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Filed: April 20, 2005
49th Day: June 8, 2005
Staff: Carrie A. Bluth
Staff Report: May 26, 2005
Hearing Date: June 8, 2005
Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

APPEAL NO.: **A-1-MEN-05-020**

APPLICANT: **Dennis Hollingsworth**

LOCAL GOVERNMENT: **County of Mendocino**

DECISION: **Approval with Conditions**

PROJECT LOCATION: **27801 North Highway One, Approximately 3 miles north of Cleone, on the east side of Hwy One, approximately ¼ mile north of Camp Ten Mile Rd. and Hwy One intersection, in Mendocino County (APN 069-010-31).**

PROJECT DESCRIPTION: **(1) After-the-fact authorization for the remodel of a 2,646-square-foot detached garage/shop structure, with a maximum height of 20 feet above finished grade; (2) grading activity associated with fill material previously placed on site within 100 feet of a stream, which would involve the permanent removal of fill from an established 50-foot ESHA buffer area, accompanied by riparian habitat**

restoration, and the temporary removal of fill located outside of the 50-foot buffer area, and, after confirmation of fill content, the replacement of the fill in the same location.

APPELLANT:

Darold Kassebaum, Jr.

SUBSTANTIVE FILE:
DOCUMENTS

1) Mendocino County CDP #47-04; 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 appellants have raised a substantial issue with the local government's action and its consistency with the certified LCP.

The appellant's allegations amount to a contention that the County's approval of the project does not address issues raised by the development in a manner consistent with LCP provisions which are designed to protect environmentally sensitive habitat areas (ESHA) from development, by providing for the establishment of adequately sized buffers between the two. The development, as approved by the County addresses un-permitted grading activity which had previously occurred on this rural residential property by establishing a 50 foot buffer to protect the ESHA resources on site (stream and riparian corridor), and requiring the permanent removal of all fill from within the buffer area, accompanied by habitat restoration over the disturbed area. Development approved just outside of the buffer area includes the temporary removal of previously placed fill, and, after confirmation of fill content, the replacement of the fill in the same location. Also approved is the remodel of an existing un-permitted 2,646-square-foot detached garage/shop type structure, with a maximum height of 20 feet.

Staff recommends that the Commission find that the project, as approved, raises a substantial issue of conformance with the certified LCP with respect to the contention raised concerning ESHA resource protection. The County's findings for approval of the project do not present sufficient evidence that the ESHA buffer size of 50 feet, approved for the project, was established based on the specific standards for determining appropriate buffer width set forth in the LCP.

Staff also recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient

information from the applicant to determine if the approved development can be found consistent with provisions of the certified LCP requiring protection of ESHA resources.

The motion to adopt the staff recommendation of Substantial Issue is found on pages 4 and 5.

STAFF NOTES

1. Appeal Process

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within one hundred feet of a wetland or stream, within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within a sensitive coastal resource area.

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

The subject development is appealable to the Commission because it is located within 100 feet of a wetland or stream.

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 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 applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

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, a 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.

The appellant filed an appeal (Exhibit No. 7) to the Commission in a timely manner on April 20th, 2005, within 10 working days of receipt by the Commission on April 8th, 2005 of the County's Notice of Final Action, included as Exhibit No. 4.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

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-05-020 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-05-020 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTION

The Commission received an appeal of the County of Mendocino's decision to approve the development from Mr. Darold Kassebaum, Jr.

The development, as approved by the County addresses un-permitted grading activity which had previously occurred on site by establishing a fifty (50) foot buffer to protect the ESHA resources (stream and riparian corridor), and requiring the permanent removal of all fill from within the buffer area, accompanied by habitat restoration over the disturbed area. Development approved just outside of the buffer area includes the temporary removal of previously placed fill, and, after confirmation of fill content, the replacement of the fill in the same location. Also approved is the remodel of an existing un-permitted 2,646-square-foot detached garage/shop type structure.

The project site is a rural residential property located approximately three (3) miles north of Cleone, on the east side of Highway One, at 27801 North Highway One. The property is 3.48 acres in size, and an unnamed Class II stream runs along the northern portion of the property. The stream supports riparian vegetation, and constitutes an environmentally sensitive habitat area (ESHA). The property is developed with an existing permitted main residence, a guest cottage, and an un-permitted garage/shop type structure.

The appellant's allegations amount to a contention that the project, as approved by the County, is inconsistent with LCP policies designed to protect environmentally sensitive habitat areas from development. The appellant's contention is summarized below, and the full text of the Appeal is included as Exhibit No. 7.

The appellant alleges that numerous regulatory violations have occurred on the subject property, and that they have not been properly addressed. The appellant indicates that with respect to the un-permitted grading, which the subject County approved CDP addresses, the applicant/property owner excavated a hole near the Class II stream and filled the hole with a variety of miscellaneous junk and hazardous waste material. The appellant further indicates that a number of 55-gallon drums of used motor oil were

stored within a few feet of the stream, and that two 250-500 gallon oil/fuel storage tanks were dumped near the stream. The appellant indicates that no soils tests have been done to determine the extent of pollution which may have occurred, and that the stream flows by a number of water wells and eventually out to the ocean.

The appeal essentially calls into question the adequacy of the 50 foot buffer width established by the County to protect the ESHA resources located on the northern portion of the project site, from development, and therefore raises a valid appeal contention involving inconsistency of the approved project with the County's LCP policies relevant to the protection of ESHA.

B. LOCAL GOVERNMENT ACTION

On March 25th, 2005 the Coastal Permit Administrator for Mendocino County approved Coastal Development Permit No. 47-04 for the subject development. The County's coastal development permit, as approved, attached 7 Special Conditions of Approval, contained in their entirety in Exhibit No. 4, and as applicable to this appeal, are included by appropriate number below:

1. Prior to the issuance of the Coastal Development Permit, the applicant shall submit an engineered grading plan and a grading permit application for the fill to be removed as well as for the fill that is to remain. All fill located within fifty (50) feet of the ESHA shall be permanently removed. The fill located outside of the 50 feet ESHA buffer shall be removed, brought down to original/natural grade and then after confirmation of the content of the fill, may be put back on the disturbed area. No grading shall be allowed prior to (1) issuance of the Coastal Development Permit (CDP) and the grading permit and (2) and April 15. Grading must be complete, and erosion control measures in place no later than October 15, 2005.
2. Prior to issuance of the Coastal Development Permit, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
 - a) The landowner understands that the site may be subject to erosion hazards 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 follow the recommendations of the engineer and the botanist and shall contact the Planning Department immediately if any proposed changes to the requirements are recommended, whether by the engineer or the botanist. This shall be in effect for the life of the project.
 - e) No structures shall be placed on the filled area, whether of temporary or permanent nature.
 - 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.
4. All recommendations within the letters/reports from KPFF dated October 12, 2004 and March 22, 2005 (protection of buffer areas and mitigation measures) shall be observed. No fill is to be removed without twenty-four hour notice to KPFF. KPFF must be on site when natural grade is discovered. All non-native species (Scotch Broom, etc.) noted by the botanist shall be removed by hand in order to allow native vegetation plantings to recover and prosper. Any proposed modifications to these recommendations shall be approved by the Department of Fish and Game and the Coastal Permit Administrator prior to enacting/implementing such changes. Prior to the violation case being closed, staff from Planning and Building Services, as well as KPFF, shall determine, in writing, that the removal and relocation of fill and revegetation plan is successful.
5. Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Planning and Building Services Department, a Replanting and Maintenance Schedule, at a minimum of a 2:1 replacement of destroyed riparian vegetation. The Replanting and Maintenance Schedule shall be prepared by a qualified botanist who shall estimate the amount of riparian vegetation destroyed by prior grading activities at the site. One year after replanting the qualified botanist shall prepare a written report, to be submitted to Planning and Building Services, describing the degree of success or failure of the replanting. This condition shall be considered met when the qualified botanist concludes, in writing, that at least 50 percent of the replantings required in the Replanting and Maintenance Schedule have survived one year and that there is no reason to believe that they will not continue to survive.
7. Within 60 days of issuance of this Coastal Development Permit or July 1, 2005, whichever occurs first, the applicant shall submit any building plans and applications necessary to legalize additions or conversions that have occurred to the primary dwelling on the property.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on April 8th, 2005 (Exhibit No. 4). 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 project was appealed to the Coastal Commission in a timely manner on April 20th, 2005, within 10 working days after receipt by the Commission on April 8, 2005, of the Notice of Final Action.

C. PROJECT AND SITE DESCRIPTION

The project site is a rural residential property located approximately 3 miles north of Cleone, on the east side of Highway One, roughly ¼ mile north of the intersection of Highway One and Camp Ten Mile Road (see Exhibit Nos. 1 & 2). The property is 3.48 acres in size, and partly forested. An unnamed Class II stream runs along the northern portion of the property. The stream supports riparian vegetation, and constitutes an environmentally sensitive habitat area (ESHA). The property is developed with an existing permitted main residence, a guest cottage, and an un-permitted garage/shop type structure.

The project as approved by the County consists of the remodel of an un-permitted 2,646-square-foot detached garage/shop type structure with a maximum height of 20-feet above finished grade, the engineering of un-permitted fill previously placed on the project site within 100 feet of an ESHA (Class II stream and riparian corridor), and related riparian habitat and slope restoration. More specifically, with regard to the engineering of the un-permitted fill, the approval establishes a 50-foot ESHA buffer to protect the Class II stream and riparian corridor on the northern portion of the property, and approves development within and outside of the buffer area. Development approved within the 50-foot buffer area involves the permanent removal of all un-permitted fill material and the restoration and re-vegetation of the disturbed riparian habitat at a minimum of a 2:1 ratio. Development approved outside of the 50-foot buffer area (but adjacent to it) includes the temporary removal of all un-permitted fill material, and after sorting the contents of the fill to remove inappropriate fill materials, replacement of the remaining fill material over the area where it was previously placed. The County also required the recordation of a deed restriction over the fill site imposing requirements including the prevention of future structural development (see Exhibit No. 3 "Site Plan" and No. 4 Notice of Final Action/County Staff Report)

Background

The existing main residence apparently dates from 1955-1960, and the secondary unit from 1974. The second single-family residence is recognized by the County as a legal

non-conforming residence. The garage/shop structure was originally proposed as a garage, however no permit was ever issued, and the shop was built without a permit. Subsequently, the applicant undertook an internal remodel of the structure without securing a permit, and in April of 2004 the County issued a "stop-work" order in response (Notice of Violation is contained in the Appeal – Exhibit No. 7). The County also "red-tagged" the un-permitted grading, which has taken place on the slope adjacent to the Class II stream, as close as 11 feet from the stream itself. As a result of the un-permitted grading, the stream was subject to sedimentation from erosion of the graded area during the winter of 2005. The County issued an emergency permit to allow for implementation of temporary erosion control measures, such as straw waddles and bales as recommended by the applicant's consulting botanist on the project (see Exhibit No. 5 "G" Permit and No. 6 Botanical Reports).

Other past violations on this site recorded by the County include the operation of a commercial use on the residential property and development associated with that use. This operation and related heavy machinery and equipment is in the process of being relocated to a Commercial/Industrial site within the City of Fort Bragg.

D. SUBSTANTIAL ISSUE ANALYSIS

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

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

The contention raises a substantial issue concerning the consistency of the approved development with LCP provisions.

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

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

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

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

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

The contention raised in this appeal challenges the project's consistency with policies of the Mendocino County certified LCP, and therefore presents potentially valid grounds for appeal. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations below, the project as approved, raises a substantial issue of conformity with the provisions of the certified Mendocino County LCP designed to protect environmentally sensitive habitat areas (ESHA) by the establishment of buffers between new development and the ESHA.

Contentions Raising Substantial Issue

Protection of Environmentally Sensitive Habitat Areas

The contentions raised in this appeal essentially allege the project is inconsistent with certain policies of the certified Land Use Plan and certain sections of the Coastal Zoning Code which address the protection of environmentally sensitive habitat areas (ESHA). The appellant's contentions call into question the adequacy of the fifty (50) foot buffer width, established by the County to protect the stream and adjoining riparian corridor located along the northern portion of the project site from the grading activity and habitat restoration approved both within and outside of the buffer area.

LCP Policies and Standards

Land Use Plan – Coastal Element

Policy 3.1-7 states in applicable part:

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

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

Implementation Plan – Coastal Zoning Ordinance

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

ESHA - Development Criteria

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

(1) Width.

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

- (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.*

Discussion

As heretofore discussed, the County's approval addresses the un-permitted grading activity which had previously occurred on the site by establishing a 50-foot buffer to protect the ESHA resources (stream and riparian corridor), and calling for the permanent removal of all fill from within the buffer area, accompanied by habitat restoration. Development approved just outside of the buffer area includes the temporary removal of previously placed fill, and, after the contents of the material has been confirmed, replacement of the fill in the same location.

In the original County staff report, the discussion concerning the determination of an appropriate buffer width - within which the fill would be permanently removed, is sparse. However, a supplement to the report (discussed below) implies that the original determination was 11 feet,

which is the distance from the stream at which the closest extent of fill was observed, as noted by the applicants consulting firm KPFF, in a report dated 10/12/04 (see Exhibit No. 6).

The supplement to the County staff report (*Interoffice Memo – Additions and Revisions to Staff Report – March 25, 2005*), changes the recommendation to increase the buffer size to 50 feet, and briefly discusses the reason for change, indicating as follows:

“Staff believes the intent of the Coastal Zoning Code, specifically the portion that pertains to development within 100 feet of an ESHA, would be better served by observing a 50-foot buffer. By maintaining a larger setback from the Class II stream, the functional capacity of the stream is much more protected from erosion and silt infiltration”. It has been proven that there is an alternative location for the relocation of a portion of the fill, away from the stream, which also could be considered the ‘best site’, given the fact that the removal and replacement of the fill will be strictly monitored by KPFF’s engineering and botanical firm”.

