

**CALIFORNIA COASTAL COMMISSION**

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## RECORD PACKET COPY

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49<sup>th</sup> Day: September 8, 2005  
Staff: Ruby Pap  
Staff Report: July 29, 2005  
Hearing Date: August 12, 2005

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

APPEAL NO.: **A-1-MEN-05-035**

APPLICANTS: **Gordon Wardlaw**

LOCAL GOVERNMENT: **County of Mendocino**

DECISION: **Approval with Conditions**

PROJECT LOCATION: **In the Town of Mendocino, approximately 1/4 mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 and 44650 Little Lake Road (APNs 119-090-42, 43, 44) (Mendocino County).**

PROJECT DESCRIPTION: **Construction of an approximately 2,418 - square-foot two story single-family residence with a maximum height of 28 feet above grade. Construction of an approximately 690 - square-foot detached garage with a maximum height of 16 feet above grade. Construction of a 16-foot-wide approximately 380-foot-long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and 44. The approved driveway would cross a wetland to access the undeveloped APN 119-090-42 (0.3-acre) to be developed with the approved residence. Electrical, telephone, and sewer services would be extended underground along the approved driveway. The project includes a 1:1 ratio wetland mitigation plan.**

APPELLANTS: Commissioners Bonnie Neeley and Sara Wan

SUBSTANTIVE FILE 1) Mendocino County CDP No. 111-02; and  
DOCUMENTS: 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

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

The development, as approved by the County, consists of (1) the construction of an approximately 2,418 - square-foot two story single-family residence with a maximum height of 28 feet above grade; (2) construction of an approximately 690 - square-foot detached garage with a maximum height of 16 feet above grade; and (3) construction of a 16-foot-wide approximately 380-foot long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and 44. The approved driveway would cross a wetland to access the undeveloped APN 119-090-42 (0.3-acre) to be developed with the approved residence. Electrical, telephone, and sewer services would be extended underground along the proposed driveway. The project includes a 1:1 ratio wetland mitigation plan.

The project site is located in the Town of Mendocino, approximately 1/4 mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 and 44650 Little Lake Road (APNs 119-090-42, 43, 44) in Mendocino County.

The Appellant poses two separate contentions, including: (1) the project as approved is inconsistent with the Mendocino County LCP provisions regarding development in wetlands, which do not include residential driveways as allowable developments in wetlands; and (2) even if residential uses were allowable developments in wetlands, the approved project is inconsistent with LCP provisions that require that permitted development in wetlands be the "least environmentally damaging alternative."

Staff recommends that the Commission find that both contentions are valid grounds for an appeal, and that both contentions raise a substantial issue of conformity of the approved development with the certified LCP.

Staff recommends that the Commission find that the first contention raises a substantial issue because the County's approval of the residential driveway is inconsistent with LCP policies for development in wetlands, which do not include residential uses as allowable developments in wetlands.

Staff recommends that the Commission find that the second contention also raises a substantial issue because the County did not provide adequate analysis to support their finding that the project as approved is the "least environmentally damaging alternative," inconsistent with LCP policies regarding development in wetlands and other environmentally sensitive habitat areas (ESHAs).

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

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STAFF NOTES:

1. Appeal Process

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

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

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

The subject development is appealable to the Commission pursuant to both 30603(a)(2) and (a)(3) of the Coastal Act because the proposed development (1) involves development within, and within 100 feet of, a wetland, and (2) is within a sensitive coastal resource area. With regard to the latter bases for appeal, Section 20.608.038(6) of the Mendocino Town Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among other categories, "special communities." Policy 4.13-1 of the Mendocino Town Plan designates the town of Mendocino as a special community. Therefore, the development is located within a sensitive coastal resource area as defined in the LCP, and, as such, is appealable to the Commission.

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

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

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

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

## 2. Filing of Appeal

One appeal was filed by Commissioners Bonnie Neeley and Sara Wan (Exhibit No. 3). The appeal was filed with the Commission in a timely manner on July 21, 2005 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 2) on July 7, 2005.

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## I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

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

### MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-05-035 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-05-035 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

**II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

**A. APPELLANTS' CONTENTIONS**

The Commission received one appeal of the County of Mendocino's decision to conditionally approve the development from Commissioners Bonnie Neeley and Sara Wan. The project as approved by the County involves (1) the construction of an approximately 2,418 - square-foot two story single-family residence with a maximum height of 28 feet above grade; (2) construction of an approximately 690 - square-foot detached garage with a maximum height of 16 feet above grade; and (3) construction of a 16-foot-wide approximately 380-foot-long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and 44. The approved driveway would cross a wetland to access the undeveloped APN 119-090-42 (0.3-acre) to be developed with the approved residence. Electrical, telephone, and sewer services would be extended underground along the proposed driveway. The project includes a 1:1 ratio wetland mitigation plan.

The approved project is located in the Town of Mendocino, approximately 1/4 mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 and 44650 Little Lake Road (APNs 119-090-42, 43, 44) in Mendocino County.

The appeal raises two contentions alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below, and the full text of the contentions is included as exhibit no.3.

1. Development in Wetlands

The Appellants contends that the approval of the residential driveway is inconsistent with the wetland policies of the LCP, which do not include residential uses as allowable developments in wetlands.

2. Least Environmentally Damaging Feasible Alternative

The Appellants further contend that even if the residential driveway were an allowable development in a wetland, the driveway as approved by the County would still be inconsistent with ESHA provisions in the LCP requiring that the project be the "least environmentally damaging alternative," because there are feasible less environmentally damaging alternatives, including (a) bridging or cantilevering the vehicular access over the wetland and (b) not conducting any development on the subject property, which would require no wetland fill, and because there is already an existing residence on APN 119-090-44, which provides for a reasonable use of the property.

**B. LOCAL GOVERNMENT ACTION**

On June 23, 2005, the Mendocino County Coastal Permit Administrator conditionally approved the coastal development permit for the project (CDP 111-02) (exhibit no.4). The permit approved (1) the construction of an approximately 2,418 - square-foot two story single-family residence with a maximum height of 28 feet above grade; (2) construction of an approximately 690 - square-foot detached garage with a maximum height of 16 feet above grade; and (3) construction of a 16-foot-wide approximately 380-foot-long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and 44. The approved driveway would cross a wetland to access the undeveloped APN 119-090-42 (0.3-acre) to be developed with the approved residence. Electrical, telephone, and sewer services would be extended underground along the proposed driveway. The project includes a 1:1 ratio wetland mitigation plan.

The approved permit imposed several special conditions pertaining to the appeal's contentions, including: (a) that the applicant complete a boundary line adjustment to merge the undeveloped APNs 119-090-42 and 43; (b) that the applicants record a deed restriction that restricts development on APN 119-090-43 (which contains the majority of the wetland) except for the approved driveway, requires implementation of the five year wetland mitigation plan providing for 1:1 wetland replacement, and specifies that no development shall occur in the wetland or the 100-foot buffer except for the approved driveway and the implementation of the wetland mitigation plan; (c) that annual monitoring reports for the wetland mitigation be provided each year for five years; (d) that all recommendations and measures in the wetland mitigation plan be incorporated into the project; (e) that protective ESHA construction fencing be placed; and (f) that all contractors must be provided copies of the wetland mitigation plan, and be kept in their possession at the work site.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by the Commission staff on July 7, 2005 (exhibit no. 2). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

The County's approval of the project was appealed to the Coastal Commission in a timely manner on July 21, 2005, within 10-working days after receipt by the Commission of the Notice of Final Local Action.

### C. PROJECT AND SITE DESCRIPTION

The approved development is located in the coastal zone in the Town of Mendocino, approximately 1/4 mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 and 44650 Little Lake Road (APNs 119-090-42, 43, 44). The applicant's subject property includes three Assessor Parcel Numbers (APNs) (see exhibit 6). The APNs were formerly considered to be one APN, but four Certificates of Compliance approved by the County in 1998 recognized four separate APNs, and a subsequent boundary line adjustment approved by the County in 1999 resulted in the current configuration of three separate APNs. APN 119-090-44, adjacent to Little Lake Road, is already developed with a residence. The other two APNs behind it and to the north are vacant, and the approved residence would be located on the northernmost APN 119-090-042. Wetlands Research Associates, Inc (WRA) prepared a wetland delineation dated September 2002 and determined that the subject property contains a 0.68-acre wetland, covering virtually all of the middle APN, APN 119-090-043, approximately half of the first APN, APN 119-090-44 adjacent to Little Lake Road, and a smaller portion of the back, northernmost portion of the subject property where the approved residence would be (APN 119-090-042).

The project as approved by the County includes: (1) the construction of an approximately 2,418 - square-foot two story single-family residence with a maximum height of 28 feet above grade on the northern portion of the subject property (APN 119-090-42); (2) construction of an approximately 690 - square-foot detached garage with a maximum height of 16 feet above grade; and (3) construction of a 16-foot-wide approximately 380-foot long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across the southern portion of the subject parcel (APNs 119-090-43 and 44). The approved driveway would cross a wetland to access the approved residence. Electrical, telephone, and sewer services would be extended underground along the approved driveway. The project includes a 1:1 ratio wetland mitigation plan.

Prior to December 2002 and without a coastal development permit, a road was cleared from Little Lake Road, through the western edges of the first two APNs, to access the back APN and the future approved residence. This road was cleared through a 0.036-acre portion of the 0.68-acre wetland. The unpermitted road impacted the wetland through vegetation removal and a

decrease in water quality caused by vehicles. The County subsequently approved the subject coastal development permit application authorizing the construction of the residence outside of the wetland area (with a 100-foot buffer) on the northernmost portion of the subject property, the "after-the-fact approval" for the previously cleared road, and the future upgrade of the road to County standards, which includes the raising and widening of the access road, including a 10-foot road prism and 3-foot wide utility corridors on either side. This road upgrade would occur in an additional 0.026-acre of wetland, for a total loss of 0.062 acre of wetland habitat when combined with the previous road work. The County also approved a wetland mitigation plan, which includes the creation of 0.068 wetland adjacent and connected to the impacted wetland. A total of 220 cubic yards of wetland fill was authorized for the project.

**D. SUBSTANTIAL ISSUE ANALYSIS.**

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

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

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

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

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

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



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

Both contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding development in wetlands. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the two allegations concerning the consistency of the project as approved with the provisions of the LCP regarding development in wetlands, the appeal raises a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP.

**Allegations Raising Substantial Issue:**

**a. Development in Wetlands**

The appellants contend that the approval of the residential driveway is inconsistent with the wetland policies of the LCP, which do not include residential uses as allowable developments in wetlands.

LCP Policies

Mendocino County LUP Policy 3.1-4 states:

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

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

7. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
8. *Nature study purposes and salmon restoration projects.*
9. *Aquaculture, or similar resource dependent activities excluding ocean ranching. (See Glossary)*

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

Coastal Act Section 30233 states, incorporated by reference into the LUP:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities.*

- (b) *Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.*
- (c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

Coastal Act Section 30607, incorporated by reference into the LUP, states:

*Any permit that is issued or any development or action approved on appeal, pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development or action will be in accordance with the provisions of this division.*

Section 20.719.005 of the Mendocino Town Zoning Code States:

*The provisions of Chapter 20.496, "Environmentally Sensitive Habitat and Other Resource Areas" of the Mendocino County Zoning Code, Title 20, Division II of the Mendocino County Code shall also apply to the Town of Mendocino and shall be incorporated into the Town Zoning Code. (Ord. No. 3915 (part), adopted 1995)[Emphasis added.]*

Section 20.496.025 of the Mendocino County Coastal Zoning Code, incorporated by reference into the Town zoning code states, in part, that:

- (A) *Development or activities within wetland and estuary areas shall be limited to the following:*
- (1) *Port facility expansion or construction.*
  - (2) *Energy facility expansion or construction.*
  - (3) *Coastal-dependent industrial facilities, such as commercial fishing facilities, expansion or construction.*
  - (4) *Maintenance or restoration of dredged depths or previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and associated boat launching ramps.*

(5) *In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that, in a degraded wetland, other boating facilities may be permitted under special circumstances.*

(6) *New or expanded boating facilities may be permitted in estuaries.*

(7) *Incidental public service purposes which temporarily impact the resource including but not limited to burying cables and pipes, or inspection of piers, and maintenance of existing intake and outfall lines.*

(8) *Restoration projects which are allowable pursuant to Section 30233(a)(7) of the Coastal Act are publicly or privately financed projects in which restoration is the sole purpose of the project...*

(9) *Mineral extraction, including sand for restoring beaches, except in ESHA's.*

(10) *Nature study purposes and salmon restoration projects.*

(11) *Aquaculture, or similar resource dependent activities excluding ocean ranching.*

(B) *Requirements for permitted development in wetlands and estuaries.*

(1) *Any proposed development that is a permitted development in wetlands and estuaries must meet the following statutory requirements, and supplemental findings pursuant to Section 20.532.100:*

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

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

Section 20.692.025 of the Mendocino Town Zoning Code states in applicable part:

All development proposed in the Town of Mendocino also shall comply with the provisions of... Chapter 20.496 (Environmentally Sensitive Habitat and Other Resource Areas), Chapter 20.500 (Hazard Areas), Section 20.532.060 (Environmentally Sensitive Habitat Area - Supplemental Application Procedures) and Section 20.532.100 (Supplemental Findings) of Chapter 20.532 (Coastal Development Permit Regulations - General) and Section 20.504.025(B) of Division II of this Title. [emphasis added.]

Section 20.532.100 of the Mendocino County Zoning Code, incorporated by reference in the Town zoning code, states in applicable part:

*In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:*

*(A) Resource Protection Impact Findings.*

*(1) Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:*

*(a) The resource as identified will not be significantly degraded by the proposed development.*

*(b) There is no feasible less environmentally damaging alternative.*

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

Section 20.496.010 of the County zoning code states in applicable part, and incorporated by reference into the Town code:

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

Discussion

The approved development allows the construction of a residential driveway through 0.062-acre of wetland to access a future new house. The approved development includes a wetland mitigation plan, utilizing a 1:1 wetland mitigation ratio. The approved driveway construction and the wetland mitigation activities would fill 0.062-acre of wetland with approximately 220 cubic yards of fill material. As discussed previously, most of the driveway was cleared, and fill may have been placed, without benefit of a coastal development permit.

Mendocino County found that there are no alternatives to the approved driveway site to access the approved residence, and hence there are no alternatives but to cross the wetland. Further, the County found that the construction of the road along the subject property's boundary and through the wetland at the narrowest part is the least environmentally damaging alternative, and that without this access road, there is no other feasible way to access the approved residence with vehicles. To mitigate the impacts to 0.062-acre wetland, the County approved a 1:1 wetland mitigation plan. This mitigation includes the creation of a 0.068-acre wetland, and the placement of culverts under the road to facilitate hydrologic continuity during periods of high water flow.

In making the above findings and approving the mitigation plan, the County utilized County Coastal Zoning Code Section 20.532.100(A)(1), incorporated by reference into the Mendocino Town Code, and which requires that supplemental findings be made for developments that occur in environmentally sensitive habitat areas (ESHAs), including wetlands, including findings that

the resource will not be significantly degraded by the development, there are no feasible less environmentally damaging alternatives, and mitigation measures are adopted. However, the County erred in utilizing this section only. Section 20.496.025 of the Mendocino County Coastal Zoning Code, which is also incorporated by reference in the Mendocino Town Code, states that only uses such as ports, recreational boating facilities, and restoration purposes (where the sole purpose of the project is restoration) are permitted uses in wetlands, not residential uses. In fact, it is this same section which incorporates the supplemental findings in Section 20.532.100 for those uses permitted in wetlands, stating, "Any proposed development that is a permitted development in wetlands and estuaries must meet the following statutory requirements, and supplemental findings pursuant to Section 20.532.100: (a) There is no feasible, less environmentally damaging alternative; (b) Where there is no feasible, less environmentally damaging alternative, mitigation measures have been provided to minimize adverse environmental effects..."

Thus, because residential driveways are not allowable developments in wetlands pursuant to the LCP wetlands policies, the degree of legal and factual support for the local government's decision is low. Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.1-4, Mendocino County Coastal Zoning Code Section 20.496.025, and Mendocino Town Zoning Code Sections 20.692.025 and 20.719.005.

**b. Least Environmentally Damaging Feasible Alternative**

The Appellants further contend that even if the residential driveway were an allowable development in a wetland, the driveway as approved by the County would still be inconsistent with ESHA provisions in the LCP requiring that the project be the "least environmentally damaging alternative," because there are feasible less environmentally damaging alternatives, including (a) bridging or cantilevering the vehicular access over the wetland and (b) not conducting any development on the subject property, which would require no wetland fill, and because there is already an existing residence on APN APN 119-090-44, providing for a reasonable use of the property.

**LCP Policies**

Mendocino County LUP Policy 3.1-4 states in applicable part (full text included in Contention (a)) (emphasis added):

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

Coastal Act Section 30233, incorporated by reference into the LUP, states in applicable part (full text included in Contention (a)) (emphasis added):

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:...*

Section 20.719.005 of the Mendocino Town Zoning Code States:

*The provisions of Chapter 20.496, "Environmentally Sensitive Habitat and Other Resource Areas" of the Mendocino County Zoning Code, Title 20, Division II of the Mendocino County Code shall also apply to the Town of Mendocino and shall be incorporated into the Town Zoning Code. (Ord. No. 3915 (part), adopted 1995)*

Section 20.496.025 of the Mendocino County Coastal Zoning Code, which is incorporated by reference into the Town Code, states in applicable part:

...

