff should be directed away from bluff areas subject to erosion, especially the area of past shallow sloughing discussed above. Surface runoff and concentrated runoff from pipes, such as roof drains, should be directed away from the proposed new residence toward the west and northeast sides of the property.

Due to the uncertain thickness and composition of weak surficial terrace soils, a geotechnical investigation, including subsurface exploration, laboratory testing, and engineering analysis is recommended in order to determine foundation design criteria. Based on the results of our subsurface investigation, conventional (deepened) footing foundations or drilled pier foundations may be appropriate. Either foundation design can be used for the planned residence with the recommended setback, provided that BACE reviews the project plans and observes the foundation excavations during construction.

Based on the conclusions of the geotechnical report and the LCP policies for blufftop development staff has included Special Condition Number 1 to ensure that all the recommendations from the geological report are incorporated into the final building plans and construction activities.

The California Coastal Commission and Mendocino County require the recordation of a deed restriction on blufftop parcels prohibiting the construction of seawalls with the requirement that the structures be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development which might fall onto a beach. Special Condition Number 2 is added to address this issue.

**Visual Resources:** The project site is not located within a designated "highly scenic" area, therefore, it is not subject to the policies within the Coastal Element relating to visual resources except for the following policy which applies to all parcels within the Coastal Zone:

STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 103-04  
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Policy 3.5-1 States:

*"...The scenic and visual qualities of Mendocino County coastal areas shall be considered and projected 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..."*

The proposed single story residence and single story workshop would have an average height of 18 feet above natural grade. The structures would be clad with wood siding stained gray and gray color asphalt composition roof shingles. The trim boards would be painted white and the windows would be white. The proposed structures are very consistent with the character of the surrounding development and natural landscape. No public views to or along the ocean would be negatively impacted by the proposed project. Therefore, the proposed development is consistent with Policy 3.5-1 of the Coastal Element.

The application indicates the use of downcast and shielded exterior lighting fixtures mounted on the walls at the garage, workshop and house. Also, path lighting would be installed on the pathways. Special Condition Number 3 has been added to ensure that all exterior lighting is consistent with the requirements of Section 20.504.035 of the MCCZC.

**Natural Resources:** William Maslach has surveyed the one-acre subject parcel for environmentally sensitive habitat areas (ESHAs). Alison Gardner conducted preliminary botanical surveying identifying some wetland type habitat and recommended a botanist/biologist with more wetland identification experience survey the property. Therefore, staff relied on the three subsequent reports from Mr. Maslach to analyze the project from a natural resources standpoint. William Maslach determined the subject site did contain an approximately 0.5 acre wetland on the northern (undeveloped area with the exception of the existing driveway) portion of the parcel. Mr. Maslach explains that the source of the water is from a subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction. The existing wetland vegetation is predominately native plants associated with saturated prairie soils and a slow-moving seep. In summary, William Maslach has recommended mitigation measures to protect the wetland habitat including installing temporary fencing during construction, redirection of water to follow the natural wetland swale, and enhancement of wetland and other native vegetation.

Chapter 20.496 and Section 20.532.060, et. seq. of the MCCZC contain specific requirements for protection of ESHAs 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 (A) (1) of the MCCZC 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.*

**Plants:** In addition to the wetland habitat associated with the swale bisecting the property, two California Native Plant Society (CNPS) List 4 plant species were identified on the parcel (approximately eleven individual *Veratrum fimbriatum*, corn-lily and approximately twenty five *Lotus formosissimus*, coastal lotus). Although

