

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

RECORD PACKET COPY

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Filed:	August 18, 2005
49 th Day:	October 6, 2005
Staff:	Tiffany S. Tauber
Staff Report:	September 1, 2005
Hearing Date:	September 14, 2005

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

APPEAL NO.:	A-1-HUM-05-041
APPLICANTS:	Phillip Kable
LOCAL GOVERNMENT:	County of Humboldt
DECISION:	Approval with Conditions
PROJECT LOCATION:	1401 Peninsula Drive, on the west side of Peninsula Drive, approximately 500 feet north from the southern intersection of Peninsula Drive with New Navy Base Road, in the Manila area of Humboldt County. (APN 401-011-028)
PROJECT DESCRIPTION:	Modification to a coastal development permit to allow: (1) reduction of the wetland setback from 100 feet to 15-50 feet; and (2) construction of an approximately 1,600-square-foot single-family residence with a maximum height of 20 feet above grade.
APPELLANT:	Michael Seeber
SUBSTANTIVE FILE DOCUMENTS:	1) Humboldt County CDP-02-106M; and 2) Humboldt 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 a modification to a coastal development permit to allow: (1) reduction of the wetland setback from 100 feet to 15-50 feet; and (2) construction of an approximately 1,600-square-foot single-family residence with a maximum height of 20 feet above grade.

The project site is located in Manila, on the west side of Peninsula Drive, approximately 500 feet north of the southern intersection of Peninsula Drive with New Navy Base Road, at 1401 Peninsula Drive (APN 401-011-28), in Humboldt County.

The appellant contends that the project as approved is inconsistent with Humboldt County LCP provisions regarding development adjacent to wetlands, which prescribe specific setback and buffer requirements for new development located within the urban limit line to protect wetland resources.

Staff recommends that the Commission find the contention constitutes valid grounds for an appeal, and that the contention raises a substantial issue of consistency with the LCP wetland setback policies because the County's approval does not demonstrate that the reduced setback will be adequate to protect the adjacent wetland habitat.

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

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

STAFF NOTES:

1. Appeal Process

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

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

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

The subject development is appealable to the Commission pursuant to both 30603(a)(1) and (a)(2) of the Coastal Act because the proposed development (1) is located between the first public road and the sea; and (2) involves development within 100 feet of a wetland.

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 opposed the application before 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 and the public access and recreation policies of the Coastal Act.

2. Filing of Appeal

One appeal was filed by Michael Seeber (Exhibit No. 5). The appeal was filed with the Commission in a timely manner on August 18, 2005 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 4) on August 5, 2005.

3. Receipt of Local Record

Following filing of the appeal, Commission staff requested a copy of the local record pursuant to Section 13112 of the Commission's regulations on August 24, 2005. However, staff has not received the local record as of the date of this staff report.

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-HUM-05-041 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-HUM-05-041 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. APPELLANT'S CONTENTIONS

The Commission received one appeal of Humboldt County's decision to conditionally approve the development from Michael Seeber. The project as approved by the County involves a modification to a coastal development permit to allow: (1) reduction of the wetland setback from 100 feet to 15-50 feet; and (2) construction of an approximately 1,600-square-foot single-family residence with a maximum height of 20 feet above grade.

The project site is located in Manila, on the west side of Peninsula Drive, approximately 500 feet north of the southern intersection of Peninsula Drive with New Navy Base Road, at 1401 Peninsula Drive (APN 401-011-28) in Humboldt County.

The appeal raises a contention alleging inconsistency of the approved project with the County's certified LCP. The appellant's contention is summarized below, and the full text of the contention is included as Exhibit No. 5.

1. Development Adjacent to Wetlands

The appellant contends that the project as approved is inconsistent with Humboldt County LCP provisions regarding development adjacent to wetlands, which prescribe specific setback and buffer requirements for new development located within the urban limit line to protect wetland resources.

B. LOCAL GOVERNMENT ACTION

In September 2003, the Humboldt County Planning Commission approved a subdivision and coastal development permit (CDP-02-106) to divide a 1.19-acre parcel into two parcels of 0.59 acres (Parcel 1) and 0.65 acres (Parcel 2). Parcel 1 is developed with an existing single-family residence and Parcel 2, the subject property, is undeveloped. The subdivision approval was conditioned to require a 100-foot setback between the building site on Parcel 2 and adjacent wetlands, as well as other standard requirements for development in the coastal zone. In the County's review and approval of the subdivision, the location of the adjacent wetlands was based on the resource inventory maps of the

County's LCP, rather than on a site-specific wetland delineation. Following the recordation of the subdivision, a site-specific wetland delineation was prepared that determined the extent of the wetlands on, and adjacent to, Parcel 2 was more extensive than as shown on the County's resource inventory maps. As a result, it was determined that there was not adequate area at the site to provide a 100-foot setback between the building site and the delineated wetland.

On July 21, 2005, the Humboldt County Planning Commission conditionally approved a coastal development permit modification (CDP-02-106M) to allow: (1) reduction of the wetland setback from 100 feet to 15-50 feet; and (2) construction of an approximately 1,600-square-foot single-family residence with a maximum height of 20 feet above grade.