*(B) Requirements for permitted development in wetlands and estuaries.*

*(1) Any proposed development that is a permitted development in wetlands and estuaries must meet the following statutory requirements, and supplemental findings pursuant to Section 20.532.100:*

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

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

Section 20.692.025 of the Mendocino Town Zoning Code states in applicable part:

*All development proposed in the Town of Mendocino also shall comply with the provisions of... Chapter 20.496 (Environmentally Sensitive Habitat and Other Resource Areas), Chapter 20.500 (Hazard Areas), Section 20.532.060 (Environmentally Sensitive Habitat Area - Supplemental Application Procedures) and Section 20.532.100 (Supplemental Findings) of Chapter 20.532 (Coastal Development Permit Regulations-General) and Section 20.504.025(B) of Division II of this Title.*

Section 20.532.100 of the Mendocino County Coastal Zoning Code, incorporated by reference into the Town code, states:

*In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:*

*(A) Resource Protection Impact Findings.*

*(1) Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:*

- (a) The resource as identified will not be significantly degraded by the proposed development.*
- (b) There is no feasible less environmentally damaging alternative.*
- (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted [emphasis added.]*

Coastal Zoning Code Section 20.496.010 "Environmentally Sensitive Habitat and other Resource Areas—Purpose," incorporated by reference into the Town Code, states (emphasis added):

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

Discussion

Mendocino County LUP Policy 3.4-1 and Sections 20.496.025(B)(1)(a) and 20.532.100 of the Mendocino County Coastal Zoning Code, which are incorporated by reference into the Town Code, state that any development that is permitted in wetlands must satisfy several tests, including that the development be the "least environmentally damaging feasible alternative." In the staff report for the approved project, the County finds that the project is the least environmentally damaging alternative, but provides no analysis or evidence to support this finding. The County staff report states:

*"Other potential vehicular access ways that would not require development in the wetland have been researched by the owner and eliminated. Further, the existing driveway needs to be corrected to address erosion and water quality issues. Short of not allowing any residential development of either unimproved parcel, there is not a less environmentally damaging alternative (6/23/05 County Staff Report, p. CPA-7)."*

The above statements do not evaluate, nor do they support a finding that the project is the "least environmentally damaging feasible alternative." The statements do not address (1) other potential vehicular access ways that are alternatives to the approved driveway, and (2) the feasibility of the "no development" option, which would not require any wetland fill.



The County staff report provided no information as to what other vehicular access ways were explored. The County's analysis did not address the alternative of creating an elevated vehicular access way over the wetland, by bridging or cantilevering over the wetlands. In addition, the "no development" alternative was not thoroughly analyzed by the County. APNs 119-090-42, 43, and 44 are in single ownership and the subject property is already in residential use with an existing residence outside of the wetland area on the southern portion of the subject property, which is accessed directly from Little Lake Road. Because of this, the "no development" alternative may be a viable alternative because it would not use any wetland fill and the existing residence would provide for a reasonable use of the property.

Therefore, the County had little legal or factual basis with which to make the finding that there are no feasible less environmentally damaging alternatives. The Commission finds that the project as approved raises a substantial issue of conformance with the provisions LUP Policy 3.4-1, and Mendocino Town Zoning Code Sections 20.692.025 and 20.719.005, as well as Sections 20.496.025(B)(1)(a) and 20.532.100 of the Mendocino County Coastal Zoning Code, which have been incorporated by reference into the Town Code.

### **Conclusion**

All of the various foregoing contentions raised by the appellants have been evaluated against the claim that they raise a substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the project as approved raises a substantial issue of conformance with the certified LCP with respect to all the contentions raised.

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

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

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

#### **1. Alternatives Analyses**

As discussed above, for those allowable uses in a wetland, authorization of the placement of fill in wetlands is contingent on making findings that there is no feasible less environmentally damaging alternative. Because the existing County Staff Report does not have sufficient information with which to make these findings, an analysis of the presence of feasible less environmentally damaging alternative driveway designs or locations is needed as prescribed in Coastal Zoning Code 20.523.100(A)(1). This analysis should encompass, at a minimum, a review of: (1) other potential vehicular access ways that are alternatives to the approved driveway, such as the alternative of creating an elevated vehicular access way over the wetland, by bridging or cantilevering over the wetlands, which would not have required any loss of wetlands; and (2) the feasibility of the "no development" option, which would not require any wetland fill. The analysis should quantify the square footage of coverage and ground and/or wetland fill associated with each alternative and include a biological assessment of the potential direct and indirect impacts to the wetland for each alternative, an analysis of the relative compatibility of development in each location with the continuance of the wetland by maintaining its functional capacity, its ability to be self-sustaining, and to maintain natural species diversity. The analysis should also discuss all other applicable limitations and restrictions on development that may affect the feasibility of development in the specified locations (i.e., required setbacks from property lines and access drives, the presence of problematic soils and/or geologic instability, preclusions within deed CC&Rs, etc.)

**2. Information Needed to Evaluate the Legality of APNs 119-090-42, 43, and 44**

Because there appears to be some evidence that the subject property was historically transferred as a single parcel and is in single ownership, an analysis of the legality of APNs 119-090-42, 43, and 44 as separate parcels is needed to help determine the legal development potential on the subject property (which already contains one residence) consistent with the Mendocino County LCP policies which limit second residences on single parcels. This analysis must include, but is not limited to, the following:

- A. The historic chain of title for the subject property;
- B. Whether the real property in question complies with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant.

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

If the project cannot be found consistent with the wetlands policies of the certified Mendocino Local Coastal Program, the Commission will need to evaluate whether an alternative proposal could be approved, and if not, whether denial of the project would result in an unconstitutional taking of private property for public use. In order to make that evaluation, the Commission will need to request additional information from the applicant concerning the applicant's reasonable investment-backed expectations to make

such determinations prior to holding a *de novo* hearing on the project. Specifically, in addition to providing the Commission with an analysis of alternatives to the proposed project that would be less environmentally damaging to wetlands as required by the certified LCP, and an analysis of the legality of APNs 119-090-42, 43, and 44 as separate parcels, the landowner of the property that is the subject of A-1-MEN-05-035 must provide the following information for the property that is subject to A-1-MEN-05-035 as well as all property on common contiguous ownership, i.e. any immediately adjacent property also owned by the applicant:

1. When the property was acquired, and from whom;
2. The purchase price paid for the property;
3. The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;
4. Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).
5. At the time the property was purchased, or at any subsequent time, whether the project been subject to any development restriction(s) (e.g., restrictive covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;
6. Whether the size or use of the property changed in any way since it was purchased. If so, identify the nature of the change, the circumstances and the relative date(s);
7. Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;
8. A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);
9. The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property;
10. The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:

- property taxes
- property assessments
- debt service, including mortgage and interest costs; and
- operation and management costs; and

11. Whether apart from any rent received from leasing all or a portion of the property (see question #7 above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

#### **4. Historical Information on the Proposed Driveway**

The County staff report states that the proposed driveway was “cleared” in 2002, and that this was done without the benefit of a coastal development permit. However, it is unclear as to whether and to what extent an older driveway/road existed in this location, and if so, when it was constructed. In order to evaluate the proposed driveway improvements for consistency with the policies of the LCP, additional information is needed from the applicant concerning the historical use of the subject property, what driveway improvements existed prior to when coastal development permit requirements went into effect, and what driveway improvements have been conducted since coastal development permit requirements went into effect.

Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the wetland policies of the LCP, the consistency of the proposed development with LCP policies limiting 2<sup>nd</sup> residences on single parcels, and the project’s consistency with Coastal Act Section 30010. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

#### **EXHIBITS**

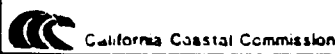
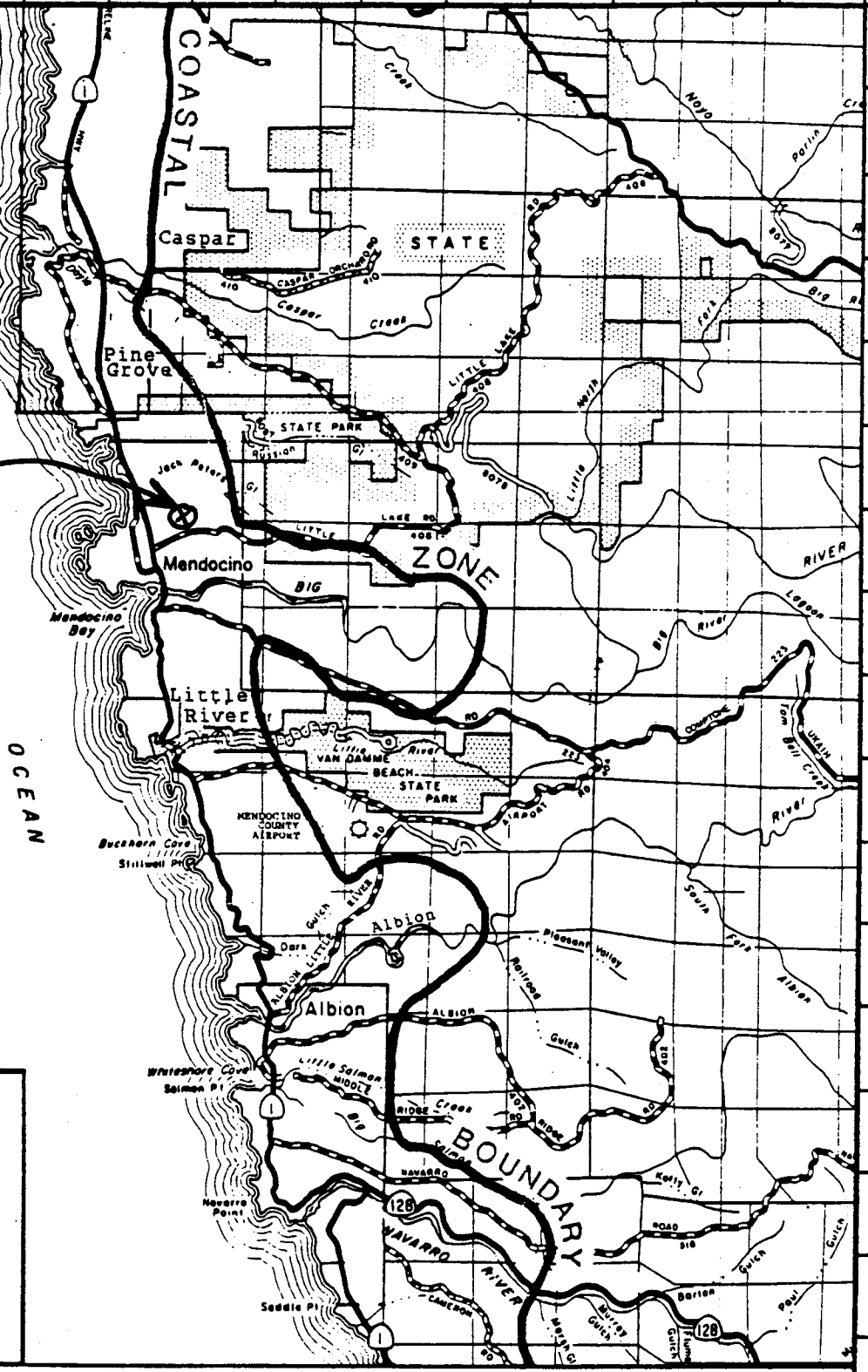
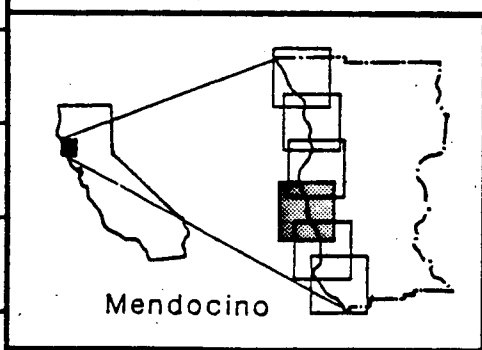
1. Regional Location Map
2. Vicinity Map
3. Subject Property
4. Project Plans
5. Notice of Final Local Action
6. Appeal

A B C D E F G H I J K L M N O

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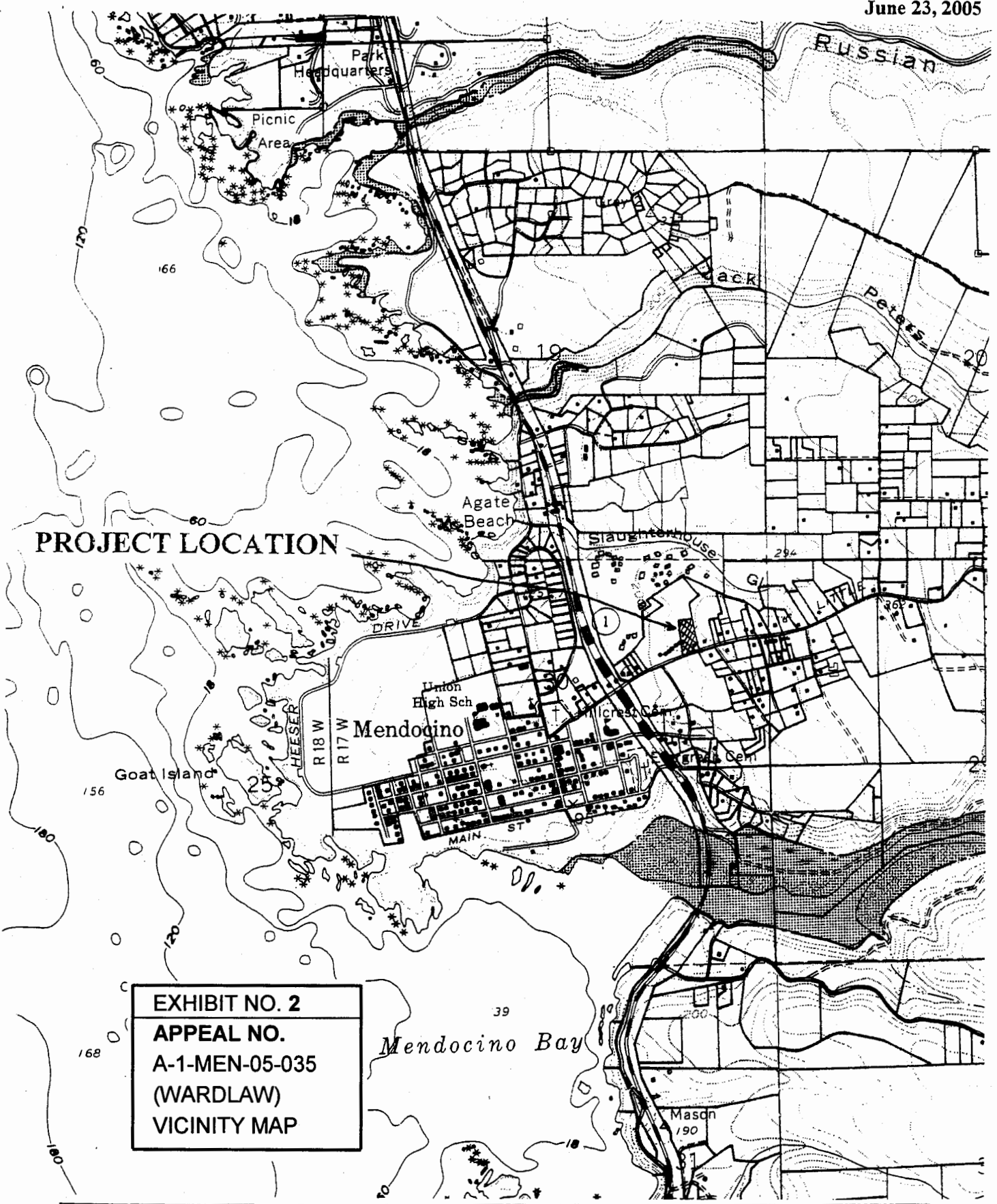
**PROJECT SITE**