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CNPS List 4 plants are not considered significant under CEQA or an ESHA by the County LCP, Mr. Maslach recommends that the populations be protected with mitigation measures. The coastal lotus is located in the existing gravel driveway and would be directly impacted when the driveway is improved. The corn lilies are located in the wetland area and would not be impacted by the project. The botanist recommends that the coastal lotuses be transplanted to an area adjacent to the wet swale because they cannot be protected in their current location. CNPS often considers transplantation to be the last resort in avoiding impacts to listed plants so he recommends that the applicant submit a brief summary prepared by a qualified biologist addressing the status of the transplantation after one year. The report would indicate the factors that have led to the success or failure of the mitigation measures. According to Mr. Maslach the information is essential for the statistics on the viability of transplanting this species. The corn lilies are located within the wetland and would not be impacted by the project. Protection of the wetland will be discussed in more detail below but Mr. Maslach recommends that the individual corn lilies be flagged so that they are not accidentally mowed. He said they would be easily incorporated into the landscape by encouraging their growth in the wet swale. Corn lily flowers are white and their vegetation can grow several feet tall. The wetland swale and associated habitat would be protected during construction with temporary fencing to ensure that grading activities and/or construction material storage does not occur in the wet swale. Special Condition Number 4 is included to address the two populations of CNPS Class 4 plants.

Wetland: Due to the location of existing development, the size/shape of the parcel, the location of the coastal bluff edge, septic disposal system, water well and vehicular access to the site from Mar Vista Drive the normally required 100 foot ESHA buffer is not currently met nor will the proposed project afford a 100 foot ESHA buffer. Mr. Maslach provided a comprehensive buffer analysis per Sec. 20.496.020 (A) through (4)(k) of the MCCZC and recommends mitigation measures that would reduce the potential impacts of the project. Further, representatives from the California Department of Fish and Game (CDFG) have reviewed the project and proposed mitigation measures as required by the LCP and have concurred with a reduced ESHA buffer. Staff has also consulted with the North Coast Regional Water Quality Control Board (NCWRQCB) about the project and protection of the ESHA. The proposed project would meet the same ESHA buffer as the existing condition on-site provides. A buffer of ten feet would be provided to the closest point of the driveway and approximately 15 feet to the western edge of the new residence. Mr. Maslach's buffer analysis noted that the proposed buffer distance would not be less than what already occur on the site. He also noted that the proposed development would occur on the driest part of the property and would avoid any direct impacts to the resource area. He said that the hydrologic integrity of the site would be maintained by not creating an impervious surface on the driveway because the driveway would be surfaced with gravel. Finally, by eliminating the man made swale that currently diverts water flows away from the wetland swale more subsurface and surface water would enter into the protected ESHA.

\* The proposed ten foot wide ESHA buffer could be allowed per Section 20.496.020 (A) (1) (f) of the MCCZC. Section 20.496.020 (A) (1) (f) of the MCCZC deals with lot configuration and the 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. (emphasis added)

The existing development on the subject parcel is located 10 feet from the ESHA associated with the wet swale. In reliance on Section 20.496.020 (A) (1) (f) MCCZC, William Maslach prepared an addendum analysis of lot

configuration and location of adjacent development to the subject property to document the reduced ESHA buffer. Three examples of structures at approximately 10' to 20' from an ESHA occur on two adjacent lots in the Seafair Subdivision. The project site is at the end of a cul-de-sac in a largely built out subdivision. The wet swale on the subject parcel passes between the existing residence to be removed and the neighboring house to the west. Both buildings enjoy a 15' to 20' setback from the resource. Additionally, a small perennial stream with alder riparian habitat passes by two adjacent houses to the north. The structures on parcels 118-190-24 & 118-190-22 adjacent to the riparian alder habitat are approximately 10' to 15' to the creek and/or riparian habitat. An exhibit has been included to demonstrate the proximity of existing development in the subdivision to ESHAs.