The approved permit imposed several special conditions pertaining to the appeal's contentions and required: (a) a landscaping plan be prepared for the wetland buffer setback area consistent with the recommendations of the wetland delineation (prepared by Winzler and Kelly dated February 2005) and the approved plot plan, and that the landscaping be maintained in a clean and healthy condition; and (b) placing and maintaining construction fencing along the wetland buffer plantings prior to, and during, project construction.

The decision of the Planning Commission 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 August 5, 2005 (Exhibit No. 4). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals. The County's approval of the project was appealed to the Coastal Commission in a timely manner on August 18, 2005, within 10-working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT AND SITE DESCRIPTION

The project site is located in Manila, on the west side of Peninsula Drive, approximately 500 feet north of the southern intersection of Peninsula Drive with New Navy Base Road, at 1401 Peninsula Drive (APN 401-011-28) in Humboldt County.

The subject property ("Parcel 2") is a relatively flat area (2-3% slope) and is approximately 101' x 290', comprising approximately 0.65 acres. Access to the site is via Peninsula Drive, a County-maintained roadway. Water and sewer services are provided by Manila Community Services District. The site is located within the County's urban limit line.

The site is designated Residential Single Family (RL) in the Humboldt Bay Area Plan (HBAP), and is zoned Residential Single Family (RS-5) with an archaeological resources combining zone. The RL designation is applied in urban areas of the County where

topography, access, utilities and public services make the area suitable for low-density residential development. Land to the north of the subject site, including Parcel 1 of the land division approved by the original permit, is designated, zoned and developed for residential use. Land to the west of the site is zoned and planned for resource protection and includes coastal dune and dune forest habitat. The Manila Dunes Recreation Area is located to the north of the site. There has historically been some public use of a footpath across the front of the property to access an easement owned by the Manila Community Services District, which lies along the south of the property and leads west to the beach.

Winzler and Kelly Consulting Engineers prepared a wetland delineation dated February 2005 and determined that the subject property (APN 401-011-028) and the adjacent property (APN 401-011-023) contain palustrine wetlands extending adjacent to the entire length of the parcel and across the southeast corner of the site. According to the wetland delineation, vegetation at and adjacent to the site includes: Arroyo willow (*Salix lasiolepis*), Slough sedge (*Carex obnupta*), Hairy willow-herb (*Epilobium ciliatum*), California blackberry (*Rubus ursinus*), and Common horsetail (*Equisetum arvense*).

The project as approved by the County involves a modification to a coastal development permit to allow (1) reduction of the wetland setback from 100 feet to 15-50 feet; and (2) construction of an approximately 1,600-square-foot single-family residence with a maximum height of 20 feet above grade.

D. SUBSTANTIAL ISSUE ANALYSIS.

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

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

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

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

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

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

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

The contention raised in this appeal presents potentially valid grounds for appeal in that it alleges the project's inconsistency with policies of the certified LCP. The contention alleges that the approval of the project by the County raises significant issues related to LCP provisions regarding development adjacent to wetlands. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation concerning the consistency of the project as approved with the provisions of the LCP regarding development adjacent to wetlands, the appeal raises a substantial issue with regard to the approved project's conformance with the certified Humboldt County LCP.

Allegations Raising Substantial Issue:

a. Development Adjacent to Wetlands

The appellant contends that the project as approved is inconsistent with the Humboldt County LCP provisions regarding development adjacent to wetlands, which prescribe specific setback and buffer requirements for new development located within the urban limit line to protect wetland resources.

Applicable LCP Policies

Humboldt Bay Area Plan Policy 3.30 (B)(6) states in applicable part (undlerline emphasis added):

6. Wetland Buffer

- a. No land use or development shall be permitted in areas adjacent to coastal wetlands, called Wetland Buffer Areas, which degrade the wetland or detract from the natural resource value. Wetland Buffer Areas shall be defined as:

(1) The area between a wetland and the nearest paved road, or the 40 foot contour line (as determined from the 7.5' USGS contour maps), whichever is the shortest distance, or,

(2) 250 feet from the wetland, where the nearest paved road or 40 foot contour exceed this distance, or

(3) Transitional Agricultural lands designated Agriculture Exclusive shall be excluded from the wetland buffer.

- b. New development; except for:

(1) development permitted in 3.30B2,3, and 4

(2) wells in rural areas; and

(3) new fencing, so long as it would not impede the natural drainage.

shall be sited to retain a setback from the boundary of the wetland sufficient to prevent adverse effects to the wetland's habitat values.

- c. within an urban limit line, the setback shall be either 100 feet or the average setback of existing development immediately adjacent as determined by the "string line method." That method shall be used which provides development setbacks similar to those occurring on adjacent parcels and adequately protects the wetland.

...

- e. In both urban and rural areas, setbacks of less than the distance specified above may be permitted only when the prescribed buffer would prohibit development of the site for principle use for which it is designated. Any such reduction in setback shall still retain the maximum setback feasible, and may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland's habitat values.