EXHIBIT NO. 1  
APPEAL NO.  
A-1-MEN-05-035  
(WARDLAW)  
REGIONAL LOCATION



# LOCATION MAP





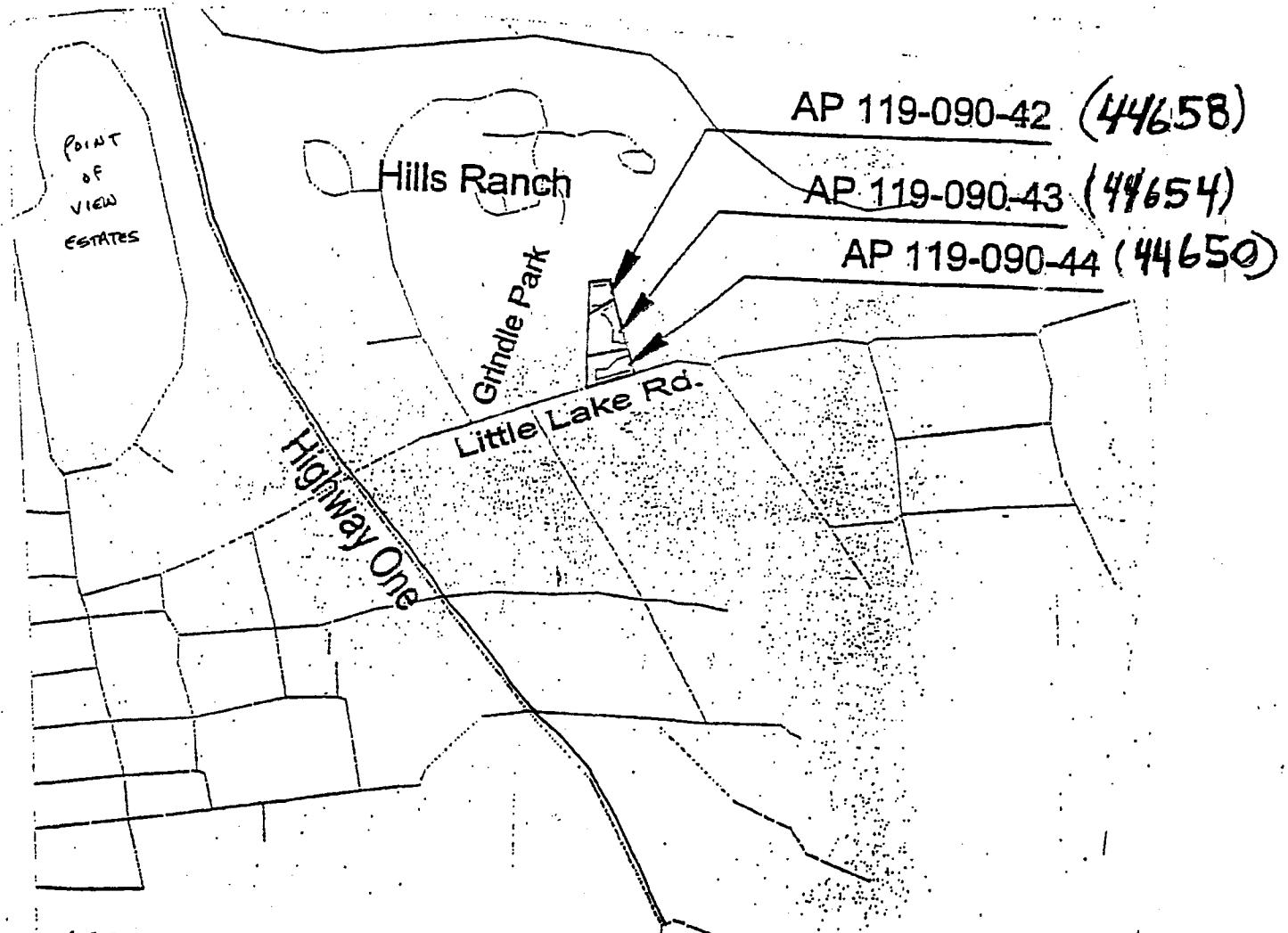
**EXHIBIT NO. 2**  
**APPEAL NO.**  
**A-1-MEN-05-035**  
**(WARDLAW)**  
**VICINITY MAP**

Exhibit A

↑  
**NORTH**

Location Map

NO SCALE



44650 Little Lake Road, Mendocino  
Original lot number AP 119-090-08

EXHIBIT NO. 3
APPEAL NO.
A-1-MEN-05-035
(WARDLAW)
SUBJECT PROPERTY



NO SCALE

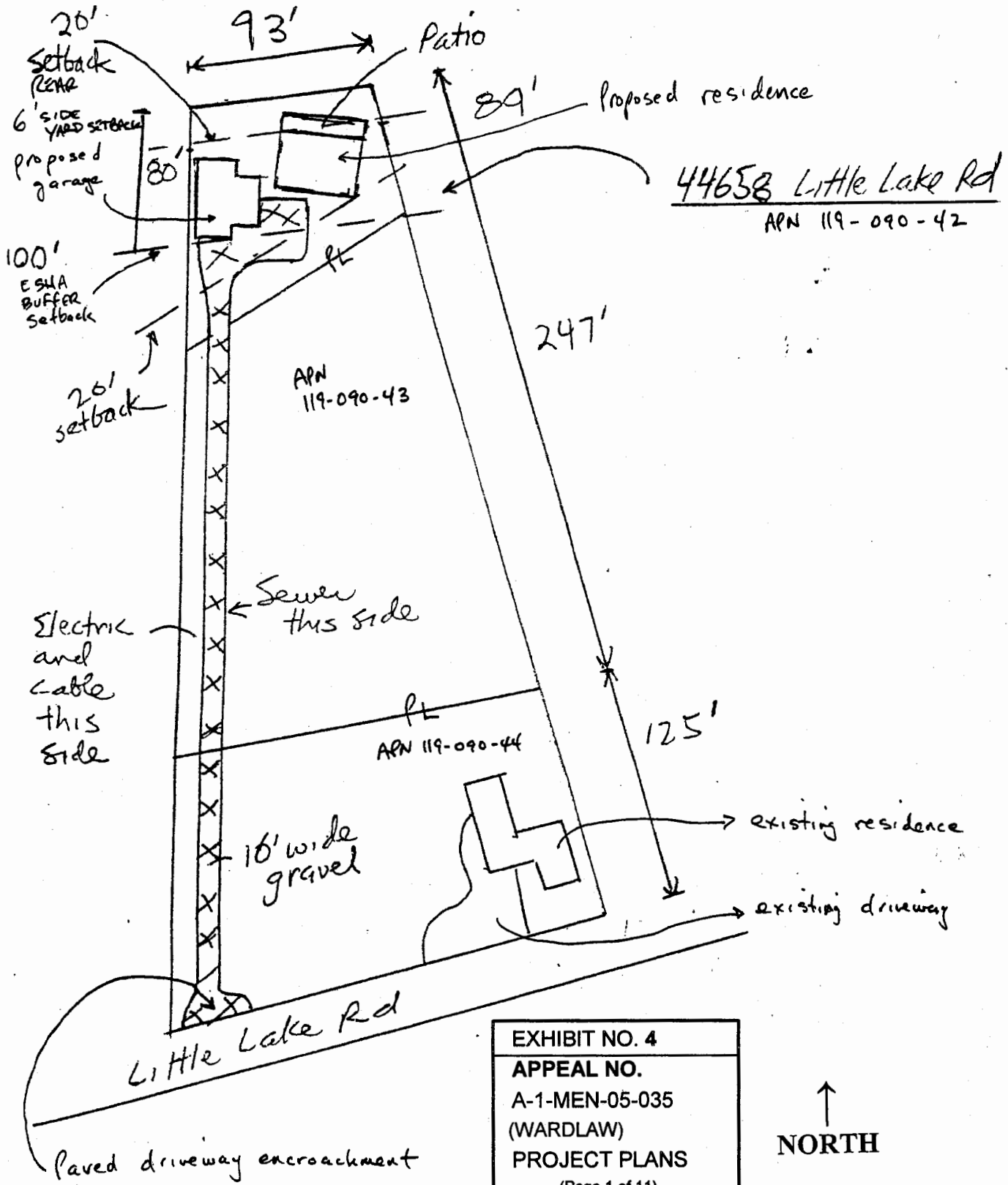
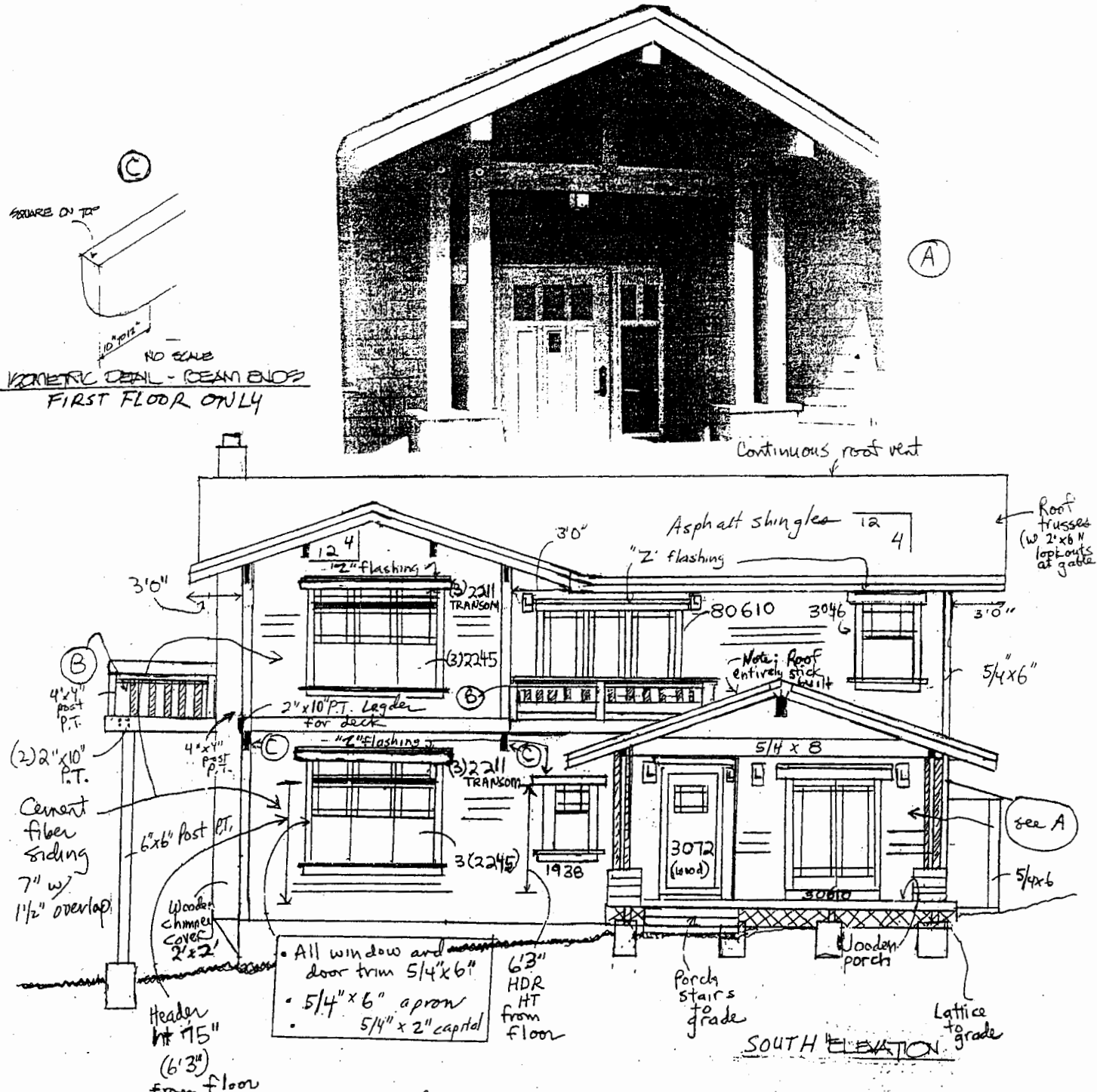


EXHIBIT NO. 4  
APPEAL NO.  
A-1-MEN-05-035  
(WARDLAW)  
PROJECT PLANS  
(Page 1 of 11)

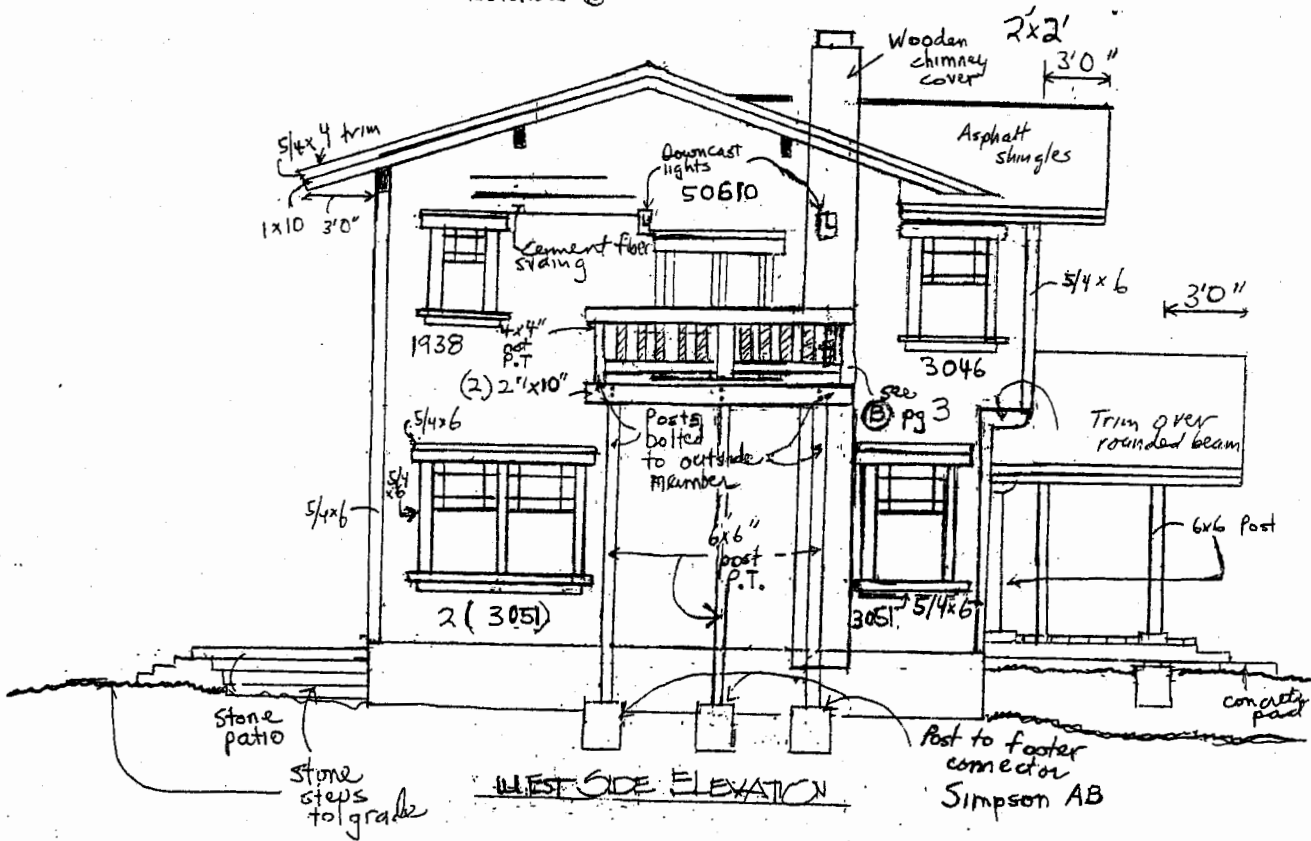
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NORTH

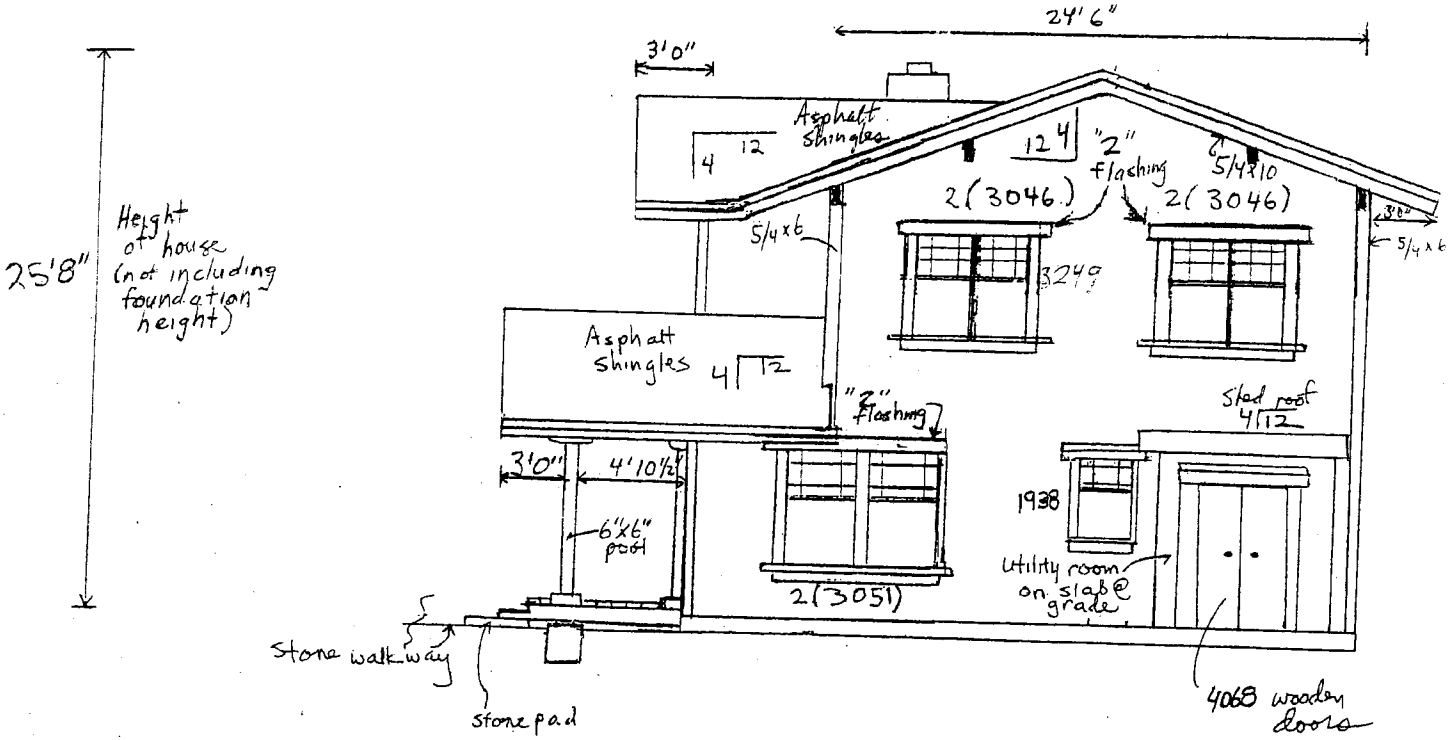




Wardlaw Residence Page 3

Note Use  
5/4x6" joist for  
deck floor. Attach w/  
SS. screws. Consider concealed  
fasteners.