William Maslach has recommended three mitigation measures to be implemented during and after construction to address potential impacts to the wetland and staff has recommended a fourth mitigation measure for the permanent protection of the wet swale and associated habitat. Mitigation measure one would correct the drainage to allow the natural flow of water into the wet swale. Currently, an 18-foot long, 10" diameter black plastic culvert exists under the driveway. Some water drains through the pipe but much is diverted by a ditch that parallels the driveway towards the house. The ditch would be filled or regarded to allow water to flow through the culvert and into the wet swale. The additional water in the wet swale will likely increase the abundance of wetland vegetation occurring in the swale over time. The owners would also replace the culvert with a larger diameter culvert further increasing water flow into the swale. Mitigation measure two would involve the placement of either temporary orange plastic fencing or black silt fencing. The site plan also shows the location of temporary fencing to be erected along the edge of the wetland before and during construction activates to ensure that grading and/or construction material storage does not accidentally enter the ESHA. Mitigation measure three would enhance the wetland vegetation associated with the wet swale. Native vegetation in the swale would be encouraged to grow by not routinely mowing it. Some areas adjacent to the swale may need to be periodically mowed to reduce the risk of fire hazard, but the vegetation in the wet swale, especially in the bottom, would be encouraged to grow. Again, individual corn lilies would be flagged so they are not mowed. Finally, staff with the assistance of John Short from the NCRWQCB recommends a fourth mitigation measure be incorporated providing that a permanent split rail type fence be erected along the edge of the wetland habitat to ensure the area is not disturbed by future development or vehicles. Special Condition Number 5 is added to address the protection of the ESHA.

The project agent, Diana Wiedemann Architect, prepared a letter outlining the ESHA considerations made during the planning phase of the project dated June 10, 2005. She summarized her statements as follows:

*"This project shall not endanger an existing sensitive habitat known as a seasonal wetland and shall work towards greater protection and enhancement of existing conditions. By using the same gravel driveway area and sliding the proposed house to the southern most portion of the lot, by installing a permanent split rail fence along the edge of the protection zone described by the environmental survey and not encroaching into the 10 to 15 foot setback of the existing house and driveway, by repairing the run off condition of water with a new culvert and rerouting the seasonal run off into the swale area, by not continuously mowing the vegetation and encouraging native plants to grow this proposed project is not only contextual to the existing conditions of the neighborhood but will enhance the existing condition of a wetland area."*

Relying on a combination of factors including that this project is in fill development situated in an existing, largely built out subdivision, the referenced setback is similar to what other structures observe to ESHAs in the vicinity, consultation and mitigation recommended by DFG personnel, NCRWQCB and Mr. Maslach's conclusions, staff concurs that the proposed buffer and mitigation measures are sufficient to protect the resource as required by the MCCZC. Special Conditions Number 4 and 5 will ensure that human intrusion and disturbance

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of the habitat area is avoided, there should be no loss of habitat on the site and the native vegetation in the ESHA will be enhanced over time due to the permanent fence and the increased water flow into the wet swale.

**Archaeological/Cultural Resources:** The site is currently developed with a residence and other improvements. The immediate area where the proposed guest cottage would be sited is unlikely to contain archaeological or cultural materials. Standard Condition #8 advises the applicant of the County's "discovery clause" which establishes procedures to follow in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

**Groundwater Resources:** The site is located within an area mapped as a Critical Water Resources area. An existing well would provide domestic water and a new on-site septic disposal system would be installed to support the project. The septic system has been reviewed and approved by the Division of Environmental Health and is designed to accommodate a two-bedroom house. No impact to groundwater resources has been identified.

**Transportation/Circulation:** The project site is presently developed and the proposed project would not increase the intensity of use at the site. The project is accessed from Mar Vista Drive, a privately maintained road. No impacts to Highway 1, local roads and circulation systems would occur.

**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 adopt the following findings and conditions.

**FINDINGS:**

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

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7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

**STANDARD CONDITIONS:**

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.  
  
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. This permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. 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 or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described

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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 feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

**SPECIAL CONDITIONS:**

1. All recommendations from the geological report prepared by BACE Geotechnical dated January 11, 2005, shall be incorporated into the design and construction of the project, including the minimum required blufftop setback of 22 feet. Prior to issuance of the building permit for the proposed residence, the owner shall submit written documentation that BACE Geotechnical has reviewed the final drainage/grading and building foundation plans for conformance with their recommendations.
2. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator that shall provide that:
  - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and landowner assumes the risk from such hazards;
  - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
  - c) The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
  - d) The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
  - e) The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