Humboldt County Coastal Zoning Ordinance Section 313-125.7 states:

125.7 **Development Permitted Within Coastal Wetland Buffer Areas with Supplemental Setback.** Developments not listed as permitted uses within subsection 313-125.6 may be permitted if they maintain the following setbacks

from the boundary of the wetland: (Former Section CZ#A314-10(G))

- 125.7.1 *Within an urban limit line: the setback from the boundaries of the wetland shall be either 100 feet or the average setback of existing development immediately adjacent as determined by the "stringline method" as described in the definitions in this Chapter, Section C: Index of Definitions of Language and Legal Terms. (Former Section CZ#A314-10(G)(1))*

...

- 125.7.3 *Reduction of Required Setback: In both urban and rural areas, setbacks of less than the distance specified in this section may be permitted only when: (Former Section CZ#A314-10(G)(3))*

- 125.7.3.1 *The applicant for the proposed development demonstrates, to the satisfaction of the County, that a setback of less than the distance specified will not result in significant adverse impacts to the wetland habitat and will be compatible with the continuance of such habitats. (Former Section CZ#A314-10(G)(3)(a))*

- 125.7.3.2 *Any such reduction in development setback may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland habitat values. (Former Section CZ#A314-10(G)(3)(b))*

Humboldt County Coastal Zoning Ordinance Section 313-125.8 states:

- 125.8 **Required Findings.** *Development within Coastal Wetland Buffer Areas shall be permitted only if the applicable Resource Protection Impact Findings in Chapter 2, Procedures, Supplemental Findings (312-39.15), are made. (Former Section CZ#A314-10(H))*

Humboldt County Zoning Ordinance Section 312-39.15 states:

39.15 WETLAND BUFFERS

- 39.15.1 *Development will be sited and designed to prevent impacts which would significantly degrade wetland habitat areas, and shall be compatible with the continuance of such habitat areas; and (Former Section CZ#A315-16(1)(14)(a))*
- 39.15.2 *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms shall be maintained, and where feasible, restored. (Former Section*

CZ#A315-16(1)(14)(b)).

Discussion

The project as approved by the County involves a modification to a coastal development permit that originally approved a subdivision of one parcel into two, and required a 100-foot setback between the building site on "Parcel 2," the subject property, and the adjacent wetlands. Following approval and recordation of the subdivision, a site-specific wetland delineation was conducted, which determined that the extent of the wetlands was greater than that shown on the LCP resource inventory maps that were used to review and approve the subdivision. The site-specific wetland delineation determined that it was not possible to provide a 100-foot setback between the building site and the adjacent wetlands. As a result, the applicant applied for, and the County approved, a modification to the coastal development permit to allow (1) reduction of the wetland setback from 100 feet to 15-50 feet; and (2) construction of an approximately 1,600-square-foot single-family residence with a maximum height of 20 feet above grade.

As cited above, the wetland protection policies of the Humboldt Bay Area Plan (HBAP) and the Coastal Zoning Ordinance define wetland buffer areas, the types of development and conditions under which development is allowed within the buffer area, and prescribe specific setback distances between new development and wetland resources. HBAP Policy 3.30(B)(6)(c) requires that new development adjacent to wetlands within an urban limit line be setback either 100 feet from the wetland, or setback the average distance of existing development immediately adjacent as determined by the "string line method." HBAP Policy 3.3(B)(6)(e) provides for setbacks of less than 100 feet only when the prescribed buffer would prohibit development on the site for the principle use for which it is designated, so long as the reduction retains the maximum setback feasible to protect the habitat values of the wetland. Section 313-125.7 of the County's Coastal Zoning Regulations reiterates these wetland policies. Furthermore, Section 313-125.8 requires the County to make supplemental findings that development located within a wetland buffer area would be sited and designed to prevent adverse impacts that would significantly degrade the wetland habitat area, would be compatible with the continuance of the habitat area, and would maintain the biological productivity and quality of the wetland.

Buffers provide separation from development and wetland areas to minimize disturbance to plants and animals inhabiting a wetland and to protect the habitat values and functions of the area. Buffers are typically intended to create a spatial separation between potentially disruptive activity typically associated with development such as noise, lighting, and human activity, which can disrupt feeding, nesting, and behavior patterns of wildlife. Buffer areas also provide transitional habitat between development and environmentally sensitive habitat areas. Additionally, buffers are often required to provide a vegetated area to capture and treat drainage and stormwater runoff from development to minimize the amount of pollutants potentially entering wetlands and receiving waters.

In its approval of the coastal development permit modification, the County found that the reduction of the originally approved 100-foot wetland setback was necessary to enable construction of the single-family residence, a principal use for the subject property that is planned and zoned for residential use. Although the County's LCP allows for a reduction of the prescribed 100-foot wetland setback when it would otherwise impede the development of a principle use, the policies do not specifically provide for a setback reduction simply as a result of an inaccurate evaluation of the extent of the wetland area. The fact that the County relied on resource maps in the HBAP to locate wetlands on the property, rather than a site-specific wetland delineation, which identified a more extensive wetland area than that reflected on the LCP maps, is not by itself a scenario by which a reduced wetland setback is provided for in the County's LCP.