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

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

The County approval does not include an evaluation of what an appropriate buffer width is in this case based on all of the aforementioned standards contained in Coastal Zoning Ordinance Section 20.496.020(A)(1). As demonstrated above, in the Supplement to the staff report, the County finds that expanding the buffer zone up to 50 feet would better carry out the intent of the Coastal Zoning

Code, by increasing protection for the stream from erosion and siltation. However, the LCP requires that buffers to protect ESHA be a *minimum* of 50 feet wide. 50 feet represents a reduction over the general standard of 100 feet, and is therefore only permitted, when, upon consultation with the Department of Fish and Game, and based on an evaluation of whether the reduced buffer width meets the standards set forth in CZO Section 20.496.020(A)(1)(a-g), it can be determined that a reduced buffer of less than 100 feet (but no less than 50 feet) is adequate to protect the adjacent sensitive resource(s) from development.

In this case, the County report explains why a 50 foot buffer is more consistent with the LCP than a lesser size (11 feet), but an evaluation of why 50 feet is adequate based on the relevant LCP standards contained in Coastal Zoning Ordinance Section 20.496.020 (A) (1) is absent from the report. The staff report and special conditions reference and incorporate recommendations made by the applicant's consulting botanist and engineer with KPFF, pertaining to development within the buffer area, such as removal of fill, erosion control, and restoration. Such measures are outlined in the reports from KPFF, contained in Exhibit No. 6. However, there is no evidence presented in these reports which substantiates the determination that a 50-foot buffer from the stream and riparian area is adequate, and none of the reports address the factors set forth in Coastal Zoning Ordinance Section 20.496.020 (A) (1) (a) through (g) for determining the width of a buffer.

Moreover, the reports contain observations that, upon analysis of the relevant factors for determining buffer width, may suggest a reduced buffer is not appropriate. For example, in a report dated 10/12/04, Susan Morrison, botanist with KPFF, notes:

The fill encroached as close as 11 feet from the stream and disturbed a significant portion of riparian vegetation making it unclear as to where the riparian and upland vegetation integrated. The soil at the site is of high silt/clay content and is highly erosive. The slope of the fill area varies between 30-40%.

CZO Section 20.496.020 (A) (1) (c) specifies that the erosive nature of the site is a factor to be considered in determining an adequate buffer width, stating:

- (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.*

Other factors, which, upon consideration may dictate the need for a wider buffer, include CZO Section 20.496.020 (A) (1) (f) Lot Configuration and Location of Existing Development, and subsection (g), which concerns the Type and Scale of Development Proposed.

- (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 [emphasis added].

The County staff report indicates the following with respect to the lot configuration and location of existing development on site: "The residences, septic system, well, and associated improvements do not occur within 100 feet of the upland extent of vegetation associated with any wetland." The 3.48-acre parcel also contains relatively large open areas located more than 100 feet away from the stream. Based on the provisions highlighted in subsection (f) above, the fact that all of the existing development is located at least 100 feet away from the riparian corridor, and there are large open areas on site, a substantial issue is raised as to whether the replacement fill should be located 100-feet or more away from the stream.

In this case, the approved development to be located outside of the buffer zone includes the remodeled garage, and land filling activity. CZO Section 20.496.020 (A) (1) (g) addresses the following consideration with respect to type/intensity of development at issue:

(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.

In the approved development, the placement of fill just outside the buffer area raises concerns about the composition of the fill (which the appellant alleges is polluted), the erosive nature of the material, and the site on which it will be placed, and the ultimate use of the fill site itself, none of which are discussed in sufficient detail in the report. Special Condition No. 1 of the report requires confirmation of the contents of the fill prior to replacing it outside of the buffer area, but does not set forth any standards for what is acceptable for replacement. This is potentially relevant with respect to buffer width, as the buffer is intended to protect the ESHA, and therefore the actual composition of the fill to be placed just outside of the buffer area is a factor of influence in the determination of the adequacy of the buffer size.

Furthermore, it is clear that the area of disturbance in the riparian corridor where fill will be permanently removed is to be cleared of any non-native vegetation and restored, however it is not clear whether the area where the fill will be placed, presumably outside of the riparian area, will be re-vegetated or left barren. Special Condition No. 2 imposes a Deed Restriction restricting future structural development on the fill area, however what type of use will occur on the site remains unclear. If left to naturally re-vegetate this area would likely be quickly colonized by invasive weeds, which could then spread to the ESHA, and choke out native vegetation. How quickly and easily such invasive species could spread to the ESHA may in part be a function of buffer width. CZO Section 20.496.020 (A) (1) (g) requires that the type of development approved be a factor in

determining the width of the buffer appropriate to protect the ESHA from impacts such as those described above associated with development. The County's findings do not include any analysis concerning the type and intensity of approved development as a factor in determining adequate buffer width.

Consultation with the Department of Fish and Game

The staff report and supplement thereto do demonstrate that the Department of Fish and Game (DFG) was consulted on this matter, and that Mr. Liam Davis, a DFG biologist concurred that the recommendations made by the County, and KPFF consultants pertaining to development which would take place presumably, at least in part within the buffer area such as erosion control, engineering the disturbed slope and revegetation – which are incorporated into the approval, would be sufficient in protecting the resource. In addition, the supplement to the staff report cites the following statement from Mr. Davis: “ The 50-foot setback is appropriate from the Class II stream.” However, despite this concurrence, the staff report, including all supplements, remains shy of demonstrating that the ultimate approval of a 50-foot buffer was based on a thorough analysis of the criteria set forth in CZO Section 20.496.020 (A) (1).

Conclusion

For all of the reasons set forth above, the Commission finds that the degree of factual and legal support for the County's action is low, given that the required information necessary to justify a reduced ESHA buffer has not been presented. In addition, the Commission finds that the precedential value of the County's action in regard to future interpretations of the LCP is relatively high given that many projects proposed in the County are located next to ESHA and raise issues concerning the determination of adequate ESHA buffer widths.

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

Information Necessary for de novo Review of Application

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

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

1) Revised Project Description and Detailed Site Plan

A revised and more comprehensive project description which includes details concerning the size, extent, and topography of the area proposed for fill retention is necessary in order for staff to fully evaluate that aspect of the development's consistency with the LCP. In addition, a more detailed site plan drawn to scale depicting all of the proposed development and relationship to major features on the site is necessary.

2) Buffers for Environmentally Sensitive Habitat Areas

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

None of the biological information referenced by the County in approving the project, including the information contained in reports prepared by the applicant's consulting firm provide an evaluation of the width of buffer needed, based on the standards in 20.496.020 (A) (1) (a) through (g). Such an evaluation prepared by a qualified professional is needed

to determine what width of buffer is appropriate and whether the buffer can be reduced to 50-feet, under the criteria specified in the LCP.

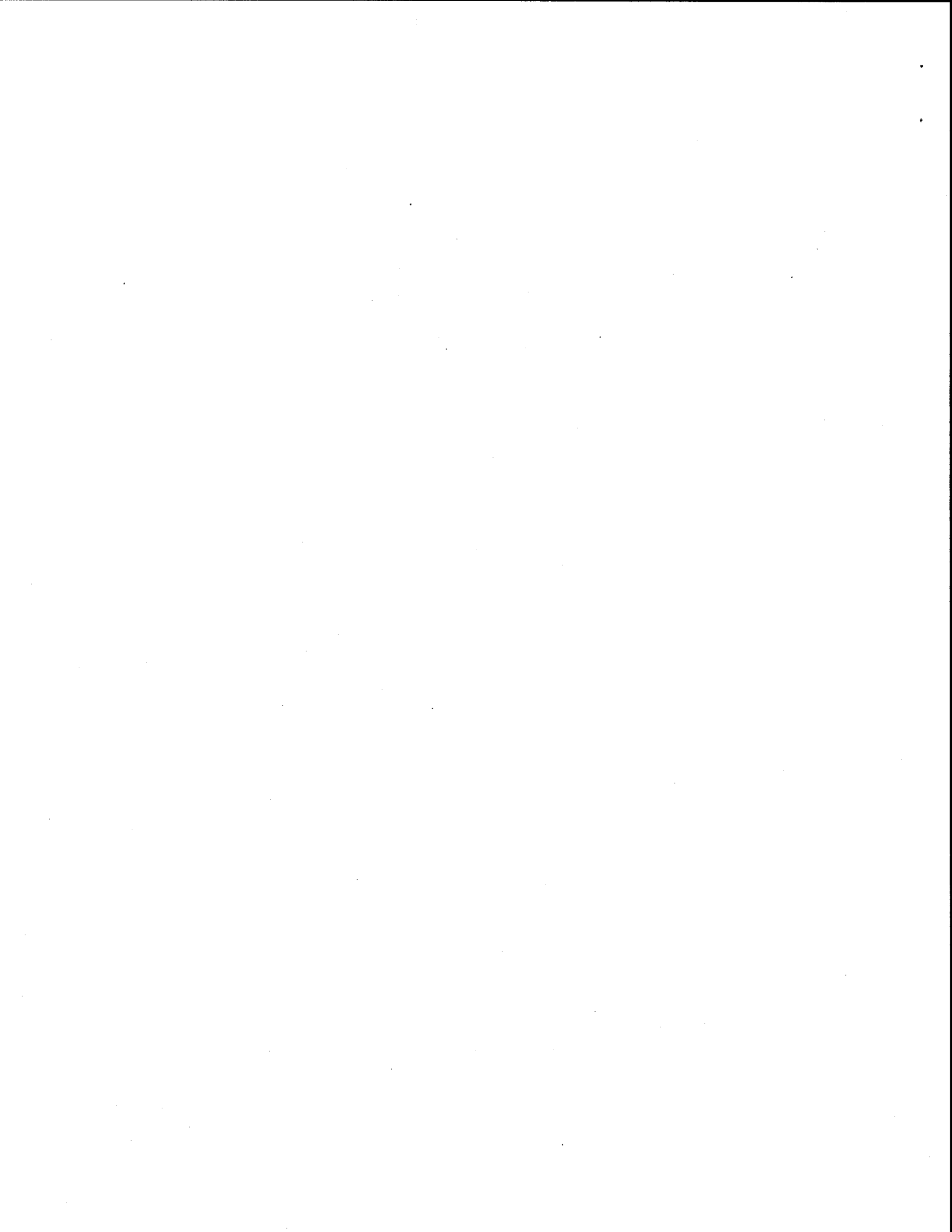
Lot Configuration and Location of Existing Development

CZO Section 20.496(A)(1)(f) provides that lot configuration and the location of existing development are factors that must be considered when determining appropriate buffer width. As discussed previously in this report, since all of the existing development on the subject property is located at least 100 feet away from the riparian corridor, and there are large open areas on site, when analyzed in consideration of the specific standards set forth in CZO Section 20.496(A)(1)(f), a substantial issue is raised as to whether the replacement fill should be located 100-feet or more away from the stream. Therefore, an alternatives analysis should be prepared which examines the feasibility and environmental impacts of locating the replacement fill on other locations on the site, which are more than 100-feet away from the stream and riparian corridor.

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

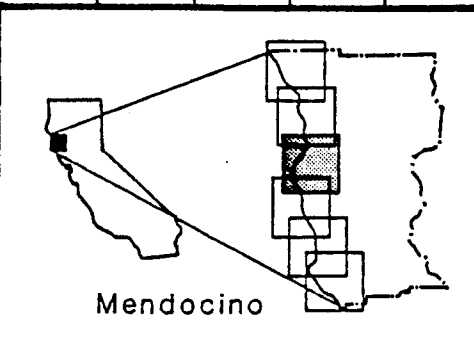
Exhibits:

- 1) Regional Location Map
- 2) Vicinity Map
- 3) Site Plan
- 4) Notice of Final Action/County Staff Report with Addendum and Supplement
- 5) Emergency Permit
- 6) KPF Botanical & Engineering Reports
- 7) Appeal