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- f) The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
3. Prior to issuance of the building permit for the residence or workshop, the applicant shall submit an exterior lighting plan which is in compliance with Section 20.504.035 of the MCCZC. The lighting fixtures shall be completely shielded and positioned in a manner that will not allow light glare to exceed the boundaries of the subject parcel. The number of exterior lighting fixtures shall be kept to the minimum required for safety.
4. The approximately 25 coastal lotus plants located in the existing driveway shall be transplanted into the wetland swale area by hand prior to any construction activities. The owner shall submit a report prepared by a qualified biologist/botanist addressing the status of the plants one year after the transplantation occurs. The report should indicate the factors that have lead to the success or failure of the transplantation efforts. The approximately 11 corn lilies shall be flagged and maintained in the wet swale area and encouraged to grow in perpetuity.
5. The four mitigation measures outlined in the staff report to protect the wetland ESHA shall be considered mandatory parts of the project. Prior to the commencement of construction activities, the temporary protective fencing shall be erected per site plan. Prior to final building inspection, the permanent fence shall be completed. The wetland area (ESHA) delineated on the site plan shall be protected from development in perpetuity as conditioned by this permit and the LCP.
6. A copy of this permit must be provided to the Contractor and all subcontractors conducting the work, and must be in their possession at the work site.

Staff Report Prepared By:

8-12-2005

Date

*Rick Miller*

Rick Miller  
Coastal Planner

Attachments: Exhibit A- Location Map  
Exhibit B- Existing Site Plan  
Exhibit C- Proposed Site Plan  
Exhibit D- Proposed Residence Floor Plan  
Exhibit E- Residence Elevations  
Exhibit F- Residence Elevations  
Exhibit G- Residence Elevations @ Courtyard  
Exhibit H- Workshop Plans  
Exhibit I- Wetland Survey Map/CNPS List 4 Plants  
Exhibit J- Adjacent Development to ESHAs

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

Appeal Fee: \$795 (Appeals to the County Board of Supervisors)

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### SUMMARY

A wetland of approximately 0.5 acres was located on the Project Site. The source of the water is from subsurface and surface flow in and around a swale. A 20'x30' workshop, additions to an existing house, a septic and replacement septic fields are proposed for development on the Project Site. All facilities are between 10' and 80' from a wetland as defined by the California Coastal Act. Mitigation measures include installing a temporary fence during construction, redirection of water to follow the natural watercourse, and enhancement of wetland and other native vegetation. Existing wetland vegetation is predominately native plants associated with saturated prairie soils and slow-moving seep.

### **PROJECT SITE DESCRIPTION**

The Study Area is one parcel located on the west side of Highway 1 and adjacent to the Pacific Ocean in Mendocino, California (APN 118-190-38). It is located in the northwest ¼ of Section 13, Township 17 North, Range 18 West. A point in the approximate center of the parcels is located at Easting 429696, Northing 4354631 by the UTM NAD83 Zone 10 coordinate system.

The Project Site is approximately 1.2 acres and elevation ranges from approximately 0-60 feet above sea level. Most of the Study Area is flat except for the steep draws and bluff faces above the beach. The vegetation community on the flat headland is mostly wet coastal prairie with an area of herbaceous wetland vegetation, mostly of native plants, bisecting the Project Site (See Figure 2).

### **SOIL**

Prior to conducting field studies, the Mendocino County Soil Survey, Western Part (Natural Resource Conservation Service, 2001) was examined to obtain the soil classification for the Project Site. The soil is defined as Cabrillo-Heeser Complex with 0% to 5% slopes (Soil ID 117) and it is not on the list of hydric soils.

The Cabrillo soil type is described as a very deep, somewhat poorly drained soil occurring on marine terraces and coastal fan terraces. Permeability is moderately slow. The Heeser soil type consists of very deep, somewhat excessively drained soils that formed in eolian (wind-carried) sands. These soils are on marine terraces (Natural Resource Conservation Service, 2001).

### **HYDROLOGY**

The site is bisected by a seasonal wetland, which is described as a saturated coastal terrace swale with very slow-moving water. Some soils adjacent to the swale were saturated, and test pits filled with water to approximately 8" below grade.