Furthermore, the County's approval of the wetland setback reduction does not include an alternatives analysis, or any other discussion, to demonstrate why the approved setback reduction (from 100-feet to 15-50 feet) would provide the maximum setback feasible as required by HBAP Policy 3.30(B)(6)(e). There is no evidence to suggest that alternative options were evaluated for siting and designing the residence in a manner that would allow for residential use of the site while providing a wetland setback greater than the approved 15-50 feet, or evidence to conclude that a greater setback is not feasible.

Additionally, there is no evidence in the County's findings that the reduced wetland setback would be adequate to prevent impacts that would significantly degrade the wetland habitat area and maintain the biological productivity and quality of the wetland resource as required by Coastal Zoning Sections 313.125.8 and 312-39.15. The wetland delineation prepared for the project states that *"based on the values of the onsite wetlands, the proposed development and break in slope, a setback of 15 to 50 feet (average 25') is recommended."* The report further states that an existing 4 to 5-foot-high sand berm along the extent of the property acts as a buffer from the proposed development, and that *"a 100' wide buffer for this property would not be necessary to protect the existing wetlands."* However, the report, and thus the County's findings, do not provide a thorough assessment of the wetland values and functions based on site-specific evidence and do not discuss why the existing berm alone would provide an adequate buffer to protect the quality and biological productivity of the wetland as required by the LCP. For example, it is not apparent that this analysis inventoried the wildlife species that use the wetlands adjoining the project site, how the species utilize the habitat (e.g., feeding, roosting, nesting, etc.), and how the particular disturbances that would result from the project would affect the functions provided by the wetland. Until this information is known, it cannot be demonstrated that a buffer width less than the 100 feet called for in LUP Policy 3.30(B)(6)(c) would be adequate to protect the various species and habitat values of the wetland area.

Thus, the degree of legal and factual support for the County's decision is not sufficient to demonstrate that the development is consistent with the wetland protection policies of the LCP. Furthermore, as Sections 30233 and 30240 of the Coastal Act require that wetlands

of the coastal zone be protected from the impacts of development and the cumulative impact of the loss of wetlands and wetland habitat over time throughout the coastal zone has been significant, the appeal raises issues of statewide significance rather than just a local issue. Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the wetland protection provisions of the certified LCP, including the provisions of HBAP Policy 3.30(B)(6) and Coastal Zoning Ordinance Sections 313-125.7, 313-125.8, and 312-39.15 that a setback less than 100 feet would be adequate to protect the various species and habitat values of the wetland at and adjacent to the site, would not significantly degrade the wetland habitat areas, and would be compatible with the continuance of such habitat areas.

Conclusion

The foregoing contention raised by the appellant has been evaluated against the claim that it raises a substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the project as approved raises a substantial issue of conformance with the certified LCP with respect to the contention raised.

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

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

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

1. Alternatives Analysis and Assessment of Habitat Values for Establishing Adequate Wetland Setback

As discussed above, a wetland setback of less than 100 feet may be permitted only when the prescribed buffer would prohibit development of the site for the principle use for which it is designated. According to the HBAP, any such setback reduction must still retain the maximum setback feasible to ensure new development does not adversely affect the habitat values of the wetland.

Because the existing County staff report does not have sufficient information with which to make these findings, an analysis of alternative options for siting and designing the residence in a manner that provides a maximum setback feasible is needed to determine the project's consistency with HBAP Policy 3.30(B)(6)(e). Additionally, the wetland delineation prepared by Winzler and Kelly Engineers and dated February 2005 does not fully analyze the impacts of the residential development on the wetland habitat on, and adjacent to, the site and the adequacy of the reduced-width buffer.

The alternatives analysis should quantify the potential setback from the wetland associated with each alternative and include a biological assessment of the potential direct and indirect impacts to the wetland for each alternative. The analysis should also discuss all other applicable limitations and constraints 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.).

To properly determine the adequacy of the wetland setback, the applicant must submit a biological assessment addressing: (1) the various resident and migratory species that inhabit or utilize the various affected wetlands; (2) the various resting, feeding, breeding, and nesting requirements of these species; (3) the relative susceptibility of the species engaging in these activities at the site to disturbance; (4) the transitional habitat needs of these species between the wetlands and the development; (5) a qualitative and quantitative analysis of what the anticipated noise and lighting levels and other human disturbances associated with the residential development would be; and (6) how the width of the buffer between the wetland and the development would affect the habitat functions of the wetland.

2. Environmentally Sensitive Habitat Area Assessment (Coastal Dunes)

As noted above in Section II.(C)., Project and Site Description, the project site is located adjacent to coastal dune and dune forest habitat. The Humboldt County LCP defines many coastal dune areas, and the sensitive plant and wildlife species that they potentially support, as environmentally sensitive habitat areas (ESHA). The LCP incorporates Coastal Act Sections 30107.5 and 30240 that define environmentally sensitive habitat areas and provide for the protection of these areas from adjacent development.

Section 30107.5 of the Coastal Act 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 be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act states in part that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The County's approval of the project did not analyze the potential impacts of the residential development on the adjacent coastal dune habitat. Therefore, to evaluate the consistency of the proposed project with LCP policies regarding new development adjacent to ESHA, an assessment of the coastal dune habitat is required. The assessment should be prepared by a qualified biologist and should include: (1) a survey of the plants and wildlife that inhabit and/or utilize the adjacent dune habitat, (2) an evaluation of the potential impacts and disturbance to the ESHA as a result of the residential development, and (3) a discussion of any recommended mitigation measures to ensure that the development would be sited and designed in a manner that would prevent impacts that would significantly degrade the area and provide for the continuance of the dune habitat. The ESHA should also be considered in all of the development alternatives and constraints that are considered pursuant to Item #1 above.