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PROJECT SITE

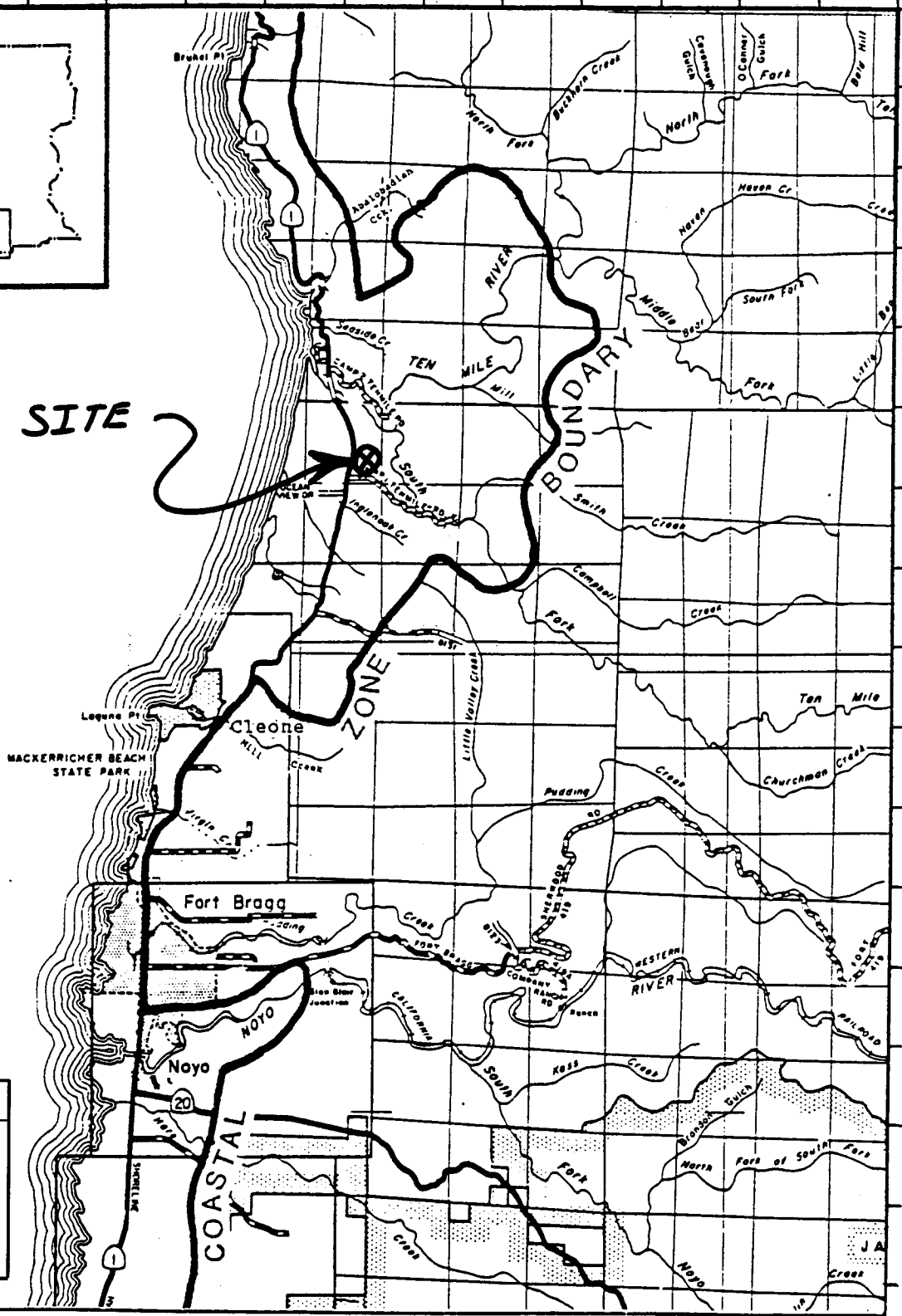
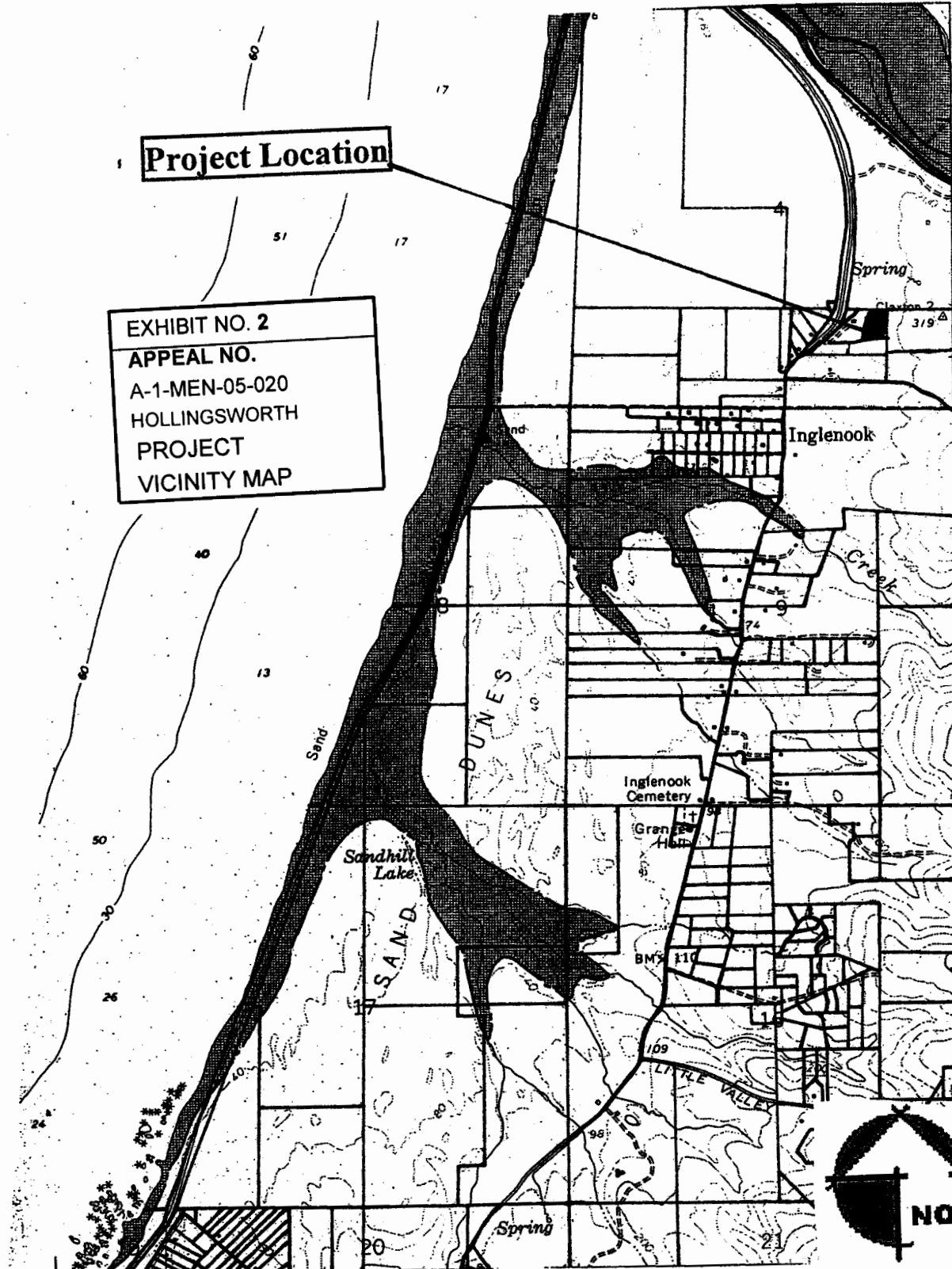


EXHIBIT NO. 1
 APPEAL NO.
 A-1-MEN-05-020
 HOLLINGSWORTH
 REGIONAL
 LOCATION MAP



LOCATION MAP





Project Location

EXHIBIT NO. 2
APPEAL NO.
A-1-MEN-05-020
HOLLINGSWORTH
PROJECT
VICINITY MAP





COUNTY OF MENDOCINO

PLOT PLAN
BUILDING INSPECTION DIVISION

JOB ADDRESS _____

ASSESSOR'S PARCEL NO. _____

APPLICATION NO. _____

TOWN or COMMUNITY _____

OWNER'S (LEGAL) NAME _____

Show all buildings, structures, mobile homes, septic tanks and leach fields, wells, streams, lakes, roads, streets, alleys, retaining wells, fences, easements, electrical power poles, and any other improvements and indicate all distances between. Specify whether existing or proposed. Draw to and show scale. Indicate orientation with a North Arrow.

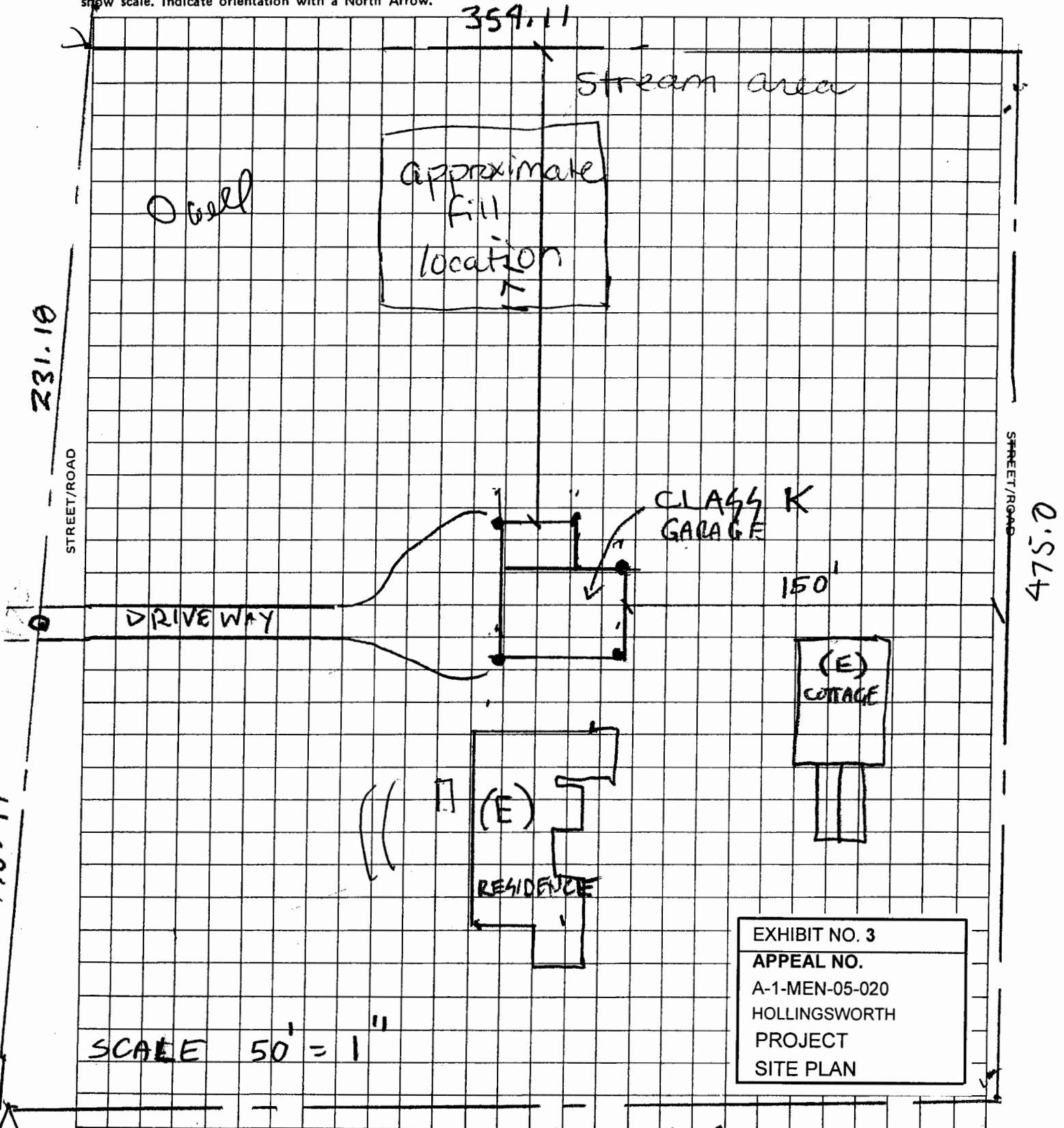


EXHIBIT NO. 3
APPEAL NO.
A-1-MEN-05-020
HOLLINGSWORTH
PROJECT
SITE PLAN



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

RAYMOND HALL, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

RECEIVED

MAY 11 2005

CALIFORNIA
COASTAL COMMISSION

April 5, 2005

NOTICE OF FINAL ACTION

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

CASE#: CDP #47-04
OWNER: Dennis Hollingsworth
REQUEST: Legalize graded and filled area on project site that is within 100' of an ESHA. Legalize garage/shop/storage structure.
LOCATION: Approximately 3 miles N of Cleone, on the E side of Highway One, approximately ¼ mile N of the intersection of Highway One and Camp Ten Mile Road (CR#427), at 27801 N Highway One, APN 069-010-31.
PROJECT COORDINATOR: Paula Deeter

HEARING DATE: March 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.

EXHIBIT NO. 4
APPEAL NO. A-1-MEN-05-020 HOLLINGSWORTH NOTICE OF FINAL ACTION and COUNTY STAFF REPORT (Page 1 of 19)



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
501 LOW GAP ROAD · ROOM 1440 · UKIAH · CALIFORNIA · 95482

RAYMOND HALL, DIRECTOR
Telephone 707-463-4281
FAX 707-463-5709
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

March 25, 2005

DENNIS HOLLINGSWORTH
27801 NORTH HIGHWAY 1
FORT BRAGG, CA 95437

Dear Mr. Hollingsworth:

I approved Coastal Development Permit #CDP 47-2004 with the standard conditions found in the original Staff Report and the Special Conditions which I have attached.

During today's meeting I also stated that I would review the legal status of the dwelling located east of the primary residence. Correspondence and notes in the Coastal Development Permit indicate that Code Enforcement personnel had previously concluded that this structure was a legal non-conforming dwelling. After reviewing the Assessor's records I concur with their conclusion. An entry on September 20, 1960 mentions a second house on the property.

Sincerely,

Raymond Hall
Director

CC: CDP# 47-2004 file

COASTAL DEVELOPMENT PERMIT #CDP 47-2004

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten 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 is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. The 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 (1) or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which such permit was granted have been violated.
 - c. The use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or is 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 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. Prior to the issuance of the Coastal Development Permit, the applicant shall submit an engineered grading plan and a grading permit application for the fill to be removed as well as for the fill that is to remain. All fill located within fifty (50) feet of the ESHA shall be permanently removed. The fill located outside of the 50 feet ESHA buffer shall be removed, brought down to original/natural grade and then after conformation of the content of the fill, may be put back on the disturbed area. No grading shall be allowed prior to (1) issuance of the Coastal Development Permit (CDP) and the grading permit and (2) and April 15. Grading must be complete, and erosion control measures in place, no later than October 15, 2005.
2. Prior to the issuance of the Coastal Development Permit, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
 - a) The landowner understands that the site may be subject to erosion hazards and the landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorney's fees and costs of any 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 follow the recommendations of the engineer and the botanist and shall contact the Planning Department immediately if any proposed changes to the requirements are recommended, whether by the engineer or the botanist. This shall be in effect for the life of the project.
 - e) No structures shall be placed on the filled area, whether of temporary or permanent nature.