### **VEGETATION**

The vegetation community of the Project Site is predominately coastal prairie vegetation adapted to periodic saturation of the soil. Bishop pines occasionally occur on the Project Site and surrounding area. Some bishop pines have been previously removed from the swale area on the Project Site and, historically, the surrounding area most likely had a greater abundance of bishop pines. The coastal prairie is predominantly comprised of a mix of exotic and native grasses and forbs.

EXHIBIT NO. 9
APPEAL NO. (SACKS)
A-1-MEN-05-47
EXCERPTS OF
WETLAND SURVEY
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## METHODS

A wetland delineation survey was conducted on February 26, 2005 at 45321 Mar Vista Drive, (APN 118-190-38, approximately 1.2 acres) Mendocino, California to describe the location and extent of waters, including wetlands, which may be considered environmentally sensitive habitat areas (ESHAs) under Chapter 20.496 of the Coastal Element of the General Plan of Mendocino County (1991). This delineation survey may also be used to describe wetlands that may be considered jurisdictional by the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act.

The study area was surveyed for wetland and riparian features. The survey for the occurrence of wetlands was based on the Statewide Interpretive Guideline (California Coastal Commission 1981), which states "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." The California Coastal Commission determined that the presence of wetland hydrology is necessary for a wetland determination while also stating that they base wetland definitions on one of three parameters as per the California Department of Fish and Game.

The wetland delineation of the Study Area is based on a combination of these two determinations. The California Department of Fish & Game determination of a wetland is a more conservative definition, but is useful in establishing a functional wetland.

## VEGETATION

The indicator status assigned to a species designates the probability of that species occurring in a wetland. A species with an indicator of OBL, FACW, or FAC (excluding FAC-) is considered to be typically adapted for life in a wetland (hydrophytic vegetation). A species indicator of FAC-, FACU and NL determines an upland species. The wetland occurrence probability and abbreviations utilized in the lists are presented below.

Table 1. Explanation of Wetland Plant Indicator Status.

INDICATOR STATUS	DESCRIPTION	OCCURRENCE IN WETLANDS
OBL	obligate wetland plants	>99%
FACW	facultative wetland plants	67-99%
FAC	facultative plants	34-66%
FACU	facultative upland plants	1-33%
UPL	obligate upland plants	<1%
NI	no indicator (insufficient information) for the region (rated neutral)	-
NL	not listed (rated upland)	-
plus sign (+)	frequency toward higher end of a category	-
minus sign (-)	frequency toward lower end of a category	-
asterisk (*)	indicates tentative assignment based on limited information	-

The dominant vegetation at each potential wetland was noted and evaluated for prevalence of hydrophytes. Indicator status follows Reed (1988).

## HYDROLOGY

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Wetland hydrology is a term which encompasses hydrologic characteristics of areas that are periodically inundated or saturated within 12 inches of the surface at some time during the growing season. The presence of direct evidence (primary indicators), such as visible inundation or saturation, surface sediment deposits, and drift lines and indirect evidence (secondary indicators), such as oxidized root channels, algal mats and water-stained leaves were noted in potential wetland areas. Pits were dug to 16" to determine the presence or absence of subsurface hydrology.

#### SOIL

Soil color was determined using a Munsell Soil color chart (GretagMacbeth 2000). Soils formed under wetland conditions generally have a characteristic low chroma matrix color of 0, 1, or 2. Soils with a chroma of 0 or 1 are usually considered hydric; soils with a chroma of 2 are required to contain other hydric features such as mottles and redoximorphic characteristics, which were evaluated in the soil pits.

#### RESULTS

Approximately 0.5 acres of the Project Site met the Mendocino County LCP definition of a wetland (See Figure 1.) and is considered an ESHA under the same LCP. The results of the survey follow.

This site contained a wetland based on the criteria for hydrologic, vegetation, and soil parameters for a wetland and a wetland based on the criteria for hydrologic and vegetation parameters. An examination of the surrounding topography and vegetation revealed that the source of water for the wetland is from subsurface flow that likely originates on the parcel to the east and subsurface flow that originates on the eastern portion of the Project Site.