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

If the project cannot be found consistent with the wetland and ESHA policies of the certified Humboldt County 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, the landowner of the property that is the subject of A-1-HUM-05-041 must provide the following information for the property that is subject to A-1-HUM-05-041 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. **Prescriptive Rights Evaluation**

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

the Coastal Act and the certified LCP. Coastal Act Sections 30210, 30211, 30212, and 30214 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area.

Applicants for coastal development permits must demonstrate that their proposed developments are consistent with the Coastal Act, including the requirements of Section 30211. In implementing this section of the Act, the permitting agency, either the Commission or the local government where there is a certified LCP, must consider whether a proposed development will interfere with or adversely affect an area over which the public has obtained rights of access to the sea. If the agency finds that there may be such an interference or effect, then it also must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use. Because the authority to make a final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues should use the same analysis as the courts. Essentially, this requires the agencies to consider whether there is substantial evidence indicating that the basic elements of an implied dedication are present. The agencies also must consider whether the applicant has demonstrated that the law prevents the area from being impliedly dedicated, even if the basic elements of implied dedication have been met.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition of such an easement by the public is referred to as an "implied dedication." The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from along-delayed assertion of rights. The rule establishes a

statute of limitation, after which the owner cannot assert formal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- a. The public has used the land for a period of five years or more as if it were public land;
- b. Without asking for or receiving permission from the owners;
- c. With the actual or presumed knowledge of the owner;
- d. Without significant objection or bona fide attempts by the owner to prevent or half the use; and
- e. The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with 30211, the Commission or the applicable local government cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law.

However, the Commission or the applicable local government is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission or the applicable local government must ensure that proposed development would not interfere with any such rights.

There are some limitations that prevent property from being impliedly dedicated, even if the basic elements of implied dedication have been met. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, he must either affirmatively prove he has granted the public a license to use his property or demonstrate that he made a bona fide attempt to prevent public use. Thus, persons using the property with the owner's "license" (e.g., permission) are not considered to be a "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to accrue. If only a limited and definable number of persons have used the land, those persons may be able to claim a personal easement but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose than when dealing with inland properties. A distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean and its bays and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the

lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject property is within 1,000 yards of the sea and the required five-year period of use need not have occurred prior to March of 1972 in order to establish public rights.

It is important to note that Section 1009 explicitly states that it is not to have any effect on public prescriptive rights existing on the effective date of the Statute (March 4, 1972). Therefore, public use of property for the prescriptive period prior to the enactment of Section 1009 is sufficient to establish public rights in the property.

Another section of the Civil Code, Section 813, adopted in 1963, allows owners of property to grant access over their property without concern that an implied dedication would occur if they did not take steps to prevent public use of the land. Section 813 provides that recorded notice is conclusive evidence that subsequent use of the land, during the time that such notice is in effect, by the public for any use or for any purpose is permissive.

In its action on the project, the County required public access as a condition of approval. The County reviewed the issue of whether potential prescriptive rights of public access exist but apparently did not conduct a prescriptive rights investigation using the procedures established within the Attorney General's Implied Dedication Prescriptive Rights Manual.

The Attorney General's Prescriptive Rights Manual describes the methods that should be used in a prescriptive rights investigation. Such methods include reviews of existing title documents, contacting government agencies, on-site inspections, and interviews of persons familiar with past and current uses of the property. The Manual indicates that the most important source of implied dedication evidence is the interview, and that an in-depth investigation entails locating and interviewing many potential testimonial witnesses. The Manual states that the information obtained from the investigation should be compiled in a written initial report. The Manual states that "The basic goal of an implied dedication investigation is to acquire enough information about the subject property so that the investigator can make an informed conclusion as to the possibility of implied dedication rights in the property. In addition, the investigator must be able to support his conclusion by a report which details the history of public use of the property." The Manual also states that "enough information should be contained within the Report to provide a basis for the Attorney General's Office to make a judgment, either that the evidence does or does not sustain a finding of implied dedication, or that an in depth investigation is needed."

The County did not investigate the use of the property to an extent that enabled them to make an informed conclusion as to the possibility of implied dedication. Furthermore, the fact that prescriptive rights of public access have not yet been determined to exist by a court does not mean that prescriptive rights of public access do not exist on the property.

It is the absence of any judicial determination that heightens the need for a thorough prescriptive rights investigation.