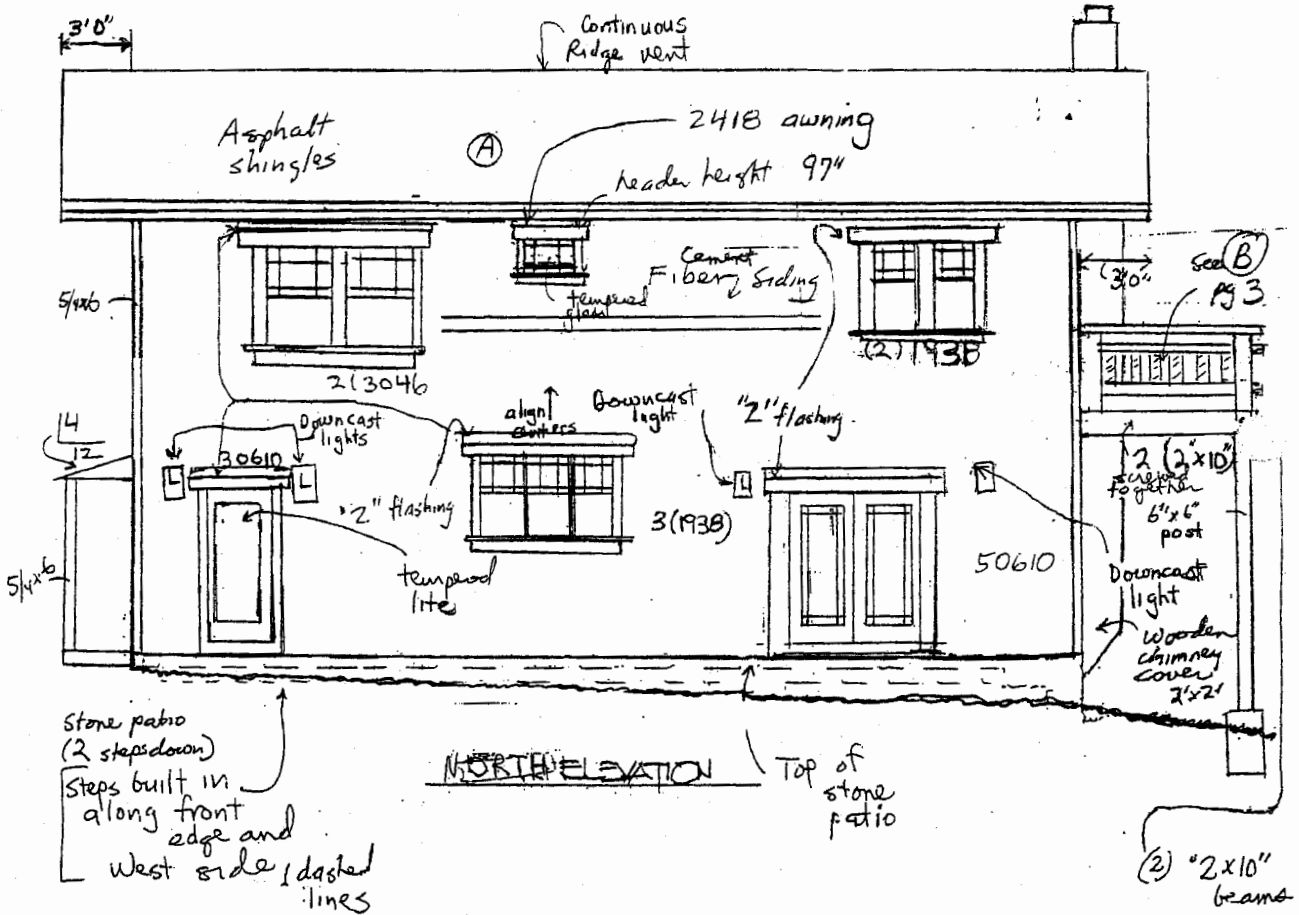


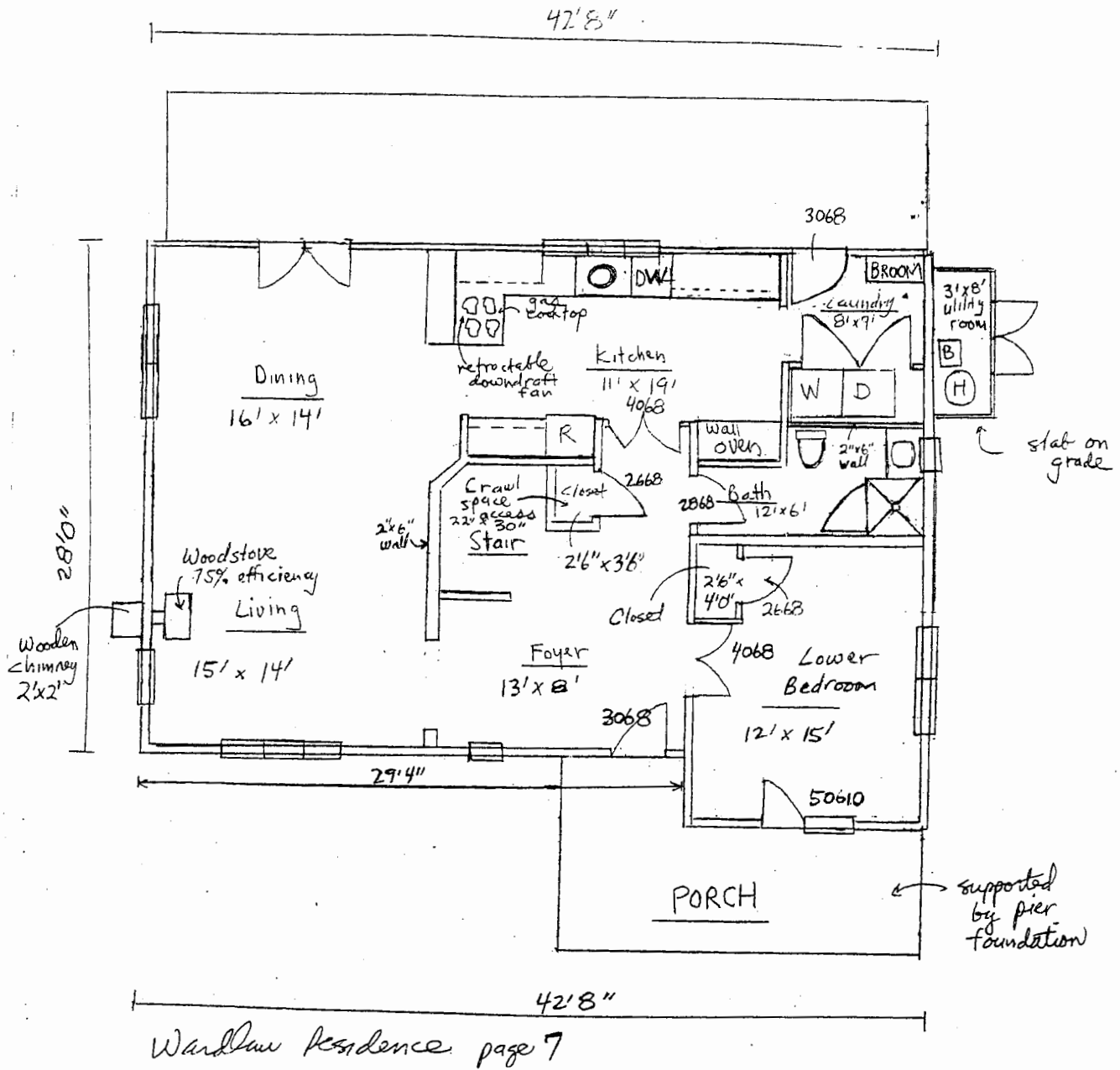


**Wardlaw Residence**  
Gordon Wardlaw

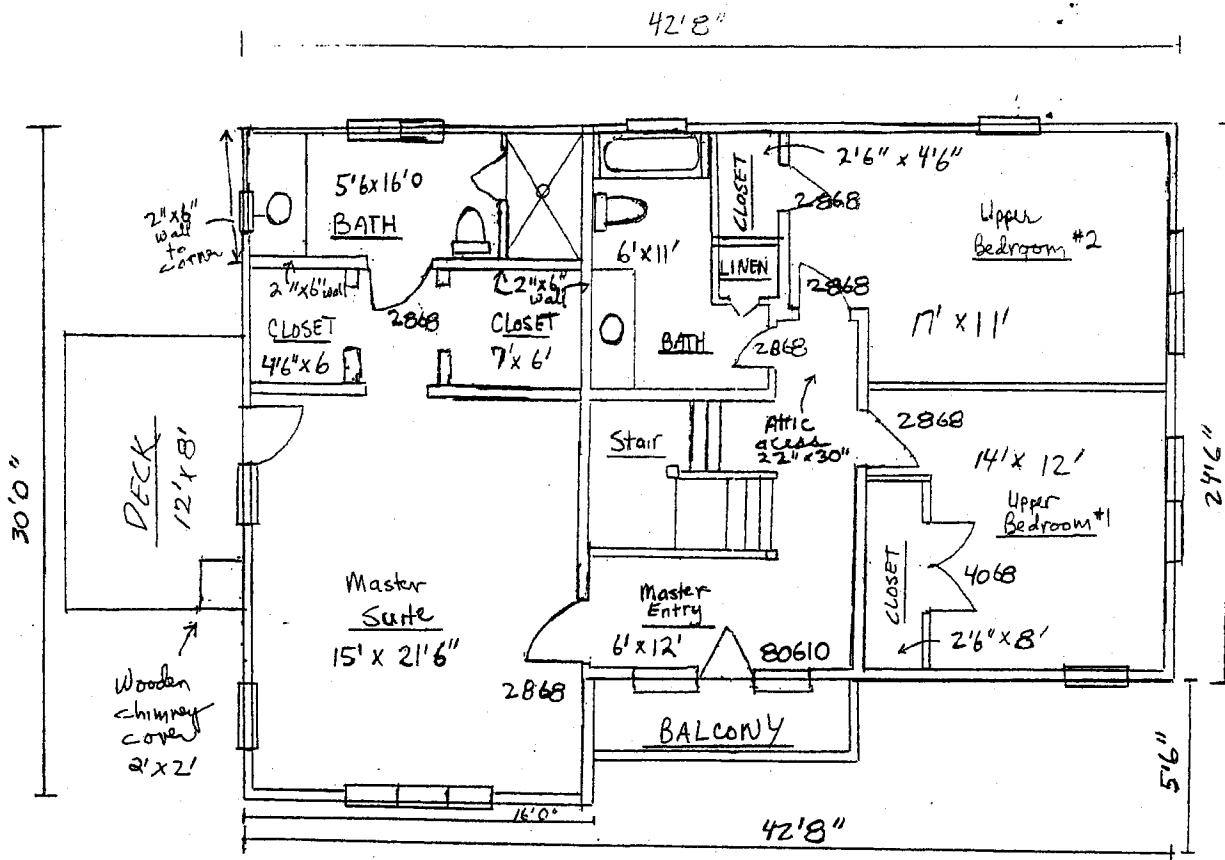
**Page 6**

East Elevation

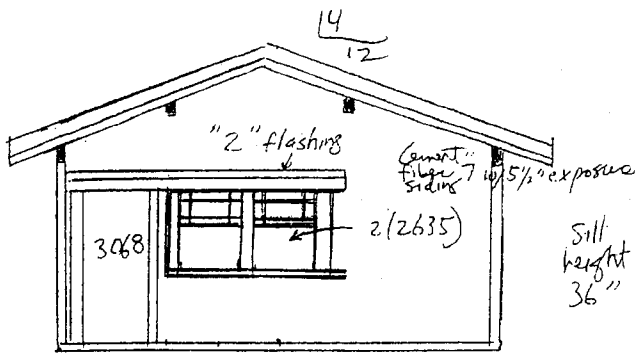




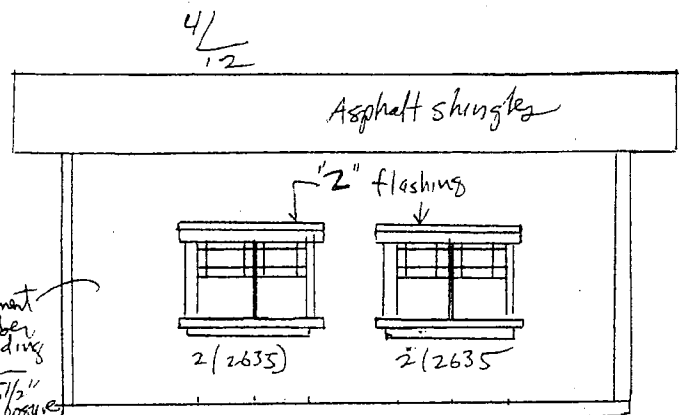
Floor Plan  
1st floor



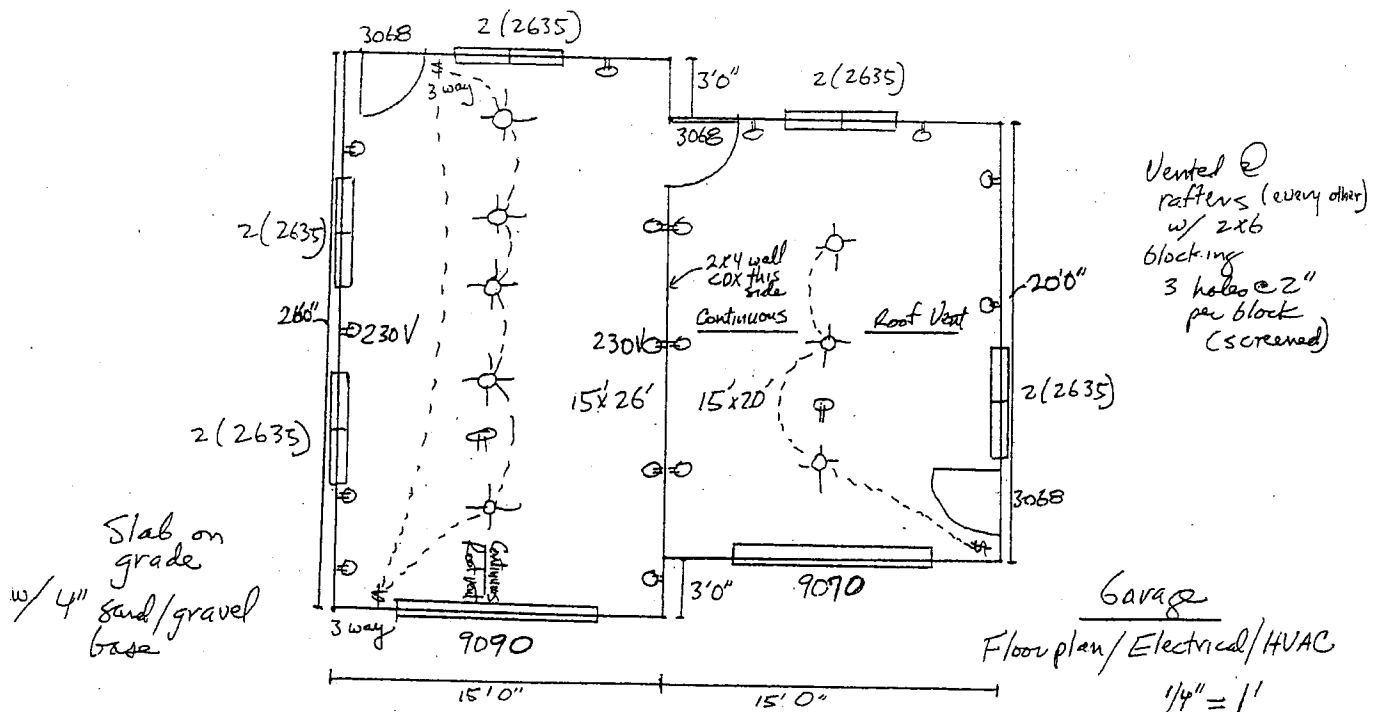
Floor Plan 2nd story



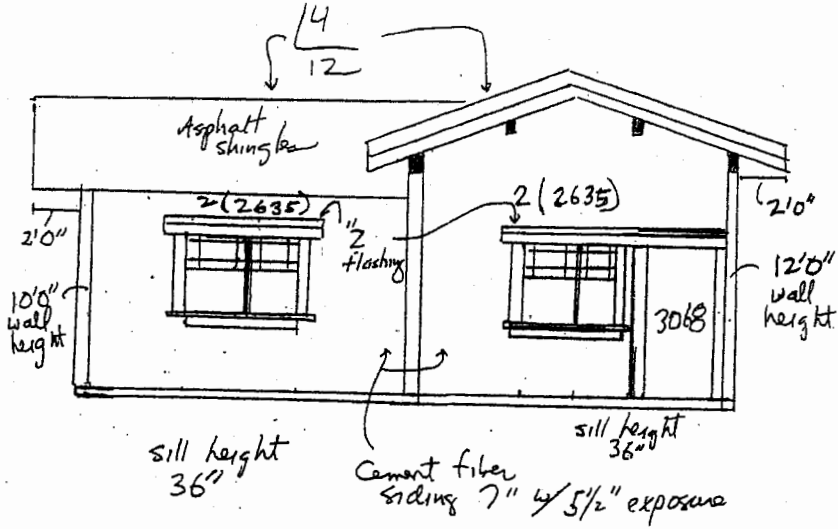
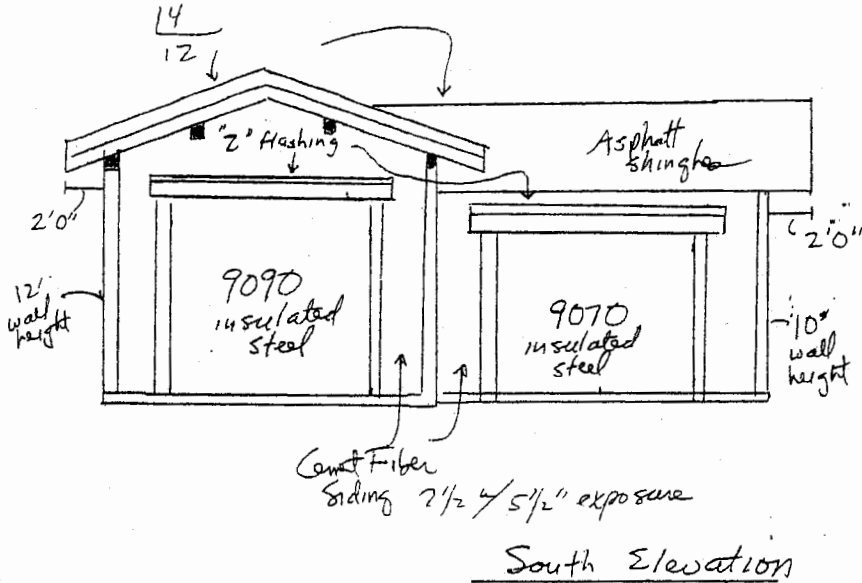
East Elevation