#### BUFFER ZONE ANALYSIS

An analysis of the proposed projects utilizing the ESHA development criteria in Mendocino LCP Ordinance 20.496.020(A) through (4)(k) is presented in Table 2. This explains the reasons for development within the buffer and concludes there will be no significant impact to the ESHA.

**Potential Impact 1:** The proposed development of the workshop, additions to the existing house, septic and replacement septic fields within the 100-foot buffer from the ESHA (wetland) may adversely affect the wetland. To reduce the impacts to a level of insignificance, the following mitigation measures will be implemented during and after construction.

**Mitigation Measure 1a:** Correct the drainage to allow for natural flow of water into the wet swale.

An 18-foot long, 10" diameter black plastic culvert exists under the driveway (Figure 1). Some water drains through the pipe, but much is diverted by a ditch that parallels the driveway to the house.

The ditch will be filled or regraded to allow water to flow through the culvert and into the wet swale. This measure will likely benefit the integrity of the existing house as it will keep water away from it. The additional water into the wet swale will likely increase the abundance of wetland vegetation occurring in the swale.

If the culvert is replaced, the installation of an additional culvert of the same size may be beneficial to the flow of water. This measure is not necessary but may be implemented.

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## SUMMARY

The owner of the Project Site is proposing development that would occur within 100' of a wet swale, which is considered an ESHA. The reduction of the buffer distance may be considered when the proximity of adjacent existing development from an ESHA is less than 100' in a subdivision that is largely built-out. Three examples of structures at approximately 10'-20' from an ESHA occur on two adjacent lots from the Project Site, which occurs in a subdivision.

## INTRODUCTION

The purpose of this analysis was to document the distance of existing structures to ESHA's (Environmentally Sensitive Habitat Areas) that are nearby the Project Site (APN 118-190-38) located at 45321 Mar Vista Drive, Mendocino, California. The owner of the Project Site wishes to make modifications to the existing structures that would result in development within an ESHA buffer.

Standards for determining the appropriate width of buffers are outlined in the Mendocino County Coastal Zoning Code, Section 20.496.020. Section (f) (Lot Configuration and Location of Existing Development) states that where there are uniform distances from an ESHA in a subdivision, at least the minimum buffer shall be maintained. It also states that if this distance is less than 100 feet, mitigation measures shall be implemented to compensate for the reduction in buffer distance.

## DESCRIPTION OF EXISTING DEVELOPMENT

The Project Site is at the end of a cul-de-sac in a subdivision. A wet swale bisects the Project Site and forms a small seasonal drainage that passes between the house on the Project Site and the neighboring house. Additionally, a small perennial stream with alder riparian habitat passes by two adjacent houses to the north.

Figure 1 on the following page illustrates the location of the Project Site in relation to the wet swale and alder riparian habitat. The wet swale is approximately 15'-20' from the house on the Project Site and from the house on the parcel (118-190-24) to the northwest (Figure 2).

Figure 1 also illustrates the location of structures on parcels 118-190-24 and 118-190-22 adjacent to riparian alder habitat that are approximately 10'-15' to the creek and/or riparian habitat. Figure 3 illustrates the structure that is close to the small creek.

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**Mitigation Measure 1b: Install temporary fencing to ensure grading and/or material storage does not occur in the wet swale.**

Temporary fencing, such as orange plastic fencing or black silt cloth, will be placed on the edge of the wetland between the wetland and the house during construction.

**Mitigation Measure 1c: Enhancement of wetland vegetation.**

Native vegetation in the wet swale will be encouraged to grow by not routinely mowing it. Some areas adjacent to the wet swale may need to be mowed to reduce the risk of fire hazard, but the vegetation in the wet swale, especially in the bottom, will be encouraged to grow. The corn lilies (*Veratrum fimbriatum*) are on the CNPS List 4 and will be flagged so they are not mowed. They can easily be incorporated into the landscape by encouraging their growth in the wet swale. Flowers are white and vegetation is low growing (several feet tall).