Prescriptive Rights Information

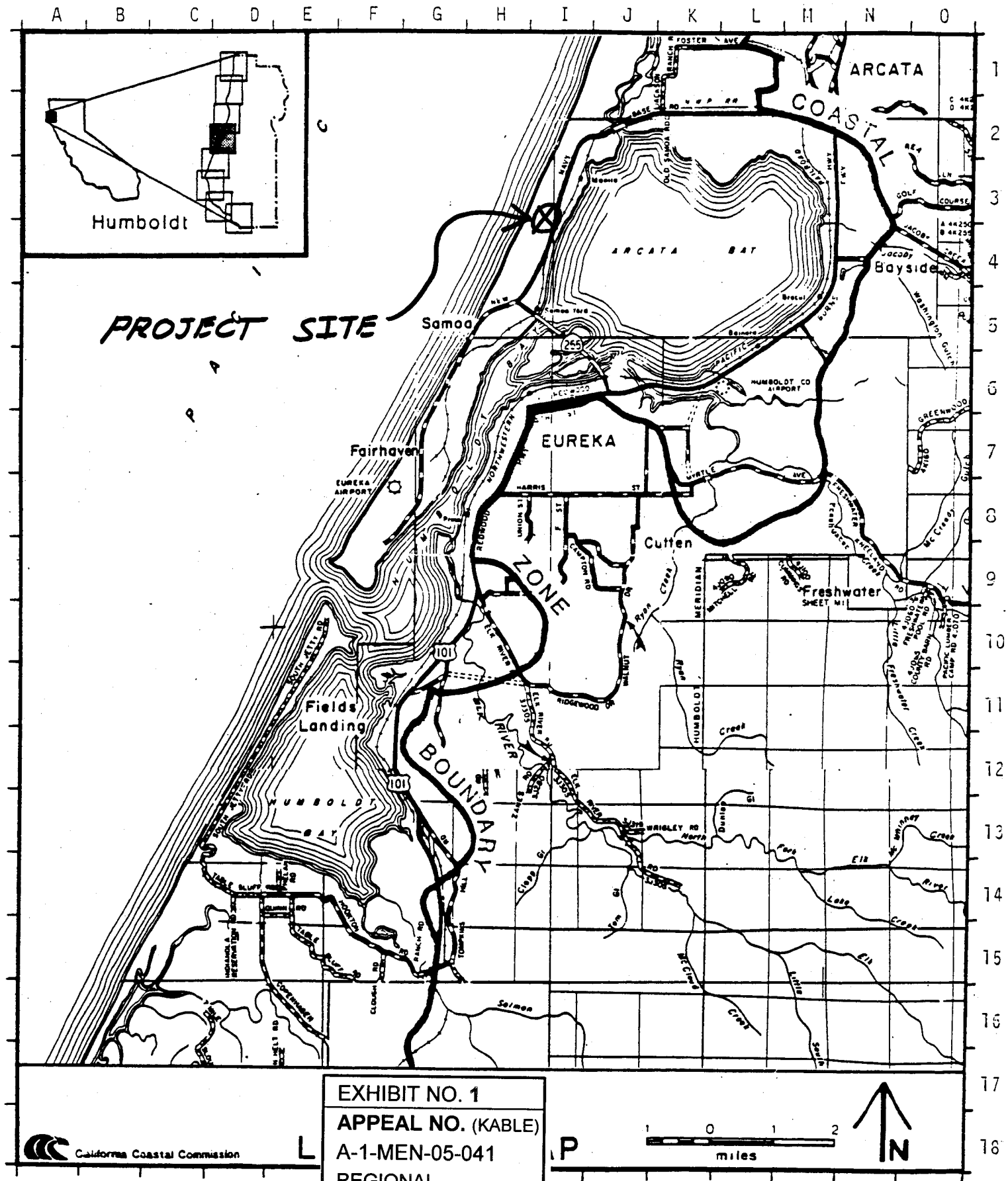
As discussed previously, the project raises an issue of conformance with Section 30211 of the Coastal Act which requires that development not interfere with the public's right of access to the sea where acquired through use. Information necessary to determine whether substantial evidence of public prescriptive rights of access may have accrued over the property includes not only information regarding the use of the property by the public as if the property was public, but also information regarding actions that the property owners have taken to prevent a public right of access from accruing over the property. Before the Commission could act on the project *de novo*, the Commission would need to conduct an investigation of public prescriptive rights of access to the sea. To proceed with an investigation of public prescriptive rights, the Commission would need to receive from the applicant certain information, including information as to

- (1) whether a notice of permissive use of the property has ever been recorded against the property pursuant to Civ. Code Section 813 or Civ. Code Section 1008;
- (2) the nature and extent of efforts of property owners to prevent or halt use of the property by the public;
- (3) the location and wording of any signing posted on the property affecting use of the property by the public; and
- (4) the extent of use of the property for public access purposes by unauthorized persons.

Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the wetland and environmentally sensitive habitat area policies of the LCP, Coastal Act Section 30010, and the public access policies of the Coastal Act. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Site Map
4. Notice of Final Local Action
5. Appeal
6. Excerpts from Wetland Delineation



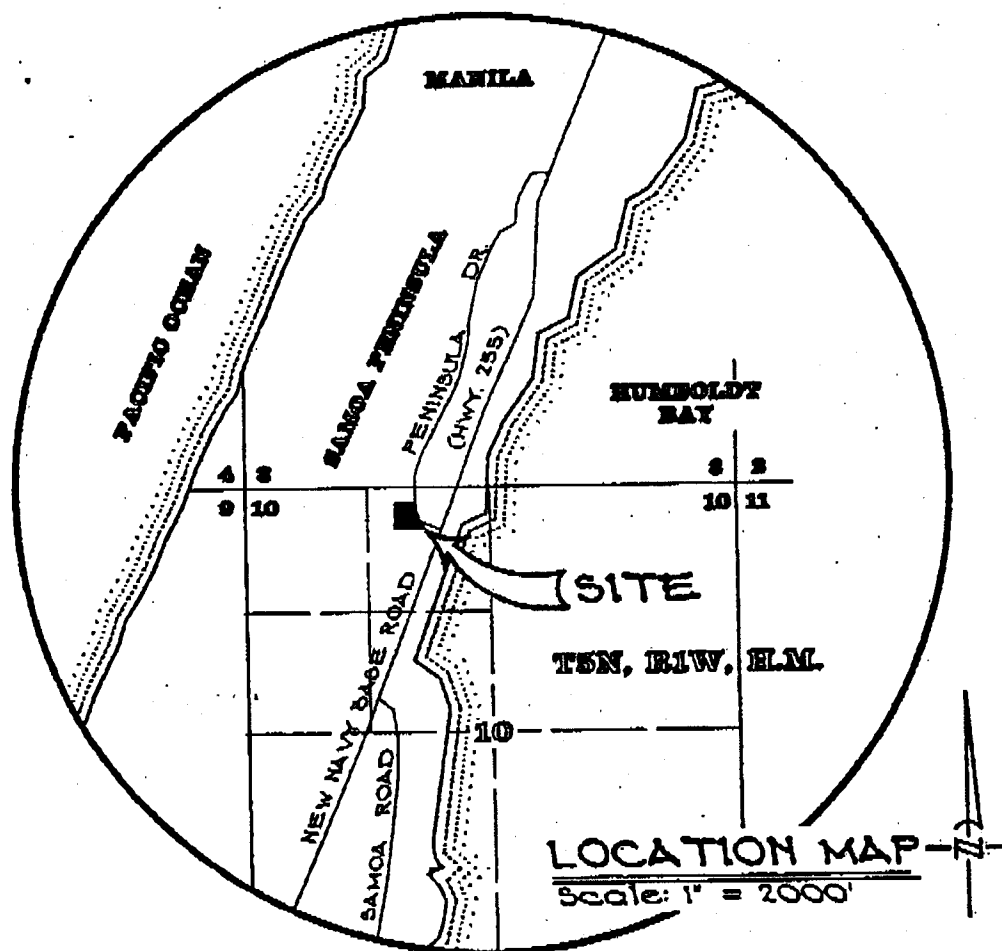


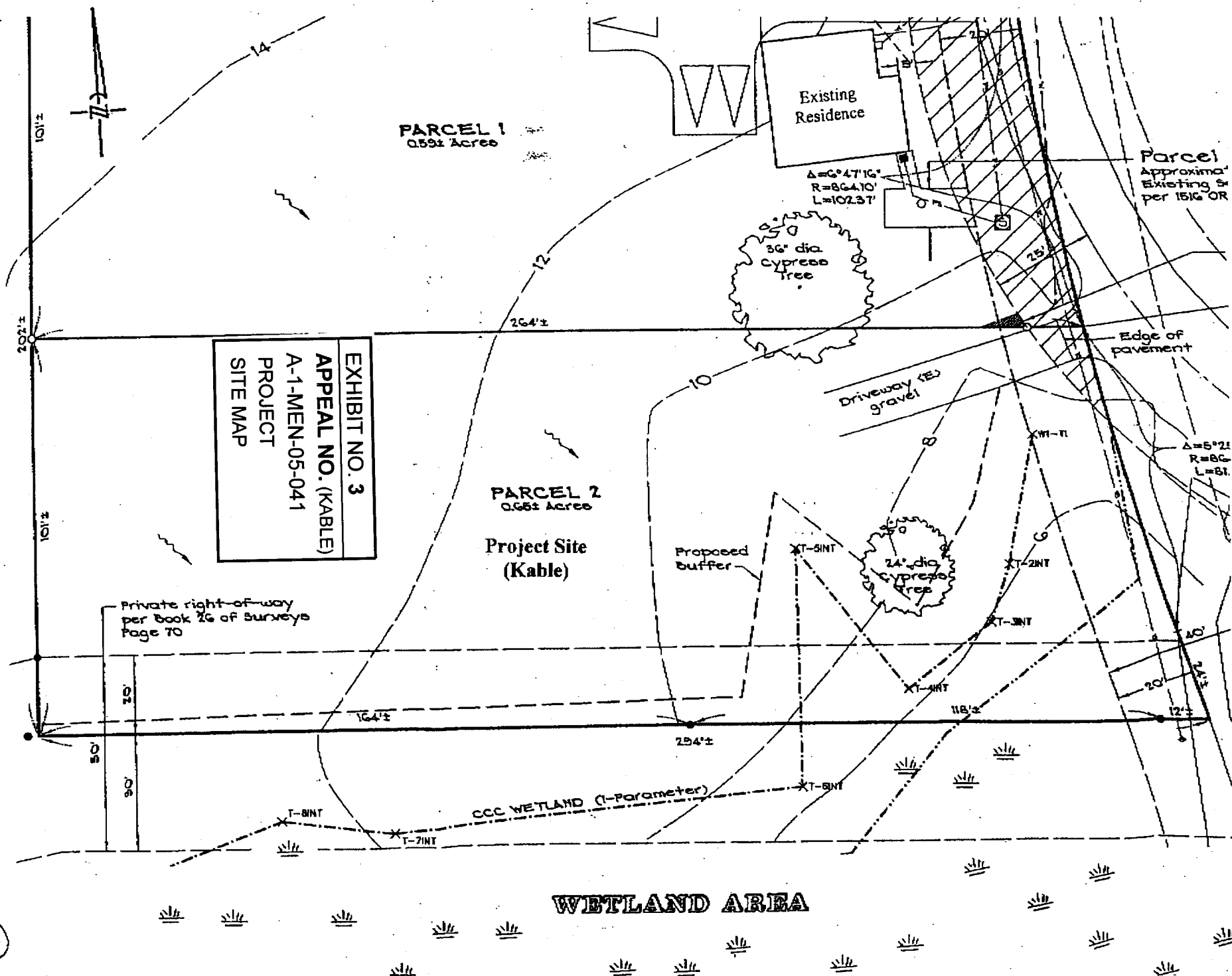
EXHIBIT NO. 2

APPEAL NO. (KABLE)

A-1-MEN-05-041

PROJECT

VICINITY MAP



STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

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

RECEIVED

ARNOLD SCHWARZENEGGER, Governor



A-1-HUM-05-041 AUG 18 2005

CALIFORNIA
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Michael Seeber
Mailing Address: 1407 Peninsula Dr.
City: Manila Zip Code: 95521 Phone: 707-443-8422

SECTION II. Decision Being Appealed

1. Name of local/port government:
County of Humboldt
2. Brief description of development being appealed:
Residential single family home within 100' of wetland
3. Development's location (street address, assessor's parcel no., cross street, etc.):
APN 401-011-28
4. Description of decision being appealed (check one.):
☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

EXHIBIT NO. 4

APPEAL NO. (KABLE)

A-1-MEN-05-041

APPEAL

(Page 1 of 5)

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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: July 21, 2005

7. Local government's file number (if any): CDP 02-106M

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:

Philip Kable
2031 Highway 36
Fortuna, CA 95540

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) Paul Cienfuegos
1485 Peninsula Drive
Manila, CA 95521

(6) Michael & Sharon Fennell
1480 Peninsula Drive
Manila, CA 95521

(11) Carl Birks
1407 Peninsula Drive
Manila, CA 95521

(2) Aryay Kalaki
Coastal Coalition
1520 Peninsula Drive
Manila, CA 95521

(7) Erika Morris
1435 Peninsula Drive
Manila, CA 95521

(12) Dan Ihara
231 Dean Ave.
Manila, CA 95521

(3) Carol Vandermeer
Friends of the Dunes
Manila Community Center
Manila, CA 95521

(8) Melanie Dabill
1435 Peninsula Drive
Manila, CA 95521