- 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 the issuance of the Building Permit, the applicant shall submit exterior lighting details for the approval of the Coastal Permit Administrator. All exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded in compliance with Sec. 20.504.035 of the Zoning Code.
 4. All recommendations within the letters/reports from Kpff dated October 12, 2004 and March 22, 2005 (protection of buffer areas and mitigation measures) shall be observed. No fill is to be removed without twenty-four hour notice to Kpff. Kpff must be on site when natural grade is discovered. All non-native species (Scotch Broom, etc.) noted by the botanist shall be removed by hand in order to allow native vegetation plantings to recover and prosper. Any proposed modifications to these recommendations shall be approved by the Department of Fish and Game and the Coastal Permit Administrator prior to enacting/implementing such changes. Prior to the violation case being closed, staff from Planning and Building Services, as well as Kpff, shall determine, in writing, that the removal and relocation of fill and revegetation plan is successful.
 5. Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Planning and Building Service Department, a Replanting and Maintenance Schedule, at a minimum of a 2:1 replacement of destroyed riparian vegetation. The Replanting and Maintenance Schedule shall be prepared by a qualified botanist who shall estimate the amount of riparian vegetation destroyed by prior grading activities at the site. One year after replanting the qualified botanist shall prepare a written report, to be submitted to Planning and Building Services, describing the degree of success or failure of the replanting. This condition shall be considered met when the qualified botanist concludes, in writing, that at least 50 percent of the replantings required in the Replanting and Maintenance Schedule have survived one year and that there is no reason to believe that they will not continue to survive.
 6. Due to the original grading within the ESHA buffer and the removal of that fill as a condition of this entitlement, Coastal Development Permit #CDP 47-2004 is considered a Standard Coastal Permit. As such additional fees in the amount of \$2,100 shall be paid to Planning and Building Services by the applicant prior to issuance of the CDP. Planning and Building Services staff has authority to revise this amount if it is determined to be inaccurate.
 7. Within 60 days of issuance of this Coastal Development Permit or July 1, 2005, whichever occurs first, the applicant shall submit any building plans and applications necessary to legalize additions or conversions that have occurred to the primary dwelling on the property.

INTEROFFICE MEMORANDUM

TO: CDP FILE 47-04
FROM: PAULA DEETER, PROJECT COORDINATOR
SUBJECT: ADDITIONS AND REVISIONS TO STAFF REPORT
DATE: 3/25/2005

The original staff report for CDP 47-04 called for legalization of the fill as close as eleven feet to the Class 2 stream on the parcel. This revision to that CDP will discuss the proposed 50-foot buffer, rather than an eleven-foot buffer. A discussion with the applicant indicated that he was willing to relocate the fill to an area that could meet the criteria for development closer to an ESHA than 100 feet. All of the other criteria (deed restriction for no future construction on the fill area; wet weather monitoring and all engineering recommendations) would remain the same.

An email dated March 7, 2004, from Liam Davis, biologist for DFG, states:

The 50-foot setback is appropriate from the Class II stream.

An updated report from KPFF includes recommendations from Mr. Eric Jahelka, Professional Engineer and from Ms. Susan Morrison, botanist and lab technician. A portion of the report states:

On March 21, 2005 we visited the Hollingsworth property to determine whether erosion control recommendations requested in our letter of October 12, 2004 had been implemented properly...the following was noted:

- Loose spoils within the ESHA had been removed.
- Straw mulch had been spread over the affected portions of the site excavation.
- Prescribed straw bale and wattle erosion protection had not been installed per KPFF recommendations.
- Four to five locations of the excavation had eroded moderately and transported fines into the ESHA.
- Locations of mild to moderate erosion had been protected with fresh applications of straw mulch.

Based on these observations, we believe that our recommendations were not fully implemented as prescribed resulting in mild to moderate erosion of the fill material. Specifically, the most westerly portion of the fill has eroded to the point that sediment has reached the stream. Straw mulch has been placed over the entire filled area and an attempt has been made to plant grass. Overland flow is apparent in several places and along the entire toe of the sloped fill, creating runoff of sediment. The vegetation disturbance has created an opening for the invasive Scotch broom.

KPFF recommends both immediate and long term remediation to this site. The implementation of straw bales with straw wattles along overland flow on the areas where there is active erosion should occur immediately. The placement of the wattles is critical in preventing further transportation of sediment to the stream. As per our letter dated October 12, 2004, the fill should be removed in order to return the slope to natural grade. Flagging will be placed by KPFF along the remaining riparian corridor and the heavy equipment should not encroach into this area. The removal shall take place from the top of the fill with no equipment encroaching along the bottom of the fill. The fill shall be removed to the area of red flagging, placed the farthest from the stream. KPFF shall be consulted 24 hours before the removal of the fill is to begin. KPFF must be on site when the natural grade has been discovered and will make any appropriate recommendations at that juncture. Removal of fill should not occur until after April 15th or when the County deems appropriate. However, the fill removal should take place as soon as possible so as to protect further damage to the ESHA which may occur during the early stages of Spring/Summer. All debris within the buffer of the ESHA shall be removed from the buffer area. Any unearthed debris shall be inspected and the appropriate disposal of the material shall be determined by the nature of the pollutant contained within.

The site shall be planted upon the completion of fill removal and is subject to final inspection by KPFF and the County of Mendocino. The vegetation list is included in Attachment A, and should be adhered to as mitigation for the destruction of an unknown amount of riparian habitat. The uncovering of natural grade shall determine the extent of vegetation to be replanted. An updated revegetation plan shall be submitted once the natural grade has been determined.

In the Mendocino County Coastal Zoning Code, Section 20.496.020 addresses development adjacent to an Environmentally Sensitive Habitat Area (ESHA):

(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer 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.

(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 event 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 ration of 1:1, which are lost as a result of development under this solution.*
- (k) If findings are made that the effects of developing an ESHA buffer 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.*

Staff believes that the intent of the Coastal Zoning Code, specifically the portion that pertains to development within 100 feet of an ESHA, would be better served by observing a 50-foot buffer. By maintaining a larger setback from the Class II stream, the functional capacity of the stream is much more protected from erosion and silt infiltration. It has been proven that there is an alternative location for the relocation of a portion of the fill, away from the stream, which also could be considered the "best site", given the fact that the removal and replacement of the fill will be strictly monitored by KPFF's engineering and botanical firm.

By requesting that any non-native species be removed and to encourage replanting native species, this will have an advantageous effect on the riparian recovery. Due to the unknown amount of riparian vegetation that has been removed, the applicant will be required (in a Special Condition) to revegetate the area that the professional botanist recommends, on at least a 1:1 ratio, for a goal of "no net-loss" of riparian vegetation.

Staff concurs with the recommendations made by KPFF, and would recommend that a Special Condition reflect these. Staff suggests that a rewrite of Special Condition #4 be written as follows:

All recommendations made by Susan Morrison, botanist, and Eric Jahelka, Professional Engineer, (protection of buffer areas and mitigation measures) shall be observed. No fill is to be removed without 24 hours prior notification to KPFF. KPFF must be on site when natural grade is discovered. All non-native species (Scotch Broom, etc.) noted by the botanist shall be removed by hand in order to allow native vegetation plantings to recover and prosper. Any proposed modifications to these recommendations shall be approved by the Department of Fish and Game and the Coastal Permit Administrator prior to enacting such changes. Prior to the violation case being closed, staff from Planning and Building, as well as KPFF shall determine that the relocation of the fill and revegetation plan is successful.

MEMORANDUM

TO: RAY HALL, DIRECTOR
FROM: PAULA DRETER, PROJECT COORDINATOR
SUBJECT: ADDENDUM TO STAFF REPORT
DATE: 2/22/2005

- After several discussions with Code Enforcement, staff, the Building Division and the engineering firm, the applicant decided that this method (engineering and deed restriction) made the most sense and implemented this into his application request.
- The Building Division insisted that, in order to keep the fill where it is, it must be removed to original grade, any inappropriate material removed to an approved disposal site, and replaced, supervised by the engineer. The material would not encroach closer to the ESHA that it already does.
- I have apparently put the grading cart in front of the CDP horse. I would change the language to reflect the difference in timing for the two permits.
- Special Condition #2 is a modified "no sea wall" deed restriction language that we would have the property owner record on his deed. I am attaching a copy of Rick's "Marlowe" (CDP 78-02) project condition that reflects this. The fill will NOT be compacted; therefore the deed restriction for the "no future structures on this site" requirement. Additionally, the deed restriction would act as a "red flag" for any potential future buyers and would have the benefit of being readily noted by a buyer or agent.
- Staff feels comfortable with the eleven foot buffer, although it does encroach further toward the ESHA than the "not less than 50 feet" noted in Section 20.496.020. It is consistent with Section 20.496.020 of the Coastal Zoning Code as "permitted development" This project does not require the findings of Section 20.532.100 (as the development does not occur within an ESHA). We have approved projects that have development within 50 feet of an ESHA without making the findings (see Rick's CDP 14-03 Seymour).

Marlowe:

3. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
 - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazards and the landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and

9 of 19

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;
- 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.

OWNER: Dennis Hollingworth
27801 N Hwy One
Fort Bragg, CA 95437

REQUEST: Legalize graded and filled area on project site that is within 100' of an ESHA. Legalize garage/shop/storage structure.

LOCATION: In the Coastal Zone, approximately 3 miles N of Cleone, on the E side of Highway One, approximately 1/4 mile N of the intersection of Highway One and Camp Ten Mile Road (CR#427), at 27801 N Highway One, APN 069-010-31.

APPEALABLE AREA: Yes, development within 100' of an ESHA

PERMIT TYPE: Standard

TOTAL ACREAGE: 3.48 acres

ZONING: RR:L-2

GENERAL PLAN: RR:2

EXISTING USES: Residential

SUPERVISORIAL DISTRICT: 4

ENVIRONMENTAL DETERMINATION: Categorically exempt, Class 3(E) and Class 4(c)

OTHER RELATED APPLICATIONS: BF 2004-1102 storage building; ZC 01-05, violation file (operating a contractor sales and service business on a parcel not zoned for such use; operation of a junk yard; unpermitted storage of non-operating vehicles; unpermitted storage of large trailers, trucks, tractors, backhoe, front end loader and bulldozer on a parcel not zoned for such storage; unpermitted grading; conversion of an attached garage into living quarters w/o benefit of building permit; construction and alteration of a detached garage/shop to potential living quarters.); Emergency Permit #EM 04-04 for immediate erosion control measures.

PROJECT DESCRIPTION: The applicant proposes to legalize the remodeling of a 2,646 square foot detached garage/shop/storage structure that was remodeled without permits. The maximum height is 20 feet from average finished grade. Additionally, fill was placed on site within 100' of an ESHA and a red-tag (stop work order) was issued. The fill will be engineered, a deed restriction placed on the site of the fill, and legalized.

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

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11 of 19



The garage/workshop is compatible with the Rural Residential zoning district and is designated as a permitted accessory use. The grading is accessory to the structures on site.

The garage/workshop complies with the maximum building height requirement of the Rural Residential zoning district, which is 28 feet in an area east of State Highway One. The structure will not exceed 20 feet from average finished grade.

Setbacks are met, as the structure is located at least 150 feet from any property line. The minimum setback required is 30 feet from any property line.

The existing residence dates from 1955-1960 and the secondary residential unit dates from 1974, according to a discussion with the Mendocino County Assessor's office. The zoning for the property as of 1974 was FC (Forest Conservation) and the second single-family residence is recognized as a legal, non-conforming residence.

The shop structure was originally applied for as a garage; however no permit was ever issued and the structure was built without a permit. A complaint was received regarding the illegal internal remodel of the structure without benefit of permits, and the project was issued a "stop-work" order. The applicant has been informed of the County's regulations that a third residence is not permitted, no bathing facilities are to be installed, and this structure is for non-residential use only. Plans have been submitted that indicate this, so no special condition is listed in the CDP; however it will be conditioned on the building permit that will legalize the structure. Additionally, the building permit will be conditioned that no commercial use shall occur at this structure. Once this Coastal Development Permit is issued, the building permit shall be issued for this structure.

The previous commercial use that was ongoing at this residentially zoned site has been relocated to a properly zoned Commercial/Industrial site on Airport Road, where the equipment and heavy machinery have been relocated. Jim McCleary, Code Enforcement Officer, verified this with staff during a site visit and inspection of documents for the rental of the site.

Public Access

The project site is located east of Highway 1 and public access to the shoreline is not an issue.

Hazards

The site is located in a State Responsibility Area and potential hazards associated with fire protection on the subject property are addressed by CDF. A preliminary fire clearance form was submitted by the applicant, CDF #578-04, which addresses addressing and driveway standards, as well as defensible space and the maintenance thereof.

As the slope of the property where the fill is located is steep, staff requested commentary from an engineering firm. Ms. Susan Morrison (of KPFF Engineering) noted:

...The slope of the fill area varies between 30-40%.

Due to the fact that the contents of the fill is unknown to the County, it was determined by Code Enforcement and the Senior Building Inspector that the fill shall be uncovered, brought down to original grade and replaced under the supervision of a licensed civil engineer. During this process, any material found to be unsuitable for replacement shall be removed and relocated to an approved disposal site.

Special Condition #1 is recommended to ensure that **prior to the issuance of the Coastal Development Permit** the fill will be engineered by a licensed civil engineer and a grading permit shall be issued by the Building Division. The report shall be submitted to the Planning and Building Services Department for their review and approval.

During a discussion between staff, the Senior Building Inspector and the Code Enforcement Officer, it was determined that a deed restriction should be required to prevent further development on the site where the fill is located.

Special Condition #2 is recommended to ensure that **prior to the issuance of the Coastal Development Permit**, a deed restriction for the location of the fill will be recorded on the property title.

Visual Resources

Policy 3.5-1 of the County of Mendocino Coastal Element applies to all development within the Coastal Zone. It states:

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

The project site is not located within a designated "highly scenic area" and is not visible from any public viewing area.

Sec. 20.504.035 Exterior Lighting Regulations states:

"(A) Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone.

(2) Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed."

The project would comply with the exterior lighting regulations of Section 20.504.035 of the Zoning Code, which requires exterior lighting to be downcast and shielded, as Special Condition #3 is recommended to ensure compliance.

Natural Resources

In the Mendocino County Coastal Zoning Code, Section 20.496.020 addresses development adjacent to an Environmentally Sensitive Habitat Area (ESHA):

- (A) *Buffer Areas.* A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer 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.
- (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 event 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 ration of 1:1, which are lost as a result of development under this solution.*
 - (k) *If findings are made that the effects of developing an ESHA buffer 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.*

Discussion

As the fill is placed within eleven feet of an unnamed Class 2 stream, a botanical survey and wetland delineation were requested. The residences, septic system, well, and associated improvements do not occur within 100 feet of the upland extent of vegetation associated with any wetland.

Susan Morrison, from KPFF Consulting submitted a report, received September 20, 2004, that states, in part:

KPFF visited the site in August of 2004 for the purpose of determining the extent of non-permitted site grading in relation to a stream located on the North portion of the property. The scope of our work included producing an updated site plan outlining the area that had been graded, as well as recommending mitigation dependant on riparian vegetation disturbance.

The site included a residence and a workshop. An area to the East of the structures had been cleared of vegetation and leveled by the use of heavy equipment. The fill encroached as close as eleven feet from the stream and disturbed a significant portion of the riparian vegetation making it unclear as to where the riparian and upland vegetation integrated. The soil at the site is of high silt/clay content and is highly erosive. The slope of the fill area varies between 30-40%.

KPFF supports the County's recommendation of engineering the slope and placing a deed restriction on the site where the fill has been placed, in addition to the restoration of the riparian habitat. The purpose of the mitigation recommendations is to restore the vegetation along the South side of the stream. A revegetation list is included as Appendix A. Silt barriers need to be placed at the toe of the disturbance.

Additionally, KPFF recommended placement of straw wattles with steel stakes to secure the bales into firm soil. Also, straw would be placed in between the wattles, creating a silt barrier and to slow the erosion process. Sediment loss into the stream would be mitigated by the requirement of this barrier. KPFF recommends that monitoring should occur throughout the 2005 wet season to ensure that the plantings are surviving and that the silt barriers are adequate in preventing the stream from being filled in.

Listed in the revegetation plan is native vegetation such as Wax Myrtle, Red Alder, California Huckleberry, Coyote Brush, Thimbleberry and Sword Fern.

During the processing of the Emergency Permit, erosion control measures were met (Susan Morrison consulted on this matter) and protective layers of straw were placed to avoid erosion problems while the Coastal Development Permit was being processed. Staff visited the site several times with Code Enforcement and determined that the requirements set forth by the botanist had been implemented.

Liam Davis, a biologist from the California Department of Fish and Game was consulted on this matter. The site was visited by staff and Mr. Davis, and staff received a verbal response from DFG on the matter.

On site, Mr. Davis concurred with staff that the deed restriction and the engineering, as well as the revegetation with native plantings, erosion control measures and wet weather monitoring would be sufficient in protecting this resource.

Staff finds that the above noted mitigation measures listed above shall adequately protect the resource and the ESHA findings can be made.

Special Condition #4 is recommended to ensure compliance with DFG and County requirements.

Archaeological/Cultural Resources

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

Groundwater Resources

The project is located within an area mapped as "Sufficient Water Resources".

A response received from a referral sent to the Division of Environmental Health states:

No Comment.

The proposed development would be served by an existing on-site water source and an existing septic system and would not adversely affect groundwater resources.

Transportation/Circulation

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

Zoning Requirements

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

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

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten 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 is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. The 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 (1) or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which such permit was granted have been violated.
 - c. The use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or is 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 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. **Prior to the issuance of the Coastal Development Permit**, an engineered plan for the fill shall be submitted for the review and approval of the Mendocino County Planning and Building Services.
2. **Prior to the issuance of the Coastal Development Permit**, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
 - a) The landowner understands that the site may be subject to erosion hazards and the landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorney's fees and costs of any 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 follow the recommendations of the engineer and the botanist and shall contact the Planning Department immediately if any proposed changes to the requirements are recommended, whether by the engineer or the botanist. This shall be in effect for the life of the project.
 - e) No structures shall be placed on the filled area, whether of temporary or permanent nature.
 - 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 the issuance of the Building Permit**, the applicant shall submit exterior lighting

details for the approval of the Coastal Permit Administrator. All exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded in compliance with Sec. 20.504.035 of the Zoning Code.

4. All recommendations made by Susan Morrison, botanist, KPFF Engineering, protection of buffer areas and mitigation measures shall be observed. Any proposed modifications to these recommendations shall be approved by the Department of Fish and Game and the Coastal Permit Administrator prior to enacting such changes.

Staff Report Prepared By:

2-14-05

Date

Paula Deeter

Paula Deeter

Planning Technician II

Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit C: Floor Plan
Exhibit D: Elevations

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: \$715 (For an appeal to the Mendocino County Board of Supervisors.)



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

RAYMOND HALL, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

COASTAL DEVELOPMENT PERMIT
AUTHORIZATION FOR EMERGENCY WORK

CASE FILE #EM 04-04

APPLICANT: Dennis Hollingsworth

SITE ADDRESS: 27801 N Hwy One, Fort Bragg

ASSESSOR'S PARCEL NUMBER: 069-010-31

NATURE OF EMERGENCY: Unauthorized grading work is in immediate need of erosion control measures and vegetation restoration to protect the site during the winter rainy season. Steep (30-40% slope) exposed slopes on the subject parcel in close proximity to a Class 3 watercourse is in immediate jeopardy of causing sediment erosion problems.

CAUSE OF EMERGENCY: Placement of fill was undertaken without the required coastal development permit (CDP) or a building/grading permit. The site is located in a sensitive area adjacent and uphill from a Class 3 watercourse.

REMEDIAL ACTION:

1. Submit grading permit within ten days to the Building Department.
2. Implement remedial action within timeline established in botanical report prepared by KPFF and received by County staff on September 20, 2004. An addendum to the report was received October 14, 2004, and recommends moving the slope back to natural grade. The heavy equipment used for fill removal should not encroach on the remaining riparian vegetation. This timeline would necessitate the work be completed by the end of October 2004. The applicant shall be required to obtain an inspection to verify that the plantings have occurred.
3. Per the recommendations of KPFF and County Planning, monitoring report #1 shall be submitted no later than December 31, 2004. Monitoring report #2 shall be submitted no later than March 31, 2005. Any deficiencies in either report shall be addressed and corrected within 30 days of staff review.

EXHIBIT NO. 5

APPEAL NO.

A-1-MEN-05-020

HOLLINGSWORTH

EMERGENCY

PERMIT (Page 1 of 2)

CIRCUMSTANCES TO JUSTIFY EMERGENCY: Contamination or silt infiltration of a nearby stream and/or failure of the slope could result this winter if the work is not done now. A standard Coastal Development Permit (CDP 47-04) is on file; however, staff considers it highly unlikely that the CDP will be issued within the time prescribed by the botanist in order to prevent adverse effects to the site.

This is a temporary measure to remedy the immediate situation and in no way ensures that further studies or removal of fill will not be required at a later date.

The proposed work would be consistent with the certified Local Coastal Program. The work authorized by this emergency permit shall be completed within thirty (30) days from issuance.

This emergency permit is effective immediately and shall become null and void at the end of sixty (60) days.

RECOMMENDED BY:

PAULA DEETER, PLANNING TECHNICIAN II

DATE

APPROVED BY:

RAYMOND HALL, DIRECTOR

DATE



March 22, 2005

Paula Deeter
Planning and Building
 760 South Franklin St
 Fort Bragg Ca 95437

Re: Parcel at 27801 N. Highway One Ap. # 069-010-31 for CDP 47-04.

Dear Paula,

On March 21, 2005 we visited the Hollingsworth property to determine whether erosion control recommendations requested in our letter of October 12, 2004 had been implemented properly. Present on the site at the time of the visit were Eric Jahelka, PE (KPFf), Susan Morrison, Botanist (KPFf), Paula Deeter (Mendocino County Planning and Building), Denis Hollingsworth (property owner) and a fifth individual named "Bill" (relationship to project, unknown). Those present walked the site and collectively assessed the existing conditions. The following was noted:

- Loose spoils within the ESHA had been removed.
- Straw mulch had been spread over the affected portions of the site excavation.
- Prescribed straw bail and wattle erosion protection had not been installed per KPFf recommendations.
- Four to five locations of the excavation had eroded moderately and transported fines into the ESHA .
- Locations of mild to moderate erosion had been protected with fresh applications of straw mulch.

Based on these observations, we believe that our recommendations were not fully implemented as prescribed resulting in mild to moderate erosion of the fill material. Specifically, the most westerly portion of the fill has eroded to the point that sediment has reached the stream. Straw mulch has been placed over the entire filled area and an attempt has been made to plant grass. Overland flow is apparent in several places and

EXHIBIT NO. 6
APPEAL NO.
A-1-MEN-05-020
HOLLINGSWORTH
BOTANICAL/ENGINEERING
REPORTS (Page 1 of 6)

334 N Franklin Ft Bragg, CA 95437 (707) 962-9307 Fax (707) 962-9308

Seattle Tacoma Portland Ft. Bragg San Francisco Oakland Sacramento Los Angeles Irvine San Diego Phoenix St. Louis

Mar 22 05 01:32p

KPF Fort Bragg

(707) 362-9308

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along the entire toe of the sloped fill, creating runoff of sediment. The vegetation disturbance has created an opening for the invasive scotch broom (*Cystisus scoparius*).

Kpff recommends both immediate and long term remediation to this site. The implementation of straw balls with straw waddles along overland flow on the areas where there is active erosion should occur immediately. The placement of the waddles is critical in preventing further transportation of sediment from to the stream. As per our letter dated October 12, 2004 (see Attachment A), the fill should be removed in order to return the slope to natural grade. Flagging will be placed by KPF along the remaining riparian corridor and the heavy equipment should not encroach into this area. The removal shall take place from the top of the fill with no equipment encroaching along the bottom of the fill. The fill shall be removed to the area of red flagging, placed the farthest from the stream. Kpff shall be consulted 24 hours before the removal of fill is to begin. Kpff must be on site when the natural grade has been discovered and will make any appropriate recommendations at that juncture. Removal of fill should not occur until after April 15th or when the County deems appropriate. However, the fill removal should take place as soon as possible so as to protect further damage to the ESHA which may occur during the early stages of Spring/Summer. All debris within the buffer of the ESHA shall be removed from the buffer area. Any unearthed debris shall be inspected and the appropriate disposal of the material shall be determined by the nature of the pollutant contained within.

The site shall be planted upon the completion of fill removal and is subject to final inspection by Kpff and the County of Mendocino. The vegetation list is included in Attachment A, and should be adhered to as mitigation for the destruction of an unknown amount of riparian habitat. The uncovering of natural grade shall determine the extent of vegetation to be replanted. An updated re vegetation plan shall be submitted once the natural grade has been determined.

Sincerely,

A handwritten signature in black ink that reads 'Susan Morrison'.

Susan A Morrison
Staff Botanist/Lab Tech

334 N Franklin St. Bragg, CA 95607 (707) 862-9307 Fax (707) 862-9308

Seattle Tacoma Portland Ft. Bragg San Francisco Oakland Sacramento Los Angeles Irvine San Diego Phoenix St. Louis

2 of 6

Mar 22 05 01:32p

K. P. Fort Bragg

(707) 962-9308

p. 5



Paula Deeter
Planning and Building
760 South Franklin St
Fort Bragg Ca 95437

A handwritten signature in black ink, appearing to be 'SD' or similar initials.

Re: Parcel at 27801 N. Highway One Ap. # 069-010-31 for CDP 47-04.

1. Project and Area Description:

Kpff visited the site in August of 2004 for the purpose of determining the extent of none permitted site grading in relation to a stream located on the North portion of property. The scope of our work included producing an updated site plan outlining the area that had been graded, as well as recommending mitigation dependant on riparian vegetation disturbance.

The sight included a residence and a workshop. An area to the East of the structures had been cleared of vegetation and leveled by the use of heavy equipment. The fill encroached as close as eleven feet from the stream and disturbed a significant portion of the riparian vegetation making it unclear as to where the riparian and upland vegetation integrated. The soil at the sight is of high silt/clay content and is highly erosive. The slope of the fill area varies between 30-40%.

2. Mitigation recommendations:

The purpose of the Kpff's mitigation recommendations is to restore the vegetation along the south side of the stream. A revegetation list is included as Appendix A. Silt barriers need to be placed at the toe of disturbance. Kpff recommends that 12" straw wattles be used along the entire length of the bottom of the graded area. Five feet above the waddles, place (2)-3' steel stakes at 2.0' on center through straw bales into firm soil. The straw bales shall be placed so that the ends touch, creating a primary silt barrier and slowing the velocity of the water runoff. Straw should be placed in between the plants creating total coverage of the sloped area that could loose sediment into the stream. Kpff believes that if left to the natural revegetation process, the stream would receive a significant amount of sediment and possibly be forced into underground flow. Kpff recommends that monitoring should occur throughout the 2005 wet season to ensure that the plantings are surviving, and that the silt barriers are adequate in preventing the stream from being filled in.

Mar 22 05 01:33p K. F Fort Bragg

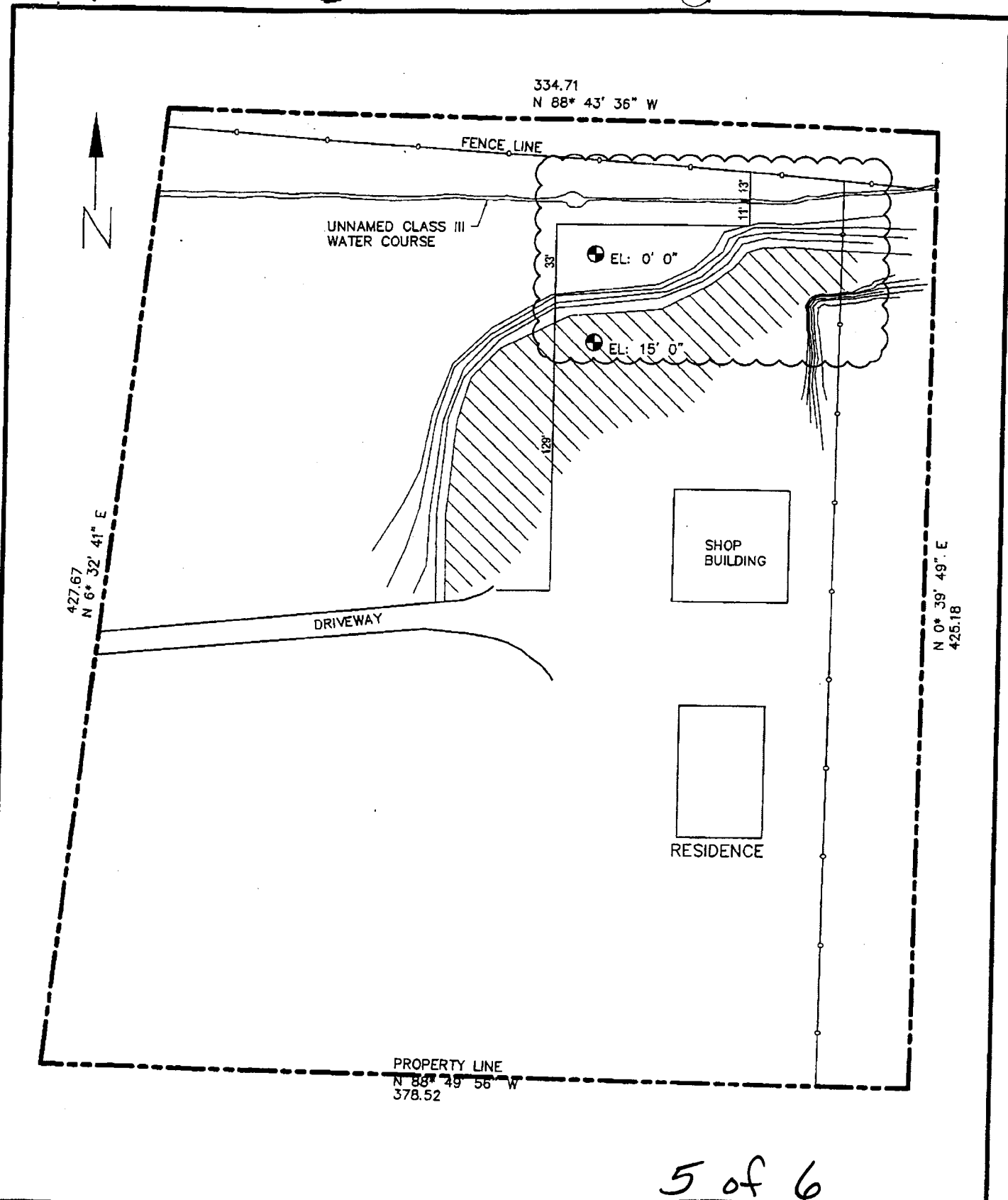
(707) 962-9308

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Table 1. Plants appropriate for revegetation

Overstory	Common Name	Scientific Name	Number of Plants
	Wax myrtle		3
	Red alder	<i>Alnus rubra</i>	3
Midlevel	California huckleberry	<i>Vaccinium ovatum</i>	6
	Coyote brush	<i>Baccharis pilularis</i>	4
	Thimbleberry	<i>Rubus parviflorus</i>	6
Ground cover	Sword fern	<i>Polystichum munitum</i>	6

4 of 6



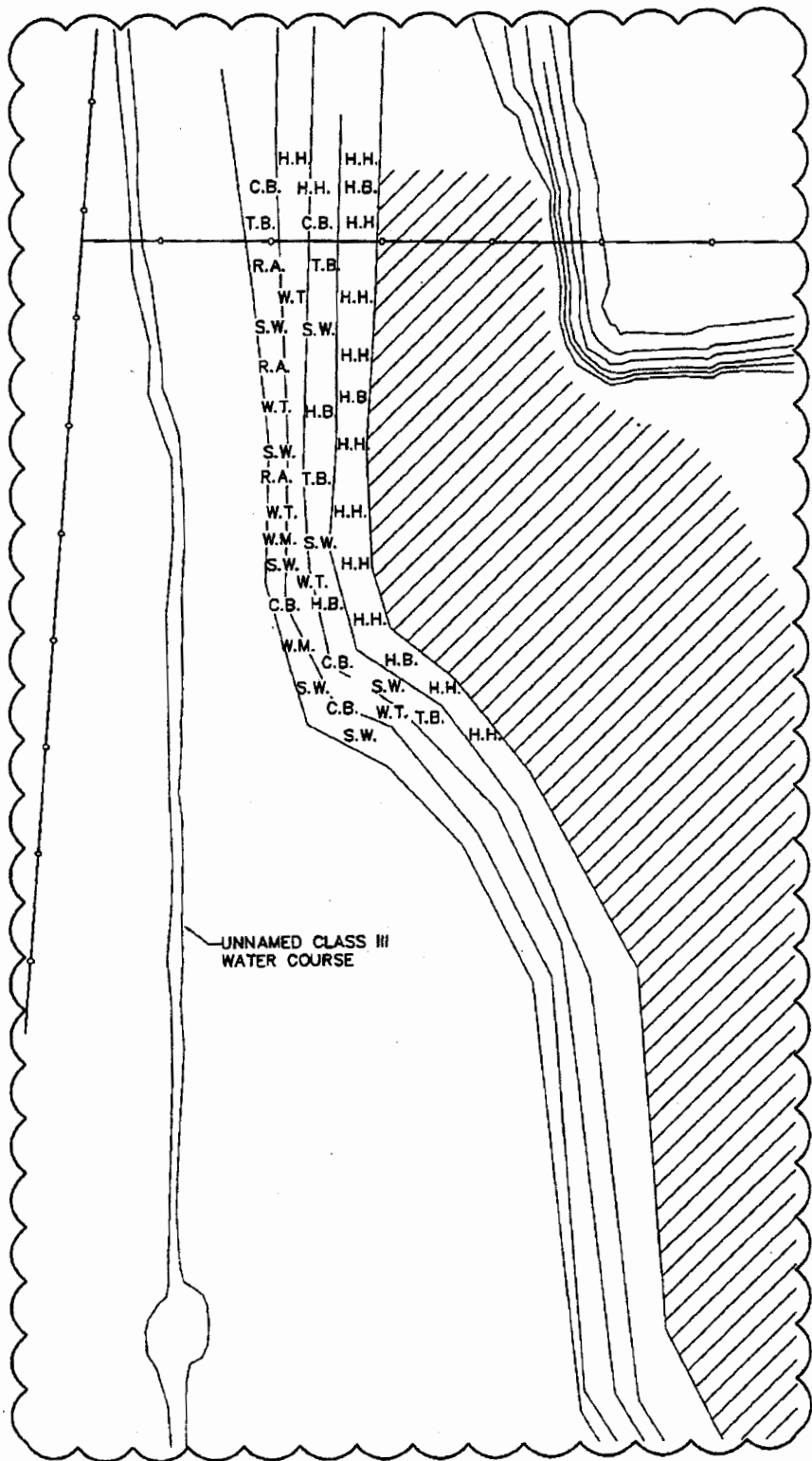
5 of 6



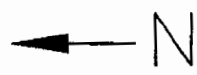
SITE PLAN
HOLLINGSWORTH

SCALE:
N.T.S

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- S.W. = SWORD FERN
- C.B. = COYOTE BUSH
- R.A. = RED ALDER
- H.B. = HUCKLEBERRY
- W.M. = WAX MYRTLE
- T.B. = THIMBLEBERRY
- H.H. = HAIRY HONEYSUCKLE
- W.T. = WITCHE'S TEETH



6 of 6



SITE PLAN
HOLLINGSWORTH

SCALE:
N.T.S.

SA

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: Darold Kassebaum, Jr.

Mailing Address: 27791 N. Hwy 1

City: Fort Bragg

Zip Code: 95437

Phone: 707/964-0686

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino Department of Planning and Building

2. Brief description of development being appealed:

Legalize graded and filled area on project site that is within 100' of an ESHA.

RECEIVED

APR 20 2005

CALIFORNIA
COASTAL COMMISSION

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

27801 N. Hwy 1, Assessors Parcel No. 069-010-31

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

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

EXHIBIT NO. 7
APPEAL NO.
A-1-MEN-05-020
HOLLINGSWORTH
APPEAL
(Page 1 of 23)

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.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	_____
DATE FILED:	_____
DISTRICT:	_____

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: March 25, 2005

7. Local government's file number (if any): CDP 47-04

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:

Dennis Hollingsworth
27801 N. Hwy 1
Fort Bragg, CA 95437

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)

(2)

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

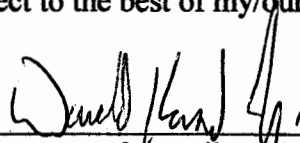
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal 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.

This property owner was sited with an Official Notice Of Violation April 27, 2004 for 7 code violations by the code enforcement officer in Ukiah, Jim McCleary. There are many violations Jim McCleary did not address. One of the many reasons I am appealing the decision by Ray Hall concerns a hole the property owner dug with a backhoe near a class 2 un-named stream. The property owner filled the hole with semi-truck differentials, steel, debris, hazardous material, and miscellaneous junk and covered it over. Jim McCleary and Ray Hall refuse to address this issue. Jim McCleary ^{video} taped evidence of the property owner digging the hole and placing the material in it to support this allegation. In the continued hearing March 25, 2005 Ray Hall said that he had never seen a case this bad in all of his years with Mendocino County. A view of Complaint Case File #ZC-01-05 will show you just how bad this situation is. I have been told by a local county official in Planning and Building that we should sell our home and move. There were at least 6- 55-gallon drums of used motor oil stored just a few feet from the class 2 un-named stream. There were at least 2- 250-500 gallon oil/fuel storage tanks dumped near the class 2 un-named stream. This property owner runs a commercial business [Northgate Equipment Company] from this RR-2 zoned property. There were no soils test done to determine the extent of the pollution which is continuing into this class 2 un-named stream which flows by at least 4 water wells and out to the ocean. My next course of appeal was to the County Board of Supervisors. This appeal would have cost me \$715. This is why I am appealing the decision to the Coastal Commission. My wife and I moved to Fort Bragg to enjoy the ocean and the environment. Please don't allow this property owner to destroy our precious natural resources. Patti Campbell told us that this is a precedent setting case in Mendocino County. Ms. Campbell came to our home and was uphauled at what she saw at this property. ^{case} Many photos and video tape ^{case} available for your inspection. Please contact me by phone at 707/217-6709 if you require anything further.

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: April 10, 2005

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: _____

OWNER: Dennis Hollingworth
27801 N Hwy One
Fort Bragg, CA 95437

REQUEST: Legalize graded and filled area on project site that is within 100' of an ESHA. Legalize garage/shop/storage structure.

LOCATION: In the Coastal Zone, approximately 3 miles N of Cleone, on the E side of Highway One, approximately ¼ mile N of the intersection of Highway One and Camp Ten Mile Road (CR#427), at 27801 N Highway One, APN 069-010-31.

APPEALABLE AREA: Yes, development within 100' of an ESHA

PERMIT TYPE: Standard

TOTAL ACREAGE: 3.48 acres

ZONING: RR:L-2

GENERAL PLAN: RR:2

EXISTING USES: Residential

SUPERVISORIAL DISTRICT: 4

ENVIRONMENTAL DETERMINATION: Categorically exempt, Class 3(E) and Class 4(c)

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OTHER RELATED APPLICATIONS: BF 2004-1102 storage building; ZC 01-05, violation file (operating a contractor sales and service business on a parcel not zoned for such use; operation of a junk yard; unpermitted storage of non-operating vehicles; unpermitted storage of large trailers, trucks, tractors, backhoe, front end loader and bulldozer on a parcel not zoned for such storage; unpermitted grading; conversion of an attached garage into living quarters w/o benefit of building permit; construction and alteration of a detached garage/shop to potential living quarters.); Emergency Permit #EM 04-04 for immediate erosion control measures.

PROJECT DESCRIPTION: The applicant proposes to legalize the remodeling of a 2,646 square foot detached garage/shop/storage structure that was remodeled without permits. The maximum height is 20 feet from average finished grade. Additionally, fill was placed on site within 100' of an ESHA and a red-tag (stop work order) was issued. The fill will be engineered, a deed restriction placed on the site of the fill, and legalized.

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 garage/workshop is compatible with the Rural Residential zoning district and is designated as a permitted accessory use. The grading is accessory to the structures on site.

The garage/workshop complies with the maximum building height requirement of the Rural Residential zoning district, which is 28 feet in an area east of State Highway One. The structure will not exceed 20 feet from average finished grade.

Setbacks are met, as the structure is located at least 150 feet from any property line. The minimum setback required is 30 feet from any property line.

The existing residence dates from 1955-1960 and the secondary residential unit dates from 1974, according to a discussion with the Mendocino County Assessor's office. The zoning for the property as of 1974 was FC (Forest Conservation) and the second single-family residence is recognized as a legal, non-conforming residence.

The shop structure was originally applied for as a garage; however no permit was ever issued and the structure was built without a permit. A complaint was received regarding the illegal internal remodel of the structure without benefit of permits, and the project was issued a "stop-work" order. The applicant has been informed of the County's regulations that a third residence is not permitted, no bathing facilities are to be installed, and this structure is for non-residential use only. Plans have been submitted that indicate this, so no special condition is listed in the CDP; however it will be conditioned on the building permit that will legalize the structure. Additionally, the building permit will be conditioned that no commercial use shall occur at this structure. Once this Coastal Development Permit is issued, the building permit shall be issued for this structure.

The previous commercial use that was ongoing at this residentially zoned site has been relocated to a properly zoned Commercial/Industrial site on Airport Road, where the equipment and heavy machinery have been relocated. Jim McCleary, Code Enforcement Officer, verified this with staff during a site visit and inspection of documents for the rental of the site.

Public Access

The project site is located east of Highway 1 and public access to the shoreline is not an issue.

Hazards

The site is located in a State Responsibility Area and potential hazards associated with fire protection on the subject property are addressed by CDF. A preliminary fire clearance form was submitted by the applicant, CDF #578-04, which addresses addressing and driveway standards, as well as defensible space and the maintenance thereof.

As the slope of the property where the fill is located is steep, staff requested commentary from an engineering firm. Ms. Susan Morrison (of KPFF Engineering) noted:

...The slope of the fill area varies between 30-40%.

Due to the fact that the contents of the fill is unknown to the County, it was determined by Code Enforcement and the Senior Building Inspector that the fill shall be uncovered, brought down to original grade and replaced under the supervision of a licensed civil engineer. During this process, any material found to be unsuitable for replacement shall be removed and relocated to an approved disposal site.

Special Condition #1 is recommended to ensure that **prior to the issuance of the Coastal Development Permit** the fill will be engineered by a licensed civil engineer and a grading permit shall be issued by the Building Division. The report shall be submitted to the Planning and Building Services Department for their review and approval.

During a discussion between staff, the Senior Building Inspector and the Code Enforcement Officer, it was determined that a deed restriction should be required to prevent further development on the site where the fill is located.

Special Condition #2 is recommended to ensure that **prior to the issuance of the Coastal Development Permit**, a deed restriction for the location of the fill will be recorded on the property title.

Visual Resources

Policy 3.5-1 of the County of Mendocino Coastal Element applies to all development within the Coastal Zone. It states:

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

The project site is not located within a designated "highly scenic area" and is not visible from any public viewing area.

Sec. 20.504.035 Exterior Lighting Regulations states:

"(A) Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone.

(2) Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed."

The project would comply with the exterior lighting regulations of Section 20.504.035 of the Zoning Code, which requires exterior lighting to be downcast and shielded, as Special Condition #3 is recommended to ensure compliance.

Natural Resources

In the Mendocino County Coastal Zoning Code, Section 20.496.020 addresses development adjacent to an Environmentally Sensitive Habitat Area (ESHA):

- (A) *Buffer Areas.* A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer 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.
- (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 event 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 ration of 1:1, which are lost as a result of development under this solution.*
 - (k) *If findings are made that the effects of developing an ESHA buffer 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.*

Discussion

As the fill is placed within eleven feet of an unnamed Class 2 stream, a botanical survey and wetland delineation were requested. The residences, septic system, well, and associated improvements do not occur within 100 feet of the upland extent of vegetation associated with any wetland.

Susan Morrison, from KPFF Consulting submitted a report, received September 20, 2004, that states, in part:

KPFF visited the site in August of 2004 for the purpose of determining the extent of non-permitted site grading in relation to a stream located on the North portion of the property. The scope of our work included producing an updated site plan outlining the area that had been graded, as well as recommending mitigation dependant on riparian vegetation disturbance.

The site included a residence and a workshop. An area to the East of the structures had been cleared of vegetation and leveled by the use of heavy equipment. The fill encroached as close as eleven feet from the stream and disturbed a significant portion of the riparian vegetation making it unclear as to where the riparian and upland vegetation integrated. The soil at the site is of high silt/clay content and is highly erosive. The slope of the fill area varies between 30-40%.

KPFF supports the County's recommendation of engineering the slope and placing a deed restriction on the site where the fill has been placed, in addition to the restoration of the riparian habitat. The purpose of the mitigation recommendations is to restore the vegetation along the South side of the stream. A revegetation list is included as Appendix A. Silt barriers need to be placed at the toe of the disturbance.

Additionally, KPFF recommended placement of straw wattles with steel stakes to secure the bales into firm soil. Also, straw would be placed in between the wattles, creating a silt barrier and to slow the erosion process. Sediment loss into the stream would be mitigated by the requirement of this barrier. KPFF recommends that monitoring should occur throughout the 2005 wet season to ensure that the plantings are surviving and that the silt barriers are adequate in preventing the stream from being filled in.

Listed in the revegetation plan is native vegetation such as Wax Myrtle, Red Alder, California Huckleberry, Coyote Brush, Thimbleberry and Sword Fern.

During the processing of the Emergency Permit, erosion control measures were met (Susan Morrison consulted on this matter) and protective layers of straw were placed to avoid erosion problems while the Coastal Development Permit was being processed. Staff visited the site several times with Code Enforcement and determined that the requirements set forth by the botanist had been implemented.

Liam Davis, a biologist from the California Department of Fish and Game was consulted on this matter. The site was visited by staff and Mr. Davis, and staff received a verbal response from DFG on the matter.

On site, Mr. Davis concurred with staff that the deed restriction and the engineering, as well as the revegetation with native plantings, erosion control measures and wet weather monitoring would be sufficient in protecting this resource.

Staff finds that the above noted mitigation measures listed above shall adequately protect the resource and the ESHA findings can be made.

Special Condition #4 is recommended to ensure compliance with DFG and County requirements.

Archaeological/Cultural Resources

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

Groundwater Resources

The project is located within an area mapped as "Sufficient Water Resources".

A response received from a referral sent to the Division of Environmental Health states:

No Comment.

The proposed development would be served by an existing on-site water source and an existing septic system and would not adversely affect groundwater resources.

Transportation/Circulation

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

Zoning Requirements

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

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

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten 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 is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. The 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 (1) or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which such permit was granted have been violated.
 - c. The use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or is 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 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. **Prior to the issuance of the Coastal Development Permit**, an engineered plan for the fill shall be submitted for the review and approval of the Mendocino County Planning and Building Services.
2. **Prior to the issuance of the Coastal Development Permit**, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
 - a) The landowner understands that the site may be subject to erosion hazards and the landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorney's fees and costs of any 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 follow the recommendations of the engineer and the botanist and shall contact the Planning Department immediately if any proposed changes to the requirements are recommended, whether by the engineer or the botanist. This shall be in effect for the life of the project.
 - e) No structures shall be placed on the filled area, whether of temporary or permanent nature.
 - 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 the issuance of the Building Permit**, the applicant shall submit exterior lighting

details for the approval of the Coastal Permit Administrator. All exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded in compliance with Sec. 20.504.035 of the Zoning Code.

4. All recommendations made by Susan Morrison, botanist, KPFF Engineering, protection of buffer areas and mitigation measures shall be observed. Any proposed modifications to these recommendations shall be approved by the Department of Fish and Game and the Coastal Permit Administrator prior to enacting such changes.

Staff Report Prepared By:

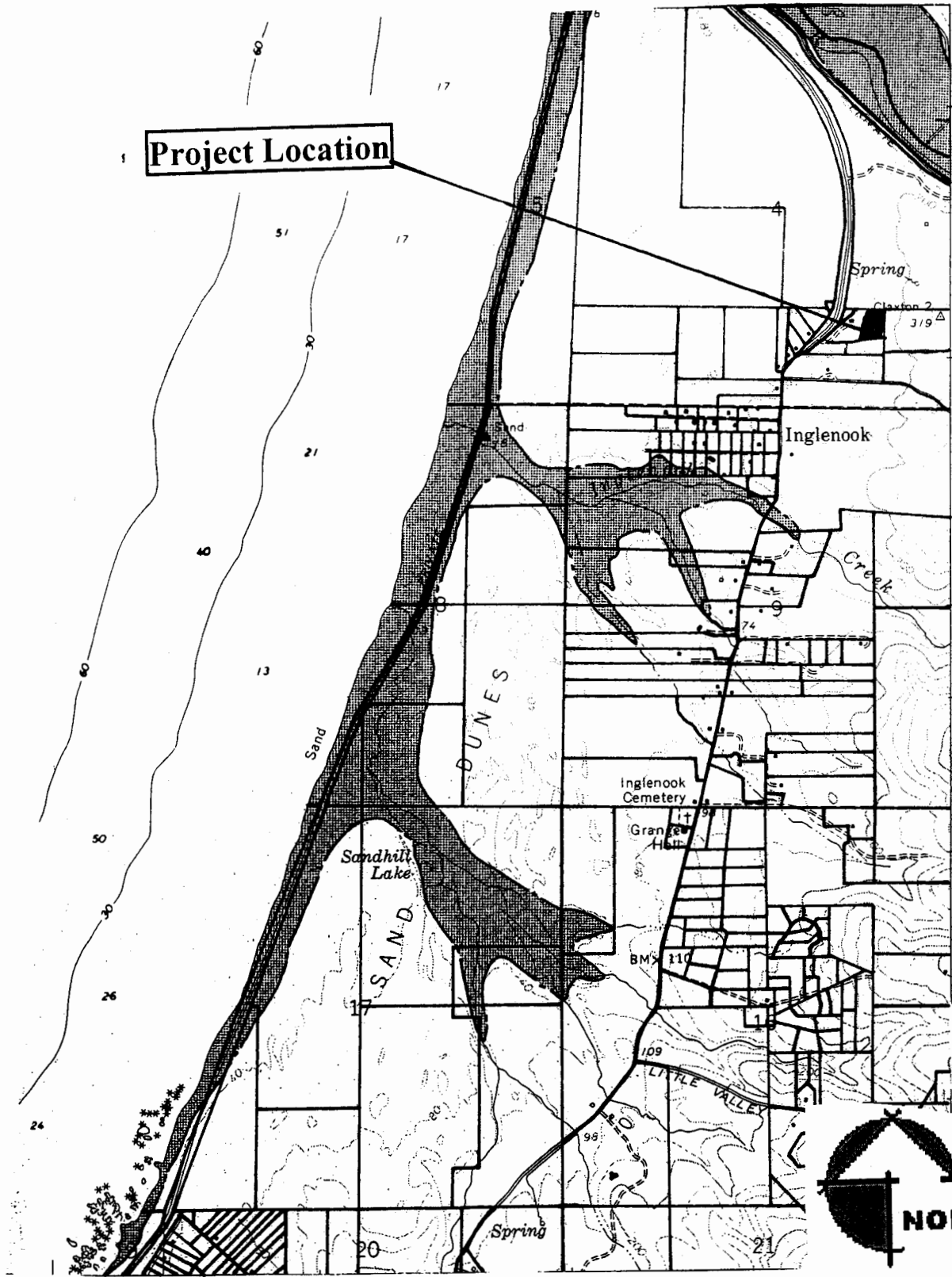
2-14-05
Date

Paula Deeter
Paula Deeter
Planning Technician II

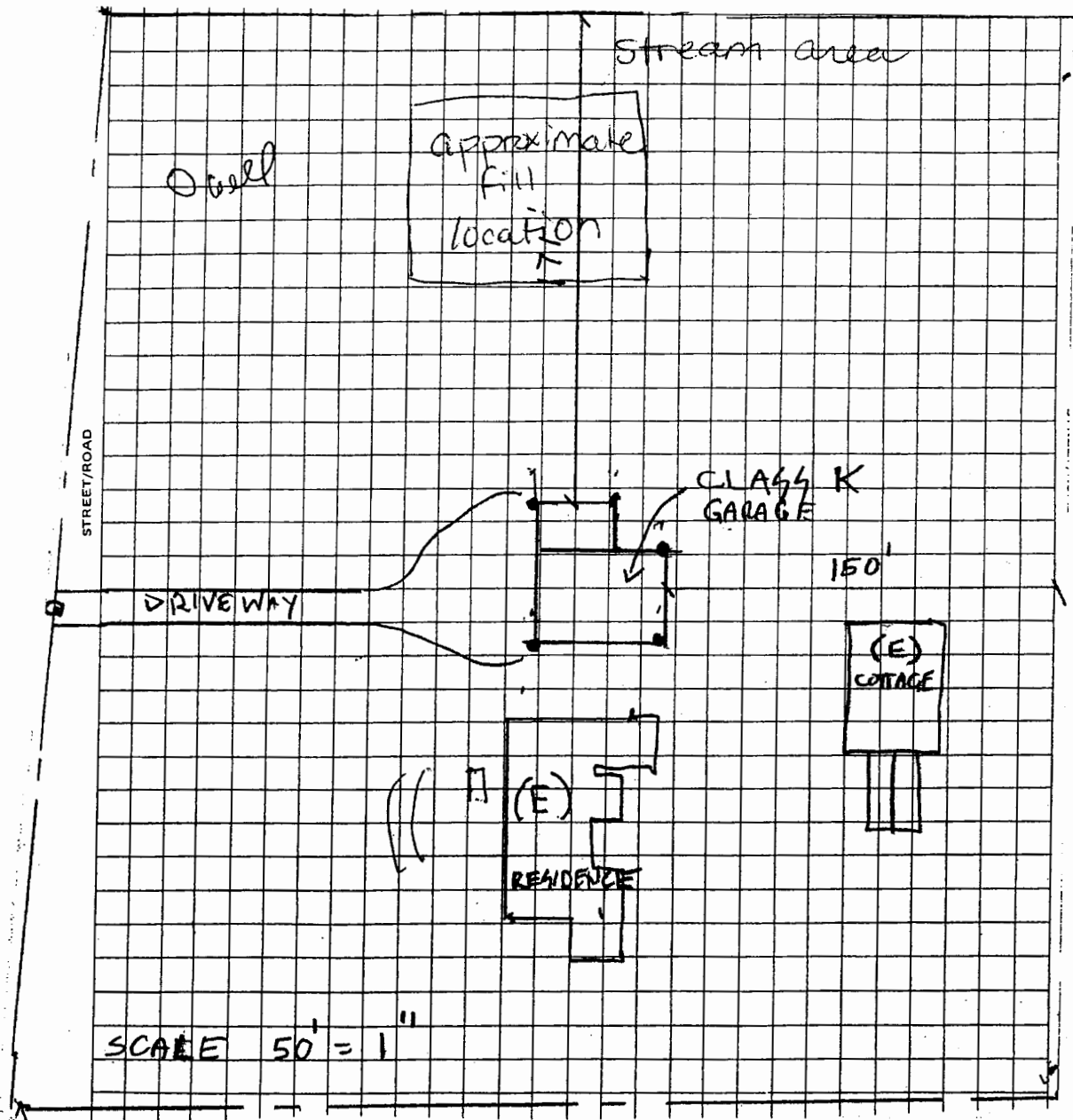
Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit C: Floor Plan
Exhibit D: Elevations

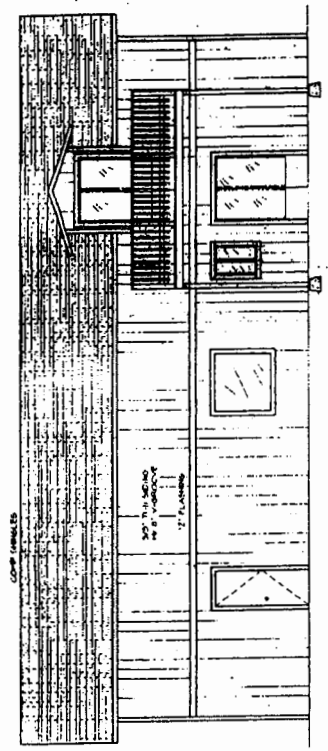
Appeal Period: Ten calendar days for the Mendocino County Board of Supervisors, followed by ten working days for the California Coastal Commission following the Commission's receipt of the Notice of Final Action from the County.

Appeal Fee: \$715 (For an appeal to the Mendocino County Board of Supervisors.)

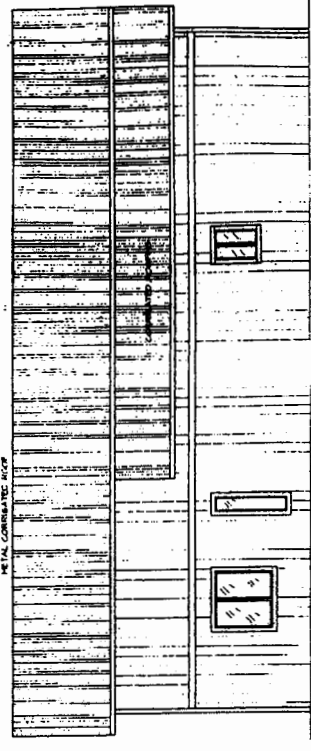


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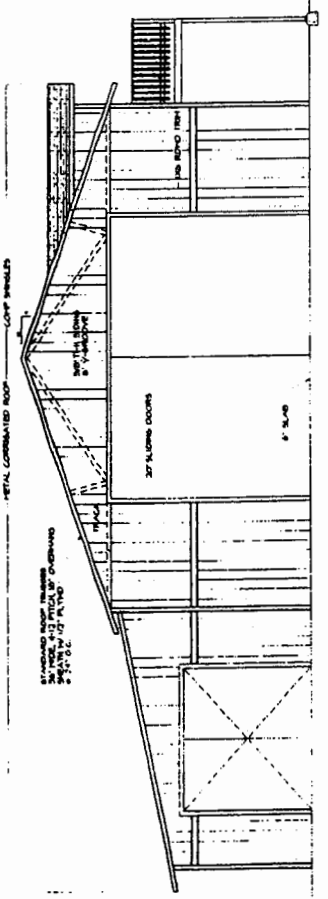




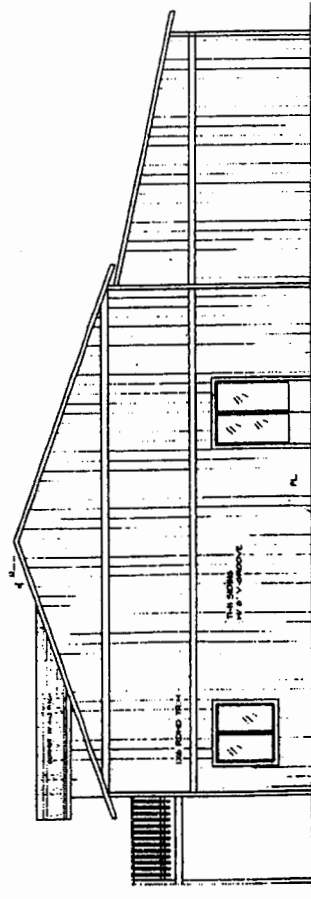
SOUTH ELEVATION
SCALE 1/4" = 1'-0"



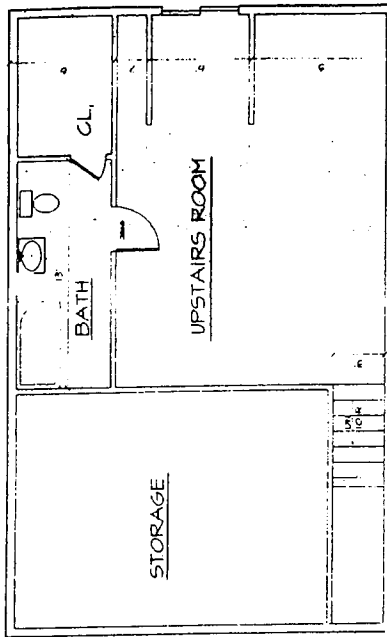
SOUTH ELEVATION
SCALE 1/4" = 1'-0"



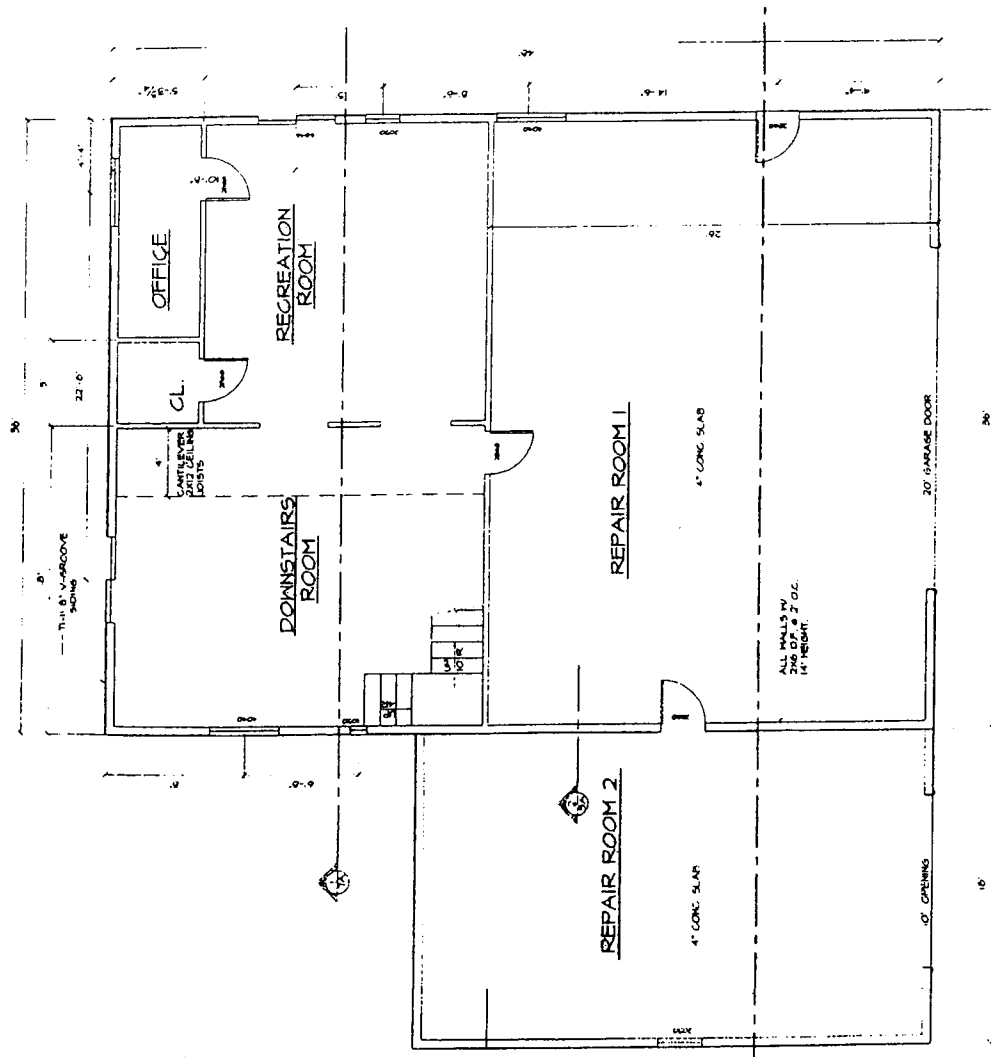
WEST ELEVATION
SCALE 1/4" = 1'-0"



EAST ELEVATION
SCALE 1/4" = 1'-0"



UPSTAIRS ROOM PLAN
SCALE 1/4" = 1'-0"



GARAGE PLAN
SCALE 1/4" = 1'-0"









CODE ENFORCEMENT DIVISION
OFFICIAL NOTICE OF VIOLATION

Date : April 27, 2004

CASE# ZC-01-05

RECEIVED

Property Owner:

Dennis Hollingsworth

APR 20 2005

Assessor's Parcel Number:

069-010-31

CALIFORNIA
COASTAL COMMISSION

Site Address:

27801 N. Hwy 1, Fort Bragg, CA

The following violations of Mendocino County code has been found to exist on the referenced property:

VIOLATION :

1. **Operation of a Contractor Sales and Service business** upon a parcel zoned Rural Residential District in violation of **MCC Sec. 20.376.010 Principal Permitted Uses for RR Districts, Sec. 20.324.055 Construction Sales and Services.**
2. **Operation of a Junk Yard** in violation of **MCC Sec. 308.065 (A)** limiting parcels of more than 40,000 sq. ft., where waste, discarded or salvaged materials bought, sold, exchanged, stored, baled, cleaned, dismantled, or handled, to 400 sq. ft.
3. **The unpermitted Storage of Non-operating Vehicles** in violation of **MCC Sec. 20.308.110 (31)** limiting the storage on any parcel of three (3) or more vehicles, which, for a period exceeding 30 days, have not been capable of operating under their own power.
4. **The unpermitted storage** of large trailers, trucks, tractors, backhoe, front end loader and bulldozer in violation of **MCC 20.164.015 (M) Accessory Parking** which allows for the parking of [not more than] two (2) large vehicles or construction equipment upon private property greater than 40,000 sq. ft. but less than five (5) acres.
5. **Unpermitted grading** as defined in **MCC 20.308.050 (G)** which limits any excavation or filling or combination thereof involving the transfer of more than two (2) cubic yards of material.

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6. **Conversion of an attached garage into living quarters within the primary residence without benefit of a building permit in violation of MCC Sec. 18.08.010 Construction Permits and Inspection Fees, and UBC Section 106.1 Permits Required.**
7. **Construction and alteration of a detached garage/shop in violation of MCC 20.523.010 Coastal Development Permit Regulations – Applicability, MCC Sec. 18.08.010 Construction Permits and Inspection Fees, and UBC Section 106.1 Permits Required.**

CORRECTIVE ACTION REQUIRED:

1. Cease operation of any commercial business activity at the site. Remove all construction equipment, supplies, materials and vehicles to a permitted location. Pursuant to MCC Sec. 20.308.110 (31), the parking of not more than two (2) large vehicles is permitted at any one time.
2. Remove all scrap metal, tires, vehicle parts, appliances, tanks, barrels, drums, scrap wood and construction debris to a permitted location.
3. Pursuant to MCC Sec. 20.308.110 (31) all but two non-operating vehicles must be removed to a permitted location.
4. Pursuant to MCC 20.164.015 (M) Accessory Parking, all but two large vehicles must be removed from the site to a permitted location.
5. Pursuant to MCC 20.308.050 (G), which limits any excavation or filling or combination thereof to not more than more than two (2) cubic yards of material, you are to remove all dirt, fill, and broken concrete currently stored in a large pile on the site to a permitted location after having obtained the necessary grading permits.
6. Submit engineered drawings detailing the primary residence garage conversion to living space, and obtain an "as built" building permit.
7. Pursuant to MCC 20.523.010, submit an application for issuance of a Coastal Development for construction of the unpermitted shop/garage structure. Additionally,, pursuant to MCC Sec. 18.08.010, you are directed to obtain the necessary building permits for this structure, by submitting engineered drawings depicting the "as built" nature of the building.

Corrective action for items 1 through 5 must be completed by Friday, June 18, 2004. Corrective action for items 6 and 7 must be completed by Monday, May 31, 2004.

Notice of Violation

April 27, 2004

Page 3

Your cooperation is requested so that it does not become necessary to initiate one of the following code enforcement actions:

- Issuance of a **citation** with potential fines,
- Recordation of a Notice of Violation against title to this real property.
- Case referral to the office of County Counsel for possible **legal action**.

Issued by: _____ Title Code Enforcement Officer
James McCleary

Attachments: Due Process, Code Enforcement in the County of Mendocino

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