West Elevation 1/4" = 1'  
Sill height 36"  
All trim: 5/4" x 6" w/ 5/4" x 2" capitals



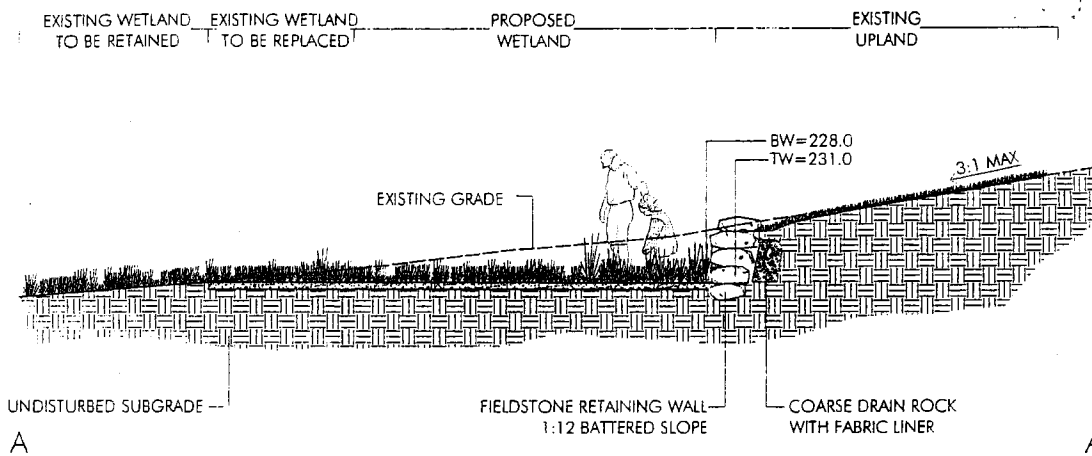
Garage  
Floor plan/Electrical/HVAC  
1/4" = 1'



Wardlaw Garage  
pg 10

North Elevation





NOTE: PEOPLE SHOW FOR SCALE

SCHMATIC SECTION  
A-A'



SCALE 1 1/2" = 1'-0"

Wetlands Research Associates, Inc.  
2166-Q East Francisco Blvd.  
San Rafael, CA 94901  
Contact: Doug Spilcher  
Phone: 415-454-8868

WARDLAW RESIDENCE WETLAND MITIGATION

LOCATION: MENDOCINO, CALIFORNIA

COUNTY: MENDOCINO

APPLICATION BY:

SHEET: 2 of 2 DATE: 04-23-2004



Wetlands Research Assoc

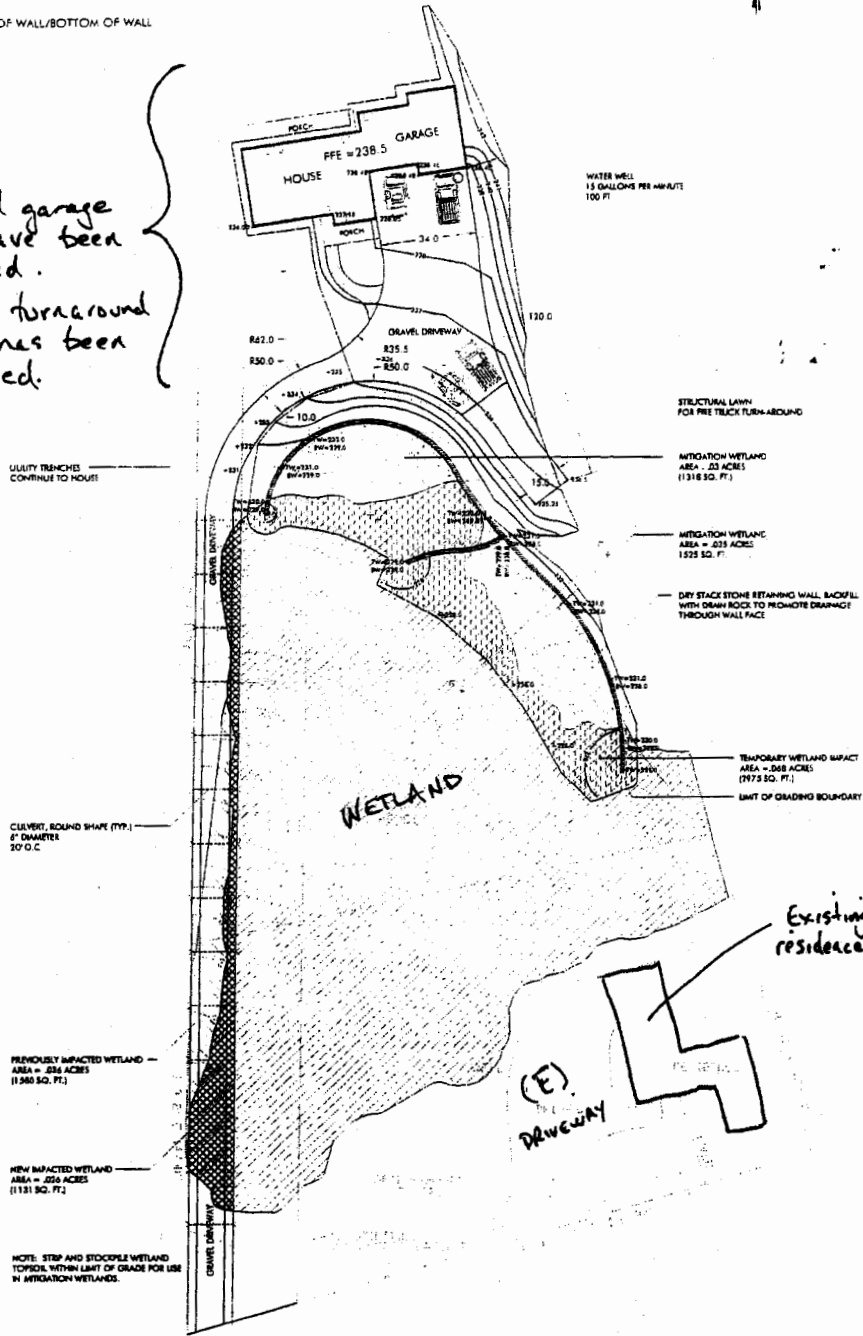
**MITIGATION LEGEND**

SYMBOL	DESCRIPTION
—	EXISTING CONTOUR LINE
— 232 —	PROPOSED CONTOUR LINE
+233.0	PROPOSED SPOT ELEVATION
—	PROPERTY LINE
T.W./B.W.	TOP OF WALL/BOTTOM OF WALL

This plan shows the location of the wetland and area of mitigation work.

**NOTE:**

- House and garage plans have been revised.
- Driveway turnaround area has been revised.



PURPOSE: WETLAND MITIGATION  
SOURCE: UNKNOWN



Wetlands Research Associates, Inc.

SCHEMATIC GRADING PLAN  
AND DRIVEWAY LAYOUT

Wetlands Research Associates, Inc.  
2169-G East Francisco Blvd.  
San Rafael, CA 94901  
Contact: Doug Bishop  
Phone: 415-454-8885

WARDLAW RESIDENCE WETLAND MITIGATION

LOCATION: MENDOCINO, CALIFORNIA  
COUNTY: MENDOCINO

APPLICATION BY:

SHEET: 1 of 2 DATE: 04-23-2004





RECEIVED

JUL 07 2005

July 5, 2005

NOTICE OF FINAL ACTION

CALIFORNIA  
COASTAL COMMISSION

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

**CASE#:** CDP #111-02  
**OWNER:** Gordon Wardlaw  
**AGENT:** Jane Veres/Bud Kamb Real Estate Services  
**REQUEST:** Construct an approximately 2,418 square foot two story single-family residence with a maximum height of 28 feet above grade. Construct an approximately 690 square foot detached garage with a maximum height of 16 feet above grade. Construct a 16-foot wide approximately 380-foot long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 & -44. Proposed driveway would cross a wetland to access an undeveloped 0.3-acre parcel to be developed with the proposed residence. Electrical, telephone and sewer services would be extended underground along the proposed driveway. The project includes a 1:1 ratio wetland mitigation plan.

**LOCATION:** In the coastal zone, in the Town of Mendocino, approximately ¼ mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 & 44650 Little Lake Road (APNs 119-090-42, -43, -44).

**PROJECT COORDINATOR:** Rick Miller

**HEARING DATE:** June 23, 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. 5

APPEAL NO.

A-1-MEN-05-035

(WARDLAW) NOTICE OF  
FINAL LOCAL ACTION

(Page 1 of 25)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 111-02 HEARING DATE: 4/23/05

OWNER: Wardlaw

ENVIRONMENTAL CONSIDERATIONS:

Categorically Exempt

Negative Declaration

EIR

FINDINGS:

Per staff report

Modifications and/or additions

ACTION:

Approved

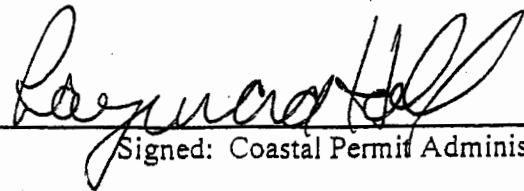
Denied

Continued \_\_\_\_\_

CONDITIONS:

Per staff report *but modified condition #6*

Modifications and/or additions

  
Signed: Coastal Permit Administrator

6a. Prior to issuance of the Coastal Development Permit, the applicant shall provide evidence that a BLA application has been submitted to PBS to merge the two currently undeveloped parcels into a single lot (APN's 119-090-42 & 43). Prior to the final inspection of the building permit for the structure authorized under CDP11-02, the applicant shall submit wetland verification that (1) the boundary line adjustment has been completed & that the deeds have been recorded & (2) a deed restriction, in a form & content acceptable to the CPA has been recorded. The deed restriction shall identify the five year wetland mitigation plan & shall state that no development shall occur in the WRA delineated wetland & the associated 100 foot ESA buffer in perpetuity with two exceptions:

1) Exception one is the sixteen foot wide driveway (which includes the utility trenches) can be maintained without any expansion of the driveway prism, and;

2) Exception two allows any work or development associated with implementing the wetland plan as described in the WRA

mitigation plan ~~or~~ as may be amended.

In the event of a BLA...

**STAFF REPORT FOR STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP 111-02  
June 23, 2005  
Page CPA-1**

**OWNER/APPLICANT:** Gordon Wardlaw  
2233 Fairfax Road  
Upper Arlington, OH 43221

**RECEIVED**  
JUN 13 2005  
CALIFORNIA  
COASTAL COMMISSION

**AGENT:** Jane Veres  
Bud Kamb Real Estate Services  
PO Box 2479  
Mendocino, CA 95460

**REQUEST:** Construct an approximately 2,418 square foot two story single-family residence with a maximum height of 28 feet above grade. Construct an approximately 690 square foot detached garage with a maximum height of 16 feet above grade. Construct a 16-foot wide approximately 380-foot long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 & -44. Proposed driveway would cross a wetland to access an undeveloped 0.3-acre parcel to be developed with the proposed residence. Electrical, telephone and sewer services would be extended underground along the proposed driveway. The project includes a 1:1 ratio wetland mitigation plan.

**LOCATION:** In the coastal zone, in the Town of Mendocino, approximately ¼ mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 & 44650 Little Lake Road (APNs 119-090-42, -43, -44).

**APPEALABLE AREA:** Yes, Within the Mendocino Town Plan area designated a Special Community and development within an environmentally sensitive habitat area.

**TOTAL ACREAGE:** 1.56 ± acres is the total of all three parcels combined. The parcel to be developed with the proposed residence and detached garage is 0.3 ± acres.

**GENERAL PLAN:** RR-2

**ZONING:** Mendocino Rural Residential (MRR-2)

**EXISTING USES:** APN 119-090-44 (adjacent to Little Lake Road) is developed with a single-family residence. The other two parcels are undeveloped.

**ADJACENT ZONING:** North & West: Mendocino Open Space (MOS)  
South & East: Mendocino Rural Residential (MRR)

**SURROUNDING LAND USES:** North & West: Undeveloped  
South & West: Residential

**SURROUNDING LOT SIZES:** North & West: 9.78 ± acres  
South: 4.5 ± acres  
East: 5.0 ± acres

5 of 25

**SUPERVISORY DISTRICT:** 5

**ENVIRONMENTAL DETERMINATION:** Negative Declaration

**OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA:** Coastal development boundary line adjustment CDB# 43-99 created the three subject parcels. The CDB was obtained after the recognition of four certificates of compliance. The original 1.56 ± acres parcel had the number, 119-090-08. Through the CDB process the number of parcels was reduced from four to three. The result of CDB# 43-99 was the three subject parcels. The parcel adjacent to Little Lake Road is already developed with a single-family residence. The other two parcels are undeveloped. The middle parcel would remain undeveloped with the exception of the access driveway and utility extension and the northern or rear parcel would be developed with the proposed residence and detached garage.

Coastal development exclusion order number CE# 74-03 was granted to allow for a test water well to be drilled with the purpose to perform a hydrological study as required by Mendocino City Community Services District (MCCSD) to prove that a viable water source was available for the proposed residence. The water well was drilled with a minimum 100-foot buffer to the identified wetland or Environmentally Sensitive Habitat Area (ESHA). The driveway which crosses the wetland was not used for the well drilling operation but rather a one time easement was granted for the well truck to approach the building site from the north through the Grindle Park open space. None of the work associated with the exclusion violated the 100-foot wetland buffer requirement.

**PROJECT DESCRIPTION:** The applicant intends to construct an approximately 2,418 square foot two story single-family residence with a maximum height of 28 feet above grade on a 0.3 ± acre parcel on the east side of Highway One within the Town of Mendocino. Additionally, an approximately 690 square foot detached garage with a maximum height of 16 feet above grade would be constructed to the west of the proposed residence. A 16-foot wide and approximately 380-foot long driveway would be constructed and upgraded to provide access to the proposed house site. The driveway would connect to Little Lake Road after crossing APNs 119-090-43 & -44. Parcel 119-090-43 (the middle parcel) is almost completely covered by wetlands and parcel 119-090-44 contains wetlands and an existing single-family residence. The proposed driveway would cross a wetland to access the undeveloped 0.3-acre parcel to be developed with a residence. Electrical, telephone and sewer services would be extended underground along the proposed driveway. The project includes a wetland mitigation plan that would be measured using vegetation-based criteria over a five-year period. Direct impacts to the wetland will be mitigated at a 1:1 ratio through the construction of a wetland on a different area of the property. A Licensed Landscape Architect at Wetlands Research Associates, Inc., has designed the mitigation wetland. The wetland mitigation incorporates a site-specific design, annual monitoring, and strict success criteria in order to easily achieve the required amount of mitigation.