(13) Anthony Perrone
1418 Peninsula Drive
Manila, CA 95521

(4) Nora Winge
1767 Raineri Ln.
Manila, CA 95521

(9) Marcia Bilderback
975 Bay Street
Eureka, CA 95501

(14) Ray Grosveld
1454 B Peninsula Drive
Manila, CA 95521

(5) Simona Altman
918 Creighton St.
Eureka, CA 95501

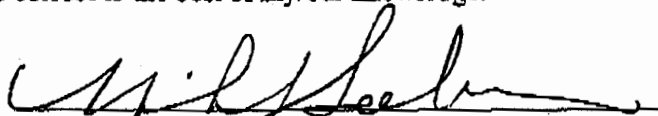
(10) Jerry Martien
P.O. Box 1051
Manila, CA 95518

(15) Rachel Graff
1454 B Peninsula Drive
Manila, CA 95521

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**SECTION V. Certification**

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


Signature of Appellant(s) or Authorized Agent

Date: 08/16/05

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

3 of 5

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.

In September 2003 the Humboldt County Planning Commission approved a subdivision and Coastal Development Permit (CDP) for APN 401-011-03 creating a new lot with APN 401-011-28. The approval was conditioned on a 100 foot setback and other standard requirements for development in the coastal zone. The new parcel, approximately 101' wide and 290' feet long, both contained and was adjacent to wetlands along its entire length. Humboldt County's Planning Division failed to require a wetlands delineation, failed to identify the dune forest habitat adjacent to the north and west, described the parcel as "surrounded by residential development" when such development exists only to the north, failed to identify the beach access trail that bisects the parcel, described the adjacent publicly owned Manila Dunes Recreation Area as "vacant residential land", failed to identify the presence of a prominent osprey nesting site nearby and failed to identify significant and relevant errors and omissions in the documentation submitted by the applicant such as showing existing utilities in the development plan that do not yet exist. The Humboldt County Planning Commission and reviewing public agencies were presented with substantially inaccurate information. Had accurate documentation been submitted by both the developers and Planning Division staff, it is likely the subdivision and CDP would not have been approved.

After approval, the developer