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Table 2 Development Criteria Matrix Based on the Mendocino County Local Coastal Program Section 20.496.020


Sec. 20.496.020 ESHA – Development Criteria.	
(A) <b>Buffer Areas.</b> A buffer area 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.	A 10 to 15-foot buffer will be maintained around the ESHA; however, to provide sufficient protection for the ESHA (wet swale), a temporary fence will be placed between the proposed construction and the wetland.
(1) <b>Width.</b> 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. 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.  Standards for determining the appropriate width of the buffer area are as follows:	A 10 to 15-foot minimum buffer adjacent to the wet swale is proposed with mitigations. The California Department of Fish & Game and Mendocino County Planning may consult regarding the reduction in buffer width. Standards for reduction of buffer width follow.
(1a) <b>Biological Significance of Adjacent Lands.</b> 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.	The wetland originates from saturated soils and subsurface flow at the eastern edge of the parcel east of the culvert under the road. The parcel to the east of the Project Site apparently has some saturated soils but surface ponding is not apparent. Additionally, the vegetation does not support a dominance of wetland vegetation as does the eastern portion of the Project Site. The wetland on the Project Site is comprised of two topographic components. The first, and most biologically significant, is the portion of the wetland mapped as "A" in Figure 1. This is the wet swale that has all three indicators of a wetland: hydrology, vegetation, and soil. The second component is the upper area to the north of the wet swale mapped as "B" in Figure 1. This area has saturated soils and soil indicative of wetlands, but does not support a preponderance of hydrophytic (wetland-adapted) vegetation.
(1b) <b>Sensitivity of Species to Disturbance.</b> 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:	The buffer distance will not be less than what already occurs on the Project Site. Presently, the existing house is approximately 10'-15' from the wet swale (ESHA). The California Department of Fish & Game and Mendocino County Planning may consult regarding the reduction in buffer width.

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Sec. 20.496.020 ESHA – Development Criteria.	
(1b-i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species.	The wetland does not support fish or fish habitat. Birds may forage in the wetland, but it is not a significant wetland (approximately 0.5 acre) for migrating birds. The wetland is poor breeding habitat for amphibians because water depth is very shallow, but it may provide resting or foraging habitat (USFWS, 1997).
(1b-ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;	The various species (primarily plants) are likely well-adapted to human disturbance because of the history of the site. Mowing has occurred on the Project Site and there is still a dominance of wetland vegetation in the wet swale. Mowing adjacent to the wet swale is preferred to mowing in the wet swale.
(1b-iii) An assessment of the impact and activity levels of the proposed development on the resource.	Disturbance in the wet swale will be reduced as a mitigation measure for the buffer width reduction. Activity during construction can easily be kept out of the wet swale, and this will be ensured by the temporary placement of a small fence.
(1c) 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.	The wet swale is susceptible to the placement of dirt fill if the driveway is graded. This potential will be eliminated by the placement of the silt fence. The Project Site is flat and not susceptible to erosion. However, much of the site, as illustrated in Figure 1, is saturated and unnatural drainage patterns can form from building or driving in the wetland. All development and associated activities will occur outside the wetland. Correction of the natural flow of water away from a ditch and into the wet swale will occur as a mitigation measure.
(1d) 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.	A bluff face occurs on the Project Site, but there are no hills or other pronounced topographic features. The existing house and proposed development are located on the driest areas on the Project Site.
(1e) 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.	The proposed construction occurs adjacent to the existing house and on the opposite side of the road from the ESHA.
(1f) 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.	Adjacent development in the subdivision occurs approximately the same distance (10'-20') from an ESHA. See Appendix B.