**PROJECT SUMMARY:** WRA Environmental Consultants prepared a wetland delineation dated September 2002 and a subsequent wetland mitigation plan for the proposed residential project. The mitigation plan was developed after consultation with the U.S. Army Corps of Engineers, the North Coast Regional Water Quality Control Board, the California Department of Fish and Game and the County Planning Division. WRA determined that the subject parcels contain a 0.68-acre wetland. The delineation method followed the wetland definition as stated in the Coastal Act and the Mendocino County LCP. Prior to December 2002 a road was cleared through a 0.036-acre portion of the 0.68-acre wetland. This road involved no filling but impacted the wetland through vegetation removal and a decrease in water quality caused by vehicles. The road upgrade will include both raising and widening of the access road, which will include a 10-foot road prism and 3-foot wide utility corridors on either side of the road. The purpose of this project is to create an access road to a proposed residence that will be constructed on the property. Studies have determined the only permanent access to a home site on the property is to cross the wetland at the impacted area. Construction of the road along the property boundary and through the wetland at the narrowest part is the least environmentally damaging alternative as determined by Wetlands

6 of 25



Research Associates, Inc., the California Department of Fish and Game, and Mendocino County staff. Without this access road there is no other feasible way to access the property with vehicles. The project will upgrade the access road to county standards and mitigate for the wetland impacted during the initial road clearing (0.036 acres) as well as additional wetland area lost during the road upgrade (0.026 acres). In order to mitigate for these permanent wetland impacts (0.062 acres), a 0.068-acre (2,953 square ft) mitigation wetland will be created, and culverts will be placed under the improved road in order to facilitate hydrologic continuity during heavy periods of water flow. The road will be upgraded to include required utility trenches, higher quality roadbed, and room for a fire truck to turn around. A temporary impact of 0.068 acres (2,975 square feet) will occur at the mitigation wetland construction site, but this temporary impact will be self-mitigating.

To summarize the project impacts and mitigation, approximately 0.036 acres of jurisdictional wetlands have already been affected by this project due to the clearing of an access road. An additional 0.026 acres of wetland will be impacted as a result of upgrading the road to county standards. This upgrade involves both raising and widening the access road, including a 10-foot wide roadway and 3-foot wide utility corridors on each side (16-foot wide total). The impacted wetland will be mitigated at a 1:1 ratio through the construction of the 2,953 square foot (0.068 acre) mitigation wetland.

The project requires the following permits from state and federal agencies: A Clean Water Act Section 401 Certification (Water Quality Certification) from the North Coast Regional Water Quality Control Board; a Clean Water Act Section 404 Nationwide Permit 39 (File Number 280540N) from the U.S. Army Corps of Engineers; a Lake and Streambed Alteration Agreement from the California Department of Fish and Game. These agencies have reviewed the project and are awaiting the approval of the coastal permit and adoption of the mitigated negative declaration to proceed.

While the driveway would not meet the ESHA buffer requirement, a 100-foot buffer from the wetland (ESHA) has been incorporated into the design of the project for the proposed residence and detached garage as required by the County LCP.

#### ENVIRONMENTAL REVIEW:

Hazards: The project site is not located on a coastal bluff and is situated approximately ¼ mile east of Highway One. The proposed development would be located on slopes which are less than 20% and the development does not present any issues relative to erosion and/or slope failure. There are no known faults, landslides or other geologic hazards in close proximity to the proposed development.

Earth (Item 1C, grading & Item 1D, modification of physical features): The Army Corps of Engineers has estimated the project would require the discharge of approximately 220 cubic yards of fill material into 0.062 acre of wetlands as part of the project and proposed mitigation plan for wetland creation. The mitigation wetland would be created by excavating the upland grade at the corner of the existing wetland to the elevation of the wetland. A wall of coarse drain rock with fabric liner and fieldstones would be used to retain the original grade from the new wetland. Vegetation from the temporarily impacted portion of the wetland would be conserved and replaced as much as possible. The new portion of the wetland would be planted and seeded with appropriate native wetland vegetation.

WRA has estimated that the entire project (including the house construction and the wetland creation) would require a total approximately 640 cubic yards of cut.

Section 20.492.015 of the Coastal Zoning Code states, in part:

*Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily.*

Direct impacts to the wetland are minimized through careful project design. The improved road will be constructed along the property boundary and at the narrowest part of the wetland in order to impact the least amount of existing wetland. In addition, best management practices will be implemented to control erosion of current road bed into adjoining wetland, installation of temporary fencing will restrict the use of heavy machinery to the areas directly on the road bed and in the mitigation wetland construction area, silt fencing will be used along the road-utility trench boundary to prevent incidental fall back of materials into the wetland, and culverts used in the road construction will facilitate increased water flow.

The mitigation wetland will be vegetated with locally occurring wetland plants using three methods: topsoil stockpiling and re-spreading, transplanting, and natural re-vegetation. Six inches of topsoil will be scraped off of the temporarily impacted wetland and stockpiled. Once the mitigation wetland has been graded, the topsoil will be redistributed over the temporarily impacted area and the mitigation area. The majority of seeds and plants in the topsoil are expected to survive this redistribution. Perennial plants from the existing, un-impacted wetland will also be transplanted to the mitigation wetland. Additionally, natural re-vegetation from surrounding plants will augment the planting in the mitigation wetland. By using these three techniques, the plant composition of the mitigation wetland should closely mimic the composition of the existing wetland.

The proposed mitigation plan which is incorporated into the project is consistent with the intent of Section 20.492.015 of the Coastal Zoning Code.

Air (Items 2A-2C, air quality): The project will produce no air emissions or odors and will have no impact on air quality. Construction of the project would not result in substantial air emissions or objectionable odors. The project would not alter air movement, moisture or temperature.

Water (Items 3B, runoff & Item G, Groundwater): No watercourses will be altered as a result of the project. The site is not designated as a tsunami hazard zone. The site is not subject to flooding. The proposed project would have an incremental, but not significant, effect on groundwater resources.

The property is within the Mendocino City Community Services District (MCCSD). The MCCSD would provide for sewage disposal and also control the amount of water that can be extracted from the ground within their jurisdiction. At their regularly scheduled meeting held on October 25, 2004 the Board of Directors voted 4-0 to approve a Groundwater Extraction Permit for a hydrological study in support of the development of the proposed four-bedroom single-family residence. The MCCSD stated that they have sufficient capacity to treat the wastewater for the proposed residence contingent upon an application for Sewer Lateral Connection and payment of applicable Right of Use Fees, prior to the commencement of construction. Staff recommends Condition Number 3 to require a clearance from the MCCSD prior to issuance of a building permit.

Plant Life (wetland, ESHA): Avoidance of impacts to environmentally sensitive habitat areas (ESHAs) is frequently a design consideration for development projects in the coastal zone. In the Coastal Zoning Code an ESHA is defined to include streams, riparian areas, wetlands, and habitats of rare or endangered plants and animals, all of which commonly occur along the shoreline. The Coastal Program also requires that development include an ESHA protective buffer to provide protection for the resources from development.

Section 20.308.040 of the Coastal Zoning Code defines environmentally sensitive habitat area as:

*...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities or developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals.*

Policy 3.1-7 of the Mendocino County Coastal Element 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 for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width.*

As stated above under the Project Summary section of the staff report, WRA determined that the subject parcels contain a 0.68-acre wetland. The delineation method followed the wetland definition as stated in the Coastal Act and the Mendocino County LCP. The applicant has developed a plan to develop a single-family residence and detached garage on the rear parcel (APN 119-090-42) that would accommodate a 100-foot ESHA buffer. However, access to the building site is only possible from Little Lake Road. This access route, adjacent to the western property boundary, requires improvements within the ESHA as shown on the site plan.

The WRA mitigation plan report explains that:

The impacted water body is a freshwater wetland that receives its water from precipitation, surface runoff and ground water discharge. At one point, a two-foot wide and one foot deep small channel drains westerly on to the adjacent parcel where a freshwater marsh is also located. The flora and fauna within the wetland are representative of freshwater marsh ecosystems. The site is a breeding ground for the Pacific tree frog (*Hyla regilla*), and contains obligate wetland plants such as bulrush (*Scirpus microcarpus*), and water parsley (*Oenanthe sarmentosa*). A field survey conducted by Gordon E. McBride, Ph.D. in July of 1999 concluded that at the time of the survey no endangered plants were located on the subject parcel. The survey focused specifically on species indicated by the California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California as being possibly located in the USGS quadrangle where the property is located. Since that time, no new plants have been listed for that area.

The WRA mitigation plan provides compensatory mitigation for the loss of 0.062 acres of wetland habitat including the creation of 0.068-acres (2,953 square feet) of wetland habitat in an upland area, adjacent to the existing wetland. In addition, incidental grading associated with the wetland creation activities would result in temporary impacts to 0.068-acres of wetland habitat. The mitigation plan incorporates a site-specific design, annual monitoring (which will be published in an annual report), and strict success criteria. A five-year monitoring of vegetation composition is proposed, with a success rate of 90 percent vegetation composition expected for year five. Re-vegetation of the wetland mitigation area is proposed utilizing topsoil stockpiling and re-spreading, transplanting, and natural re-vegetation. Culverts will also be placed under the proposed road in order to facilitate hydrologic continuity between wetland areas during heavy periods of water flow. Non-compensatory mitigation measures include avoidance of sensitive habitat, through the construction of the road along the western property boundary and at the narrowest part of the wetland in order to impact the least amount of existing wetland. In addition, standard Best Management Practices (BMP's) will be implemented to control erosion associated with the current roadbed. Installation of temporary fencing will restrict the use of heavy machinery to the areas directly on the roadbed and in the mitigation wetland construction area, silt fencing will be used along the road-utility trench boundary to prevent incidental fall back of materials into the wetland, and culverts will be used in the road construction to facilitate increased water flow.

The WRA report explained the mitigation plan is expected to succeed based on its connectivity with existing wetlands and its site-specific hydrology. The mitigation wetland will share a common boundary with the existing

wetland. In order to create the mitigation wetland, the slope next to the existing wetland would be excavated and held by a low retaining wall. The area where the mitigation wetland is to be constructed is also an area of natural hydrologic upwelling. This upwelling will provide a continual source of water for the mitigation wetland and will help ensure the establishment of the wetland. The revegetation plan specifies the use of 300 *Scirpus microcarpus* (Small-fruited Bulrush), 80 *Juncus effuses* (Soft-stem Rush), 80 *Juncus ensifolius* (Dagger-leaf Rush) and 40 *Carex hartfordii* (Hardford's Sedge).

The applicant explored other vehicle access options early in the planning process to determine if it would be possible to approach the potential building site without having to connect to Little Lake Road and pass through the wetland which covers almost the entire middle parcel (APN 119-090-43) and the northern half of the front parcel (APN 119-090-44). With no other options available from surrounding land owners to obtain an access easement, the applicant hired WRA to develop a mitigation program that would satisfy all the resource agencies with jurisdiction over the project including Mendocino County. Relative to wetland development and the mitigation plan, the project has been reviewed by the North Coast Regional Water Quality Control Board, the U.S. Army Corps of Engineers and the California Department of Fish and Game.

Andrew Jensen with the North Coast Regional Water Quality Control Board has prepared a draft permit for the project but has not provided a final draft at this point in time. Their action is awaiting approval from the County. The Water Board's draft permit includes several conditions that both mirror and strengthen the conditions that the County intends to place on the permit approval. Their draft conditions include but are not limited to the following: notification to the Water Board prior to the commencement of grading work, with details regarding the construction schedule, in order to allow staff to be present on-site during construction; ensuring that no accidental discharge of materials occurs into the ESHA; the use of Best Management Practices for sediment and turbidity control need to be implemented and in place prior to, during, and after construction; recommendations that the parcel on which the wetland mitigation occurs should be protected in perpetuity through a Covenant Deed Restriction, Conservation Easement or an equivalent measure; requiring the applicant to provide photos of the completed work to the Regional Water Board and also provide photos of the completed work areas after the first significant rainfall event in order to ensure that erosion control has been successful. Finally, yearly monitoring reports for the required compensatory mitigation shall be provided to the Regional Water Board by July 15 during each calendar year for a total of five years. Depending on the findings of the yearly reports, additional mitigation measures may be required to ensure that no net loss of wetland habitat occurs as a result of the project. The Water Board's draft conditions are consistent with LCP policies and provide an added layer of agency review of the project as a whole and the mitigation plan specifically.

In response to the proposed management plan, Tracie Hughes with the California Department of Fish and Game provided Mendocino County with the following comment (in pertinent part) dated June 22, 2004:

DFG acknowledges that this appears to be the least disturbing access to the property, regarding the existing 0.68-acre wetland on the property. DFG believes that the mitigation proposed will be sufficient to protect the wetland habitat.

Coastal Zoning Code Section 20.532.100 (A) (1) states that no development shall be allowed in Environmentally Sensitive Habitat Areas unless the following findings can be made:

- 1. The resource as identified will not be significantly degraded by the proposed development.*
- 2. There is no feasible less environmentally damaging alternative.*
- 3. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.*

The proposed project and wetland mitigation plan would improve the current unimproved driveway and would not significantly degrade the resource. Staff has not identified any less environmentally damaging alternative.

10 of 25

Other potential vehicular access ways that would not require development in the wetland have been researched by the owner and eliminated. Further, the existing driveway needs to be corrected to address erosion and water quality issues. Short of not allowing any residential development of either unimproved parcel, there is not a less environmentally damaging alternative. Staff believes that the proposed mitigation plan would provide all feasible mitigation measures capable of reducing project impacts. The mitigation plan has been preliminarily approved by all the resource agencies with jurisdiction over the project. Therefore, Staff recommends the addition of several conditions to the permit that would integrate the mitigation plan into the project approval. Finding Number 8 has been added to the staff report for the Coastal Permit Administrator.

Recommended Condition Number 4 would mandate adherence to the WRA wetland mitigation plan as part of the approval. Additionally, the mitigation plan requires the submission of annual reports to County Planning and Building Services. Considerable staff time may be involved in monitoring the ongoing management plan and reviewing the reports. A condition that would reimburse the County for time and resources necessary to oversee the applicant's proposed mitigation plan should be incorporated into the project. Therefore, staff recommended Condition Number 5.

As discussed above, the project covers three separate legal parcels. The middle parcel (APN 119-090-43) is almost entirely covered by the wetland and would contain the majority of the wetland mitigation. Due to LCP limitations for development in an ESHA and as a condition to allow for the driveway construction, staff would recommend that the middle parcel be restricted in perpetuity from future development. Also, the wetland mitigation will occur on a separate parcel from that being developed with the proposed residence. It would be possible for one or both parcels to be sold before the 5-year mitigation monitoring period is complete. Some means is necessary to ensure that the mitigation plan will be completed, and that the center parcel will not be developed in the future. The same concern was raised by the NCWRQCB who would be recommending that the County require such a restriction on future use of the middle parcel in perpetuity. Staff has developed two ideas for accomplishing the desired limitations on the middle parcel. The restriction could be accomplished through a boundary line adjustment (BLA) to merge the rear two undeveloped parcels into one or a deed restriction could be recorded against the middle parcel limiting future development. The options for restricting use of the middle parcel were briefly discussed with the agent who indicated that a requirement to obtain a BLA to merge the two parcels together was not the favored option of the applicant. Nonetheless, staff recommends the BLA because it is the cleanest way to restrict use of the middle parcel and tie the mitigation work more closely to the residential project on the northern (rear) parcel. Staff has included two alternative recommendations for Condition Number 6. Staff favors the first alternative requiring the applicant to submit a BLA application to the Planning Division to merge the two rear parcels prior to issuance of the coastal permit. A second alternative for Condition Number 6 is included as an option to require the applicant to record a deed restriction against the middle parcel limiting future development. Either condition would allow for the maintenance of the 16-foot wide driveway and utility trenches and any work associated with the wetland mitigation plan. The Coastal Permit Administrator would need to determine which condition is more appropriate for the project.

Animal Life (Items 5A-5C, diversity): The project will not impact the diversity of wildlife species inhabiting the site. No rare or endangered animal species are known on the site. No new species of animals will be introduced.

Animal Life (Item 5D, habitat): A small amount of natural habitat will be lost as a result of the proposed project as discussed above under Plant Life. However, the area proposed for this development does not provide unique or rare habitat for animals. The total area affected is not significant when considered in relation to the surrounding vicinity. The subject parcel is located within a mostly developed subdivision of half-acre residential parcels.

Noise (Item 6A & 6B): The only noise generated by the project will be that of construction activity associated with the residential development, which will be of limited duration. Noise impacts will not be significant.

Light and Glare (Item 7): The application explains that a combination of exterior lighting has been planned for the project. Path lighting would be installed at 50 foot intervals on the west side of the driveway, three outdoor

lights would be placed on the front porch and one light would be installed with the house numbers at Little Lake Road. All the lighting fixtures use glass panels to shield the internal light bulb.

Sec. 20.504.035 of the Coastal Zoning Code (Exterior Lighting Regulations) states in pertinent part:

*(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.*

*(5) No lights shall be installed so that they distract motorists.*

Planning Division policy has been not to accept any lighting unless the light bulb was completely covered and shielded so that only reflected light was visible. In order to provide time for the applicant to select new lights or modify the proposed lighting fixtures to be in full compliance with the intent of the regulations, Condition Number 9 is recommended. The condition would allow staff to review the exterior lighting fixtures prior to issuance of the building permit.

Land Use (Item 8): The proposed single-family residential development is compatible with the Mendocino Rural Residential zoning district and is designated as a principal permitted use per Chapter 20.644 of the Town of Mendocino Zoning Code. The structure would have a maximum height of 28 feet above grade. The maximum allowable height is 28 feet because the property is not located in a designated highly scenic area. The project would result in approximately 2,110 square feet of lot coverage or 16% which does not exceed the maximum allowable lot coverage (20%). The project complies with the minimum setback requirements for the district (20 feet in the front and rear, 6 feet on the side yards) and the corridor preservation setback from Little Lake Road.

Natural Resources (Item 9): The project will not consume any significant quantities of natural resources beyond what is normally associated with the construction and use of a single-family residence.

Population (Item 10): The project would not affect the location, distribution, density or growth rate of human population. The proposed single-family residence is the principal permitted use for the rural residential zoning district. Other single-family residences surround the area.

Housing (Item 11): The project will provide one additional single-family residence in a largely built out residential area within the urban boundary of the Town. The project would not impact existing houses or create the demand for new housing.

Transportation/Circulation (Item 12C, roads): As part of the project a new encroachment onto Little Lake Road (CR408) will be constructed. Mendocino County Department of Transportation has recommended that a standard private driveway approach be constructed according to County standards. The encroachment would need to be A/C overlay to match the public street but the remainder of the driveway surface would be gravel as discussed above as part of the wetland mitigation plan. Condition Number 7 is recommended to require that the work proposed within the County right-of-way be completed in accordance with encroachment procedures administered by the Department of Transportation.

The project would contribute incrementally to traffic on local and regional roadways. The cumulative effects of traffic resulting from development of a residence on this site were considered when the Coastal Element land use designations were assigned. No adverse impacts would occur.

12 of 25

Public Services (Item 13, fire protection): The property is in an area with a moderate fire hazard severity rating as determined by the California Department of Forestry and Fire Protection, and is in a State Responsibility Area for fire safety review. Recommended conditions of approval from CDF (CDF 607-02) recommending compliance with CDF address, driveway and emergency water supply standards were received with the application. Condition Number 8 is recommended to achieve compliance with the fire safe standards recommended by the Department of Forestry.

Energy (Item 14): There will be no significant consumption of energy as a result of the proposed project beyond the normal consumption of a single-family residence. As with all new residences in California, the project will need to comply with the energy conservation requirements of Title 24 prior to obtaining a building permit.

Utilities (Item 15): The proposed residential development would be provided water from an onsite water source and septic disposal from the MCCSD. These items were discussed under the Water Section (Item 3) of the report and Condition Number 3. Electrical service, telephone and a sewer line would be installed underground within the proposed 16 foot wide roadbed. The utility trench would be placed along the western edge of the driveway to the proposed garage.

Human Health (Item 16): The proposed residential project would not pose a health hazard.

Aesthetics (Item 17, views and appearance): The property is not located in a designated highly scenic area according to the Coastal Plan Map. However, analysis of aesthetic issues relating to appearance and views to and along the ocean are required for all development in the coastal zone. The importance of aesthetics is evidenced by policies in the County's Coastal Element which apply to all areas in the coastal zone regardless of location in a designated highly scenic area.

Coastal Plan Policy 3.5-1 of the Mendocino County Coastal Element states in pertinent part:

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

The proposed 2,418 square foot two-story residence would have a maximum height of 28 feet above grade. The single story 690 square foot detached garage would have a maximum height of 16 feet above grade. The buildings would be clad in Hardieboard fiber cement panels painted dark brown with matching trim color. The roofing would be dark brown asphalt composition shingles and the window frames would be Anderson 400 series in a forest green color. The proposed exterior color choices are dark earthtones that should blend well with the surrounding natural landscape and tree background as viewed from the public road. None of the proposed exterior finishes would stand out from the surrounding area. The development would not have any negative impact on coastal views to or along the ocean and the project would not be visible from Highway One.

Also, Section 20.720.035 (A) (7) of the Mendocino Town Code requires that the development be found to be in conformance with the design standards of Section 20.760.050. The regulations governing development in portions of Historical Zone B are somewhat inconsistent, in that portions of Zone B are within the single family residential categorical exclusion area, in which a residence can be built on an undeveloped lot without obtaining a coastal development permit, and without review by MHRB if the project cannot be seen from Zone A (areas lying on the west side of the highway). In the past it has been County practice not to require conformance with the standards for projects not subject to MHRB review (not visible from Zone A), however there is no basis for this practice in the Code. Therefore, the following discussion of conformance with the design standards is provided.

The design standards primarily address exterior appearance of development, with the objective of maintaining some measure of compatibility between new development and the 19<sup>th</sup> century structures that define the architectural character of Mendocino. The proposed exterior appearance, materials and finish colors appear to be consistent with the design standards. Additionally, the development will not be visible from any public location except when traveling on Little Lake Road and would be set back approximately 400 feet from the public road, the project may be found to be in conformance with the design standards of Section 20.760.050.

For the reasons stated above, Condition Number 9 is recommended to require that building materials and colors will not be changed without prior approval of the Coastal Permit Administrator.

**Public Access & Recreation (Item 18):** The project site is located east of Highway 1 and is not designated as a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the site. The project would not have a negative affect on public access or recreation.

**Cultural Resources (Item 19):** The project site is not located in an area where archaeological and/or cultural resources are likely to occur. Nonetheless, the applicant is advised by Condition Number 10 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

**Growth Management:** Growth management is a primary issue addressed in the Mendocino Town Plan. The Plan contains a number of policies aimed toward the objective of maintaining Mendocino as a "real" town, as opposed to a resort or a collection of "...shops selling trinkets to tourists." The growth management policies generally strive to preserve single-family residences in the Town and prevent them from being converted to visitor facilities or commercial space. The proposed project would help to maintain the supply of single-family residence in the Town Plan area and is consistent with the Town Plan growth management policies.

**ENVIRONMENTAL RECOMMENDATION:** Although the construction of a residence would normally be categorically exempt from the California Environmental Quality Act (Class 3(a)), this location is particularly sensitive because the only access to the proposed building site requires a driveway be installed partially in a wetland. However, no significant environmental impacts are anticipated which cannot be adequately mitigated, therefore, a Negative Declaration is recommended.

**ZONING REQUIREMENTS:** The project complies with the zoning requirements for the Mendocino Rural Residential District set forth in Section 20.644 and with all other zoning requirements of Division III of Title 20 of the Mendocino County Code.

**GENERAL PLAN CONSISTENCY RECOMMENDATION:** The proposed project is consistent with applicable goals and policies of the General Plan.

#### **RECOMMENDED MOTION:**

**General Plan Consistency Finding:** As discussed under pertinent sections of this report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

**Environmental Findings:** The Coastal Permit Administrator finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval so that no significant adverse environmental impacts will result from this project; therefore, a Negative Declaration is adopted.

**Department of Fish and Game Finding:** The Coastal Permit Administrator finds that because the project would result in the need to mitigate for the loss of 0.13 acre of wetland at a 1:1 replacement ratio, the de minimis finding can not be made for this project. The project is, therefore, subject to the Fish and Game fee of \$1,275.00.

14 of 25



**Coastal Development Permit Findings:** Pursuant to the provisions of Chapters 20.720, 20.532 and 20.536 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve the proposed project, and adopts the following findings and conditions.

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 zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other services, including but not limited to, solid waste, public roadway capacity and proof of an adequate water supply pursuant to Chapter 20.744 have been considered and are adequate to serve the proposed development.
7. That the proposed development is in conformance with the design standards of Section 20.760.050.
8. Environmentally Sensitive Habitat Areas.
  - (a) The resource (wetland) as identified will not be significantly degraded by the proposed development.
  - (b) There is no feasible less environmentally damaging alternative.
  - (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

**Project Findings:** The Coastal Permit Administrator, making the above findings, approves #CDP 111-02 subject to the conditions of approval recommended by staff.

**RECOMMENDED CONDITIONS:**

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1. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$1,275.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to July 5, 2005. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.

15 of 25

2. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted, and after any fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Department of Planning and Building Services. Failure of the applicant to make use of this permit within 2 years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.
- \*\* 3. Prior to issuance of the building permit, written verification shall be provided to the Planning Division that the MCCSD application has been submitted and fees have been paid.
- \*\* 4. All the requirements, recommendations and protective measures established by the Wetland Mitigation Plan prepared by WRA shall be incorporated into the project. Prior to issuance of the building permit or the commencement of construction activities, the protective ESHA construction fencing shall be in place. A copy of this permit and the WRA wetland mitigation plan must be provided to the Contractor and all subcontractors conducting the work, and must be in their possession at the work site.
- \*\* 5. The annual monitoring reports for the required compensatory wetland mitigation shall be provided to the Coastal Permit Administrator by July 15 during each calendar year for a total of five years. Reports shall include photo documentation of the mitigation area. After five years have passed, the mitigation will be evaluated for successful attainment of the final success criteria, as outlined in the Wetland Mitigation Plan, prepared by Wetlands Research Associates, Inc., and a decision will be made whether additional mitigation measures are necessary to ensure that no net loss of wetland habitat occurs. A professional consultant shall prepare reports with in-depth experience in wetland ecosystem creation and function, as well as wetland mitigation monitoring techniques.
- The owner shall compensate the Coastal Permit Administrator who reviews the report at the prevailing hourly rate for the time it takes to review the report, correspond with WRQCB and/or DFG (if necessary) and document in the file that the report was prepared, reviewed and accepted.
- \*\* 6a. Prior to the issuance of the coastal development permit, the applicant shall provide evidence that a boundary line adjustment application has been submitted to the County Planning Division to merge the two undeveloped parcels into a single lot (APNs 119-090-42 & -43). No development shall occur within the WRA delineated wetland or the 100-foot ESHA buffer in perpetuity with two exceptions. First, the 16 foot wide driveway (which includes the underground utility trenches) can be maintained without any expansion of the driveway prism. Two, any work or development associated with implementing wetland mitigation as described in the WRA mitigation plan or as amended would be allowed to occur in the wetland and associated 100-foot ESHA buffer.
- \*\* 6b. Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which identifies that a five year wetland mitigation plan providing for the 1:1 wetland replacement plan was a requirement for authorization to conduct the project. The deed restriction shall state that no development shall occur on the middle parcel (APN 119-090-43) in perpetuity with two exceptions. Exception one is that the 16 foot wide driveway (which includes the underground utility trenches) can be maintained without any expansion of the driveway prism. Exception two would be to allow any work or development associated with implementing the wetland plan as described in the WRA mitigation plan or as amended. Additionally, the deed restriction shall indicate that due to the presence of the wetlands on the three subject parcels any future development within the 100-foot ESHA wetland buffer (as depicted on the Wetland Mitigation

Plan and Driveway Layout dated 09/27/04 – Exhibit M) shall be subject to the review and approval by the Coastal Permit Administrator for the life of the project. The deed restriction shall reference Mendocino County CDP 111-02 so that a future owner could obtain information from the case file.

- \*\* 7. Prior to the issuance of the building permit or the commencement of construction activities, and pursuant to encroachment permit procedures administered by the Mendocino County Department of Transportation; the applicant shall construct appropriate improvements to protect the County road during the construction phase of the project. Prior to final occupancy, the applicant shall complete, to the satisfaction of the Department of Transportation, a standard private driveway approach onto Little Lake Road (CR408), to a minimum width of sixteen (16) feet, area to be improved fifteen (15) feet from the edge of the County road, to be surfaced with comparable surfacing on the County road. A copy of the encroachment permit shall be submitted to the Planning Division along with the building permit for the residence.
- \*\* 8. The applicant shall comply with those recommendations in the California Department of Forestry Conditions of Approval (CDF# 607-02) or other alternatives acceptable to the Department of Forestry. Prior to the final inspection of the building permit, written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.
- \*\* 9. Prior to issuance of the building permit the applicant shall submit for the review and approval by the Coastal Permit Administrator, lighting details and specifications to indicate that all exterior lighting shall be downcast and shielded and shall be installed in a manner that the light source is not directly visible. The lights shall not allow light glare beyond the boundaries of the project site.
- All exterior building materials and finishes shall match those specified in the coastal development permit application. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
- \*\* 10. 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.
- \*\* 11. It shall be the responsibility of the applicant to ensure that contractors engaged to perform work on the site are aware of the conditions of this permit and that all work performed is in compliance with applicable conditions.
12. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
13. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Coastal Permit Administrator.
14. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

15. This permit shall be subject to revocation or modification by the Coastal Permit Administrator upon a finding of any one or more of the following grounds:
- The permit was obtained or extended by fraud.
  - One or more of the conditions upon which the permit was granted has been violated.
  - The use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.
  - A final judgment of a court of competent jurisdiction has declared one or more of the conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more of the conditions.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

16. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.

6/3/2005

DATE

*Rick Miller*

Rick Miller  
Planner III

Attachments: Exhibit A- Location Map  
Exhibit B- Vicinity Map  
Exhibit C- Site Plan  
Exhibit D- Residence Elevations  
Exhibit E- Residence Elevations  
Exhibit F- Residence Elevations  
Exhibit G- Residence Elevations  
Exhibit H- Residence Floor Plan  
Exhibit I- Residence Floor Plan  
Exhibit J- Garage Elevations & Floor Plan  
Exhibit K- Garage Elevations  
Exhibit L- WRA Wetland Mitigation Plan Schematic Section  
Exhibit M- WRA Wetland Mitigation Plan Schematic Grading Plan

#### Negative Declaration

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.)

\*\* Indicates conditions relating to Environmental Considerations - deletion of these conditions may effect the issuance of a Negative Declaration.

18 of 25

**SUMMARY OF COMMENTS:**

Department of Transportation	Required installation of a standard residential driveway encroachment.
Environmental Health – Fort Bragg	Referred the Planning Division to MCCSD
Building Inspection – Fort Bragg	No comment.
Assessor	No response.
CDF	CDF# 607-02
DF&G	Required a Lake and Streambed Alteration Agreement
US Fish and Wildlife Service	No response.
Army Corps. Of Engineers	Required a Nationwide Permit 39
NCRWQCB	Required a Clean Water Act Section 401 Certification
Coastal Commission	No response.
Planning Division -Ukiah	Noted previous permits

DRAFT  
NOTICE OF PROPOSED  
NEGATIVE DECLARATION

For Review by Interested Agencies and the Public in Accordance with Mendocino County Environmental Review Guidelines and the California Environmental Quality Act, an analysis has been made of possible environmental impacts of the following project by Staff:

Applicant: Gordon Wardlaw

Case #: 111-02

Agent: Jane Veres, Bud Kamb Real Estate Services

Project Title & Description: Construct an approximately 2,418 square foot two story single-family residence with a maximum height of 28 feet above grade. Construct an approximately 690 square foot detached garage with a maximum height of 16 feet above grade. Construct a 16-foot wide approximately 380-foot long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 & -44. Proposed driveway would cross a wetland to access an undeveloped 0.3-acre parcel to be developed with a residence. Electrical, telephone and sewer services would be extended underground along the proposed driveway. The project includes a 1:1 ratio wetland mitigation plan.

Project Location: In the coastal zone, in the Town of Mendocino, approximately ¼ mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44650 Little Lake Road (APNs 119-090-42, -43, -44).

Findings Which Support A Negative Declaration: After conducting an Initial Study, the Lead Agency has determined that the project will not have a significant, substantial adverse effect on the environment for the following reasons:

1. The project will not have impacts which have the potential to degrade the quality of the environment or curtail the range of the environment.
2. The project will not have impacts which achieve short-term, to the disadvantage of long-term, environmental goals. A short-term impact on the environment is one which occurs in a relatively brief, definite period of time while long-term impacts will endure well into the future.
3. The project will not have impacts which are individually limited, but cumulatively considerable. A project may affect two or more separate resources where the impact on each resource is relatively small. If the effect of the total of those impacts on the environment is significant, an EIR must be prepared. This mandatory finding of significance does not apply to two or more separate projects where the impact of each is insignificant.
4. The environmental effects of a project will not cause substantial adverse effects on human beings, either directly or indirectly.

Attached hereto is a copy of the Initial Study documenting reasons to support the above findings. Also attached are any mitigation measures proposed to avoid potentially significant effects.