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Sec. 20.496.020 ESHA -- Development Criteria.	
(1g) 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.	The proposed development is an addition to an existing house, construction of a workshop, and placement of septic and replacement septic fields. These developments are similar to other developments in the subdivision.
(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).	The buffer was measured from the landward edge of the wetland. Wetland delineation methods followed those established in the Mendocino County Local Coastal Program and California Coastal Act.
(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.	No subdivisions or boundary line adjustments are proposed.
(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:	
(4a) 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.	The proposed development will not impact the functional capacity of the wetland. The development will not impede the flow of water into the wetland and will improve the flow into the wetland through the implementation of mitigation measures necessary for development within the ESHA buffer.
(4b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.	The parcel is bounded by the Pacific Ocean to the west, private property to the south, east, and Mar Vista Drive to the north. Development occurs on the driest site of Project Site, avoiding direct impacts to the ESHA. 
(4c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.	Impacts to adjacent habitat areas are minimized by concentrating development next to existing structures and away from the ESHA.
(4d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.	The existing driveway is within 10'-20' from the wet swale. The hydrologic integrity of the site will be maintained by <u>not creating</u> an impervious surface on the driveway.

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(4e) 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.	The locations of the proposed septic and replacement septic field and workshop are on the most environmentally feasible locations on the Project Site. No wetland vegetation will be lost to the development; however, native vegetation will be encouraged by not mowing in the wet swale.
(4f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.	The driveway will be <u>graveled</u> , thus reducing the amount of impervious surface on the Project Site. Vegetation will be mowed on the land above the wet swale, but vegetation in the wet swale will be retained.
(4g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.	No riparian or wetland vegetation will be lost during construction. ✓
(4h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.	The wetland on the Project Site is a saturated swale and does not have periods of high flow.
(4i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.	The construction will not significantly increase runoff to the site or interfere with hydrological processes. All areas of proposed development, including those within the buffer will not negatively affect the biological diversity of the native terrestrial vegetation. Most of the vegetation in this area is <u>exotic perennial grasses</u> .
(4j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.	Some surface flow is currently diverted towards the existing house by a ditch paralleling the driveway. This ditch will be filled and regraded to allow water to follow the natural course through the wet swale. ✓
(4k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)	Mitigation measures will be implemented for the proposed developments within the 50-foot buffer from an ESHA. These measures will improve the habitat quality of the wetland on the Project Site. Hydrologic patterns and vegetation will be restored in the wet swale.

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## SUMMARY

The owner of the Project Site is proposing development that would occur within 100' of a wet swale, which is considered an ESHA. The reduction of the buffer distance may be considered when the proximity of adjacent existing development from an ESHA is less than 100' in a subdivision that is largely built-out. Three examples of structures at approximately 10'-20' from an ESHA occur on two adjacent lots from the Project Site, which occurs in a subdivision.

## INTRODUCTION

The purpose of this analysis was to document the distance of existing structures to ESHA's (Environmentally Sensitive Habitat Areas) that are nearby the Project Site (APN 118-190-38) located at 45321 Mar Vista Drive, Mendocino, California. The owner of the Project Site wishes to make modifications to the existing structures that would result in development within an ESHA buffer.

Standards for determining the appropriate width of buffers are outlined in the Mendocino County Coastal Zoning Code, Section 20.496.020. Section (f) (Lot Configuration and Location of Existing Development) states that where there are uniform distances from an ESHA in a subdivision, at least the minimum buffer shall be maintained. It also states that if this distance is less than 100 feet, mitigation measures shall be implemented to compensate for the reduction in buffer distance.

## DESCRIPTION OF EXISTING DEVELOPMENT

The Project Site is at the end of a cul-de-sac in a subdivision. A wet swale bisects the Project Site and forms a small seasonal drainage that passes between the house on the Project Site and the neighboring house. Additionally, a small perennial stream with alder riparian habitat passes by two adjacent houses to the north.

Figure 1 on the following page illustrates the location of the Project Site in relation to the wet swale and alder riparian habitat. The wet swale is approximately 15'-20' from the house on the Project Site and from the house on the parcel (118-190-24) to the northwest (Figure 2).

Figure 1 also illustrates the location of structures on parcels 118-190-24 and 118-190-22 adjacent to riparian alder habitat that are approximately 10'-15' to the creek and/or riparian habitat. Figure 3 illustrates the structure that is close to the small creek.

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