Mimi Nade

Project Coordinator

6/3/2005

Date

20 of 25

**INITIAL STUDY ENVIRONMENTAL CHECKLIST**

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
<b>1. EARTH:</b>					
A. Unstable earth conditions or changes in geologic substructures.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Disruptions, displacements, compaction, or overcovering of the soil.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Change in topography or ground surface relief features. <i>Wetland Mitigation Plan – see Condition No. 4</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
D. The destruction, covering, or modification of any unique geologic or physical features. <i>Wetland Mitigation Plan – see Condition No. 4</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
E. Any increase in wind or water erosion of soils, either on or off the site.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Changes in deposition or erosion of beach sands, or changes in siltation, deposition, or erosion that may modify the channel of a river, stream, inlet, or bay?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Exposure of people or property to geologic hazards such as earthquakes, ground failure, or other hazards.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>2. AIR:</b>					
A. Substantial air emissions or deterioration of ambient air quality.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. The creation of objectionable odors.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>3. WATER:</b>					
A. Changes in currents, or the course of water movements, in either fresh or marine waters.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff. <i>Residence, Driveway &amp; Wetland Mitigation Plan - see Condition No. 4</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
C. Alterations to the course of flow of flood waters.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Change in the amount of surface water in any water body.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
F. Alteration of the direction or rate of flow of ground water.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Change in the quantity of ground water, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations. <i>MCCSD Groundwater Extraction Permit granted October 25, 2004.</i>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Substantial reduction in the amount of water otherwise available for public water supplies.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Exposure of people or property to water related hazards such as flooding or tsunamis.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4. PLANT LIFE:</b>					
A. Change in the diversity of species, or number of any species of plants including trees, shrubs, grass, crops and aquatic plants. <i>See Condition No. 4</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction of the numbers of any unique, rare, or endangered species of plants.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Reduction in acreage of any agricultural crop.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>5. ANIMAL LIFE:</b>					
A. Change in the diversity of species, or number of any species of animals including birds, land animals, reptiles, fish, shellfish, insects, and benthic organisms. <i>See Condition No. 4</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction in the number of any unique, rare, or endangered species of animals.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Introduction of new species of animals into an area, or in a barrier to the migration or movement of animals.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Deterioration of existing fish or wildlife habitat.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>6. NOISE:</b>					
A. Increases in existing noise levels.	✓				
B. Exposure of people to severe noise	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



levels.					
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Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
<b>7. LIGHT AND GLARE:</b>					
A. Production of new light and glare. <i>See Condition No. 9</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>8. LAND USE:</b>					
A. Substantial alteration of the present or planned land use of a given area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>9. NATURAL RESOURCES:</b>					
A. Increase in the rate of use of any natural resources.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>10. POPULATION:</b>					
A. Alterations in the location, distribution, density, or growth rate of human populations.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>11. HOUSING:</b>					
A. Will the proposal affect existing housing or create a demand for new housing?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>12. TRANSPORTATION/ CIRCULATION:</b>					
A. Generation of substantial additional vehicular movement?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Effects on existing parking facilities, or demand for new parking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Substantial impact upon existing transportation systems? <i>See Condition No. 7</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Alterations to present patterns of circulation or movement of people and/or goods?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Alterations to waterborne, rail, or air traffic?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>13. PUBLIC SERVICES:</b>					
A. Will the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:					
Fire protection?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schools?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks and other recreational facilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintenance of public facilities, and roads?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other governmental services?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
<b>14. ENERGY:</b>					
A. Use of substantial amounts of fuel or energy?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Substantial increase in demand upon existing sources of energy, or require the development of new energy sources?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>15. UTILITIES:</b>					
A. Will the project result in a need for new systems or substantial alterations to the following:					
Potable water?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewerage?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Energy or information transmission lines?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>16. HUMAN HEALTH:</b>					
A. Creation of any health hazard or potential health hazard?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to any existing health hazards?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. A risk of an explosion or the release of hazardous substances (including oil, pesticides, chemicals, or radiation) in the event of an accident or upset conditions.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Possible interference with an emergency response plan or evacuation plan.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>17. AESTHETICS:</b>					
A. Obstruction of any scenic vista or view open to the public, or create an aesthetically offensive site open to public view?	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
<i>See Condition No. 9</i>					
<b>18. RECREATION:</b>					
A. Impact upon the quality or quantity of existing recreational opportunities?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>19. CULTURAL RESOURCES:</b>					
A. Alteration or destruction of a prehistoric or historic archaeological site?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Adverse physical or aesthetic effects to a prehistoric or historic building or structure?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
C. Cause a physical change that would affect the unique ethnic cultural values?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Restrict existing religious or sacred uses within the potential impact area?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Section III</b>	<b>Responses to Environmental Checklist.</b>
	For a discussion of each of the environmental effects listed in the Environmental Checklist along with related goals and policies of the General Plan, see the Environmental Review section of the attached staff report.

<b>Section IV</b>	<b>Mandatory Findings of Significance.</b>
	<p>A. As discussed in the preceding sections, the project <input type="checkbox"/> does ✓ does not have the potential to significantly degrade the quality of the environment, including effects on animals or plants, or to eliminate historic or prehistoric sites.</p> <p>B. As discussed in the preceding sections, both short-term and long-term environmental effects associated with the project will be <input type="checkbox"/> significant ✓ will be less than significant.</p> <p>C. When impacts associated with the project are considered alone or in combination with other impacts, the project-related impacts are <input type="checkbox"/> significant ✓ insignificant.</p> <p>D. The above discussions <input type="checkbox"/> do ✓ do not identify any substantial adverse impacts to people as a result of the project.</p>

<b>Section V</b>	<b>Determination.</b>
	<p>On the basis of this initial evaluation, it has been determined that:</p> <p><input type="checkbox"/> The proposed project will not have a significant effect on the environment, and it is recommended that a NEGATIVE DECLARATION be adopted.</p> <p>✓ Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, it is recommended that a NEGATIVE DECLARATION be adopted.</p> <p><input type="checkbox"/> The proposed project may have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.</p>

## 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: Coastal Commissioners Bonnie Neeley and Sara Wan

Mailing Address: SEE ATTACHMENT 1

City:

Zip Code:

Phone:

# RECEIVED

JUL 21 2005

CALIFORNIA  
COASTAL COMMISSION

### SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Construction of an approximately 2,418 - square-foot two story single-family residence with a maximum height of 28 feet above grade. Construction of an approximately 690 - square-foot detached garage with a maximum height of 16 feet above grade. Construction of a 16-foot-wide approximately 380-foot long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and 44. Proposed driveway would cross a wetland to access an undeveloped APN 119-090-42 to be developed with the proposed residence. Electrical, telephone, and sewer services would be extended underground along the proposed driveway. The project includes a 1:1 ratio wetland mitigation plan.

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

In the Town of Mendocino, approximately 1/4 mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 and 44650 Little Lake Road (APNs 119-090-42, 43, 44).

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

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

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

#### TO BE COMPLETED BY COMMISSION:

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

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

EXHIBIT NO. 6

APPEAL NO.

A-1-MEN-05-035

(WARDLAW)

APPEAL

(Page 1 of 13)

**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: June 23, 2005

7. Local government's file number (if any): CDP #111-02

**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:

Gordon Wardlaw  
44650 Little Lake Road  
Mendocino, CA 95460

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.

See Attachment 2

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

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

SECTION V. Certification

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

Signed: Bonnie Feely  
Appellant or Agent

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

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

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

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

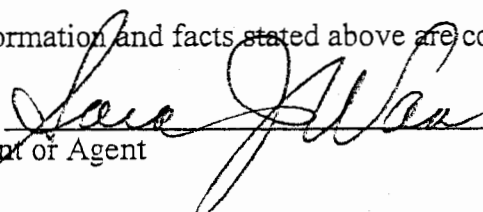
Page 3

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

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

SECTION V. Certification

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

Signed:   
Appellant or Agent

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

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

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

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



## ATTACHMENT 2

### Appealable Project

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

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

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

The subject development is appealable to the Commission pursuant to both 30603 (a)(2) and 30603 (a)(3) of the Coastal Act because the proposed development (1) involves development within and within 100 feet of a wetland, and (2) is within a sensitive coastal resource area. In regard to the latter basis for appealability, Section 20.608.038(6) of the Mendocino Town Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among other categories, "special communities." Policy 4.13-1 of the Mendocino Town Plan designates the town of Mendocino as a special community. Therefore, the development is located within a sensitive coastal resource area as defined in the LCP, and, as such, is appealable to the Commission.

### Reasons for Appeal

The County of Mendocino approved Coastal Development Permit # 111-02 for construction of a 2,418 - square-foot single family residence and 690 - square-foot attached garage, with a 16-foot wide 380-foot-long driveway, a portion of which crosses and fills approximately 0.062-acre of wetland. The approval of this development is inconsistent with the County LCP Policies to protect wetlands, which do not allow residential development, including driveways, in wetlands, and require that permitted development in wetlands be the "least environmentally damaging feasible alternative."

I. LCP PROVISIONS

Mendocino County LUP Policy 3.1-4 states:

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

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

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

Coastal Act Section 30233 states:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
  - (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
  - (3) *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
  - (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
  - (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
  - (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
  - (7) *Restoration purposes.*
  - (8) *Nature study, aquaculture, or similar resource dependent activities.*
- (b) *Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.*
- (c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

Coastal Act Section 30607 states:

Any permit that is issued or any development or action approved on appeal, pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development or action will be in accordance with the provisions of this division.

Section 20.719.005 of the Mendocino Town Zoning Code States:

The provisions of Chapter 20.496, "Environmentally Sensitive Habitat and Other Resource Areas" of the Mendocino County Zoning Code, Title 20, Division II of the Mendocino County Code shall also apply to the Town of Mendocino and shall be incorporated into the Town Zoning Code. (Ord. No. 3915 (part), adopted 1995)

Section 20.496.025 of the Mendocino County Coastal Zoning Code, which is incorporated by reference into the Town Zoning code, states, in part, that:

*(A) Development or activities within wetland and estuary areas shall be limited to the following:*

- (1) Port facility expansion or construction.*
- (2) Energy facility expansion or construction.*
- (3) Coastal-dependent industrial facilities, such as commercial fishing facilities, expansion or construction.*
- (4) Maintenance or restoration of dredged depths or previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and associated boat launching ramps.*
- (5) In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that, in a degraded wetland, other boating facilities may be permitted under special circumstances.*
- (6) New or expanded boating facilities may be permitted in estuaries.*
- (7) Incidental public service purposes which temporarily impact the resource including but not limited to burying cables and pipes, or inspection of piers, and maintenance of existing intake and outfall lines.*
- (8) Restoration projects which are allowable pursuant to Section 30233(a)(7) of the Coastal Act are publicly or privately financed projects in which restoration is the sole purpose of the project....*
- (9) Mineral extraction, including sand for restoring beaches, except in ESHA's.*
- (10) Nature study purposes and salmon restoration projects.*
- (11) Aquaculture, or similar resource dependent activities excluding ocean ranching.*

*(B) Requirements for permitted development in wetlands and estuaries.*

*(1) Any proposed development that is a permitted development in wetlands and estuaries must meet the following statutory requirements, and supplemental findings pursuant to Section 20.532.100:*

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

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

Section 20.692.025 of the Mendocino Town Zoning Code states in applicable part:

*All development proposed in the Town of Mendocino also shall comply with the provisions of... Chapter 20.496 (Environmentally Sensitive Habitat and Other Resource Areas), Chapter 20.500 (Hazard Areas), Section 20.532.060 (Environmentally Sensitive Habitat Area - Supplemental Application Procedures)...and Section 20.532.100 (Supplemental Findings) of Chapter 20.532 (Coastal Development Permit Regulations – General) and Section 20.504.025(B) of Division II of this Title.*

Section 20.532.100 of the Mendocino County Coastal Zoning Code, which is incorporated by reference into the Town Zoning code, states:

*In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:*

***(A) Resource Protection Impact Findings.***

***(1) Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:***

*(a) The resource as identified will not be significantly degraded by the proposed development.*

*(b) There is no feasible less environmentally damaging alternative.*

*(c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. [emphasis added]*

Coastal Zoning Code Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose”, which is incorporated by reference into the Town Zoning Code, states (emphasis added):

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

The project as approved by the County is inconsistent with provisions of the Mendocino County LCP regulating development in wetlands, which clearly omit residential uses from the list of allowable developments in wetlands. Further, even if residential uses were allowable developments in wetlands, the approved project is inconsistent with LCP provisions that require that permitted development in wetlands be the "least environmentally damaging feasible alternative."

A. Development in Wetlands

The approved development allows the construction of a residential driveway through 0.062-acre of wetland to access a future new house. The approved development includes a wetland mitigation plan, utilizing a 1:1 wetland mitigation ratio. The approved driveway construction and the wetland mitigation activities would fill 0.062-acre of wetland with approximately 220 cubic yards of fill material.

The subject development includes three APNs, all owned by the applicant. The APNs were formerly considered to be one parcel, but four Certificates of Compliance approved by the County in 1998 recognized four separate parcels, and a subsequent boundary line adjustment approved by the County in 1999 resulted in the current configuration of three separate APNs. The APN adjacent to Little Lake Road (APN 119-090-44) is already developed with a residence. The other two APNs behind it and to the north are vacant, and the approved residence would be located on the northernmost APN (APN 119-090-042). Wetlands Research Associates, Inc (WRA) prepared a wetland delineation dated September 2002 and determined that the subject APNs contain a 0.68-acre wetland, covering virtually all of the middle APN (119-090-043), approximately half of the first APN adjacent to Little Lake Road (APN 119-090-44), and a smaller portion of the back, northernmost APN where the approved residence would be (APN 119-090-042).

Prior to December 2002 and without a coastal development permit, a road was cleared from Little Lake Road, through the western edges of the first two APNs, to access the back APN and the future approved residence. This road was cleared through a 0.036-acre portion of the 0.68-acre wetland. The unpermitted road impacted the wetland through vegetation removal and a decrease in water quality caused by vehicles. The County subsequently approved the subject coastal development permit application authorizing the construction of the residence outside of the wetland area (with a 100-foot buffer) on the northernmost APN, the "after-the-fact approval" for the previously cleared road, and the future upgrade of the road to County standards, which includes the raising and widening of the access road, including a 10-foot road prism and 3-foot wide utility corridors on either side. This road upgrade would occur in an additional 0.026-acre of wetland, for a total loss of 0.062 acre of wetland habitat when combined with the previous road work. The County also approved a wetland mitigation plan, which includes the creation of 0.068 wetland adjacent and connected to the impacted wetland. A total of 220 cubic yards of wetland fill was authorized for the project.

Mendocino County found that there are no alternatives to the approved driveway site to access the approved residence, and therefore found that there are no alternatives but to cross the

wetland. Further, the County found that the construction of the road along the property boundary and through the wetland at the narrowest part is the least environmentally damaging alternative, and that without this access road, there is no other feasible way to access the property with vehicles. To mitigate the impacts to 0.062-acre wetland, the County approved a 1:1 wetland mitigation plan. This mitigation includes the creation of a 0.068-acre wetland and the placement of culverts under the road to facilitate hydrologic continuity during periods of high water flow.

In making the above findings and approving the mitigation plan, the County utilized County Coastal Zoning Code Section 20.532.100(A)(1), portions of which are incorporated by reference to the Mendocino Town Code and which requires that supplemental findings be made for developments that occur in environmentally sensitive habitat areas (ESHAs), including wetlands, including that, there are no feasible, less environmentally damaging alternatives, and that all feasible mitigation measures are adopted. However, the County erred in utilizing this section only. Section 20.496.025 of the Mendocino County Coastal Zoning Code, which is incorporated by reference in the Mendocino Town Code, states that only uses such as ports, recreational boating facilities, and restoration purposes (where the sole purpose of the project is restoration) are permitted uses in wetlands, not residential uses. In fact, it is this same section which incorporates some of the supplemental findings in Section 20.532.100 only for those uses permitted in wetlands, stating, "Any proposed development that is a permitted development in wetlands and estuaries must meet the following statutory requirements, and supplemental findings pursuant to Section 20.532.100: (a) There is no feasible, less environmentally damaging alternative; (b) Where there is no feasible, less environmentally damaging alternative, mitigation measures have been provided to minimize adverse environmental effects..."

As demonstrated above, the County should have first considered the allowable uses in a wetland before approving the residential driveway. Residential driveways are clearly not permitted uses in wetlands.

B. Least Environmentally Damaging Feasible Alternative

Even if the residential driveway were an allowable development in a wetland (which is contested above in Part A), the project as approved by the County would still be inconsistent with ESHA provisions in the LCP requiring that the project be the "least environmentally damaging alternative."

Mendocino County LUP Policy 3.4-1 and Sections 20.496.025(B)(1)(a) and 20.532.100 of the Mendocino County Coastal Zoning Code, which are incorporated into the Town Zoning code by reference, state that any development that is permitted in wetlands must satisfy several tests, including that the development be the "least environmentally damaging feasible alternative." In the staff report for the approved project, the County finds that the project is the least environmentally damaging alternative, but provides no analysis or evidence to support this finding. The County staff report states:

*"Other potential vehicular access ways that would not require development in the wetland have been researched by the owner and eliminated. Further, the existing driveway needs to be corrected to address erosion and water quality issues. Short of not*

*allowing any residential development of either unimproved parcel, there is not a less environmentally damaging alternative (6/23/05 County Staff Report, p. CPA-7)."*

The above statements do not evaluate, nor do they support a finding that the project is the "least environmentally damaging feasible alternative." The statements do not address (1) other potential vehicular access ways that are alternatives to the approved driveway, and (2) the feasibility of the "no development" option, which would not require any wetland fill.

The County staff report provided no information as to what other vehicular access ways were explored. The County's analysis did not address the alternative of creating an elevated vehicular access way over the wetland, by bridging or cantilevering over the wetlands, which would not have required any loss of wetlands. Only portions of the approved driveway are located on wetlands, and this could therefore be a feasible alternative to access the approved residence. In addition, the "no development" option would be a less environmentally damaging feasible alternative, as this alternative would require no fill and would provide for a reasonable use of the property. All three APNs are owned by the applicant, have been in one ownership for years, and the combined property already is in residential use with an existing residence outside of the wetland area on the southern parcel which is accessed directly from Little Lake Road. Therefore, the project as approved is inconsistent with LUP Policy 3.4-1 as well as Section 20.496.025(B)(1)(a) and 20.532.100 of the County Zoning Code which have been incorporated by reference into the Town Zoning Code as the project, as approved, is not the least environmentally damaging feasible alternative.

Therefore, for all of the above reasons, the project as approved by the County is inconsistent with County LUP Policy 3.1-4, Sections 20.719.005 and 20.692.025 of the Mendocino Town Zoning Code, and Sections 20.496.025 and 20.532.100 of the Mendocino County Zoning Code which have been incorporated by reference into the Mendocino Town Zoning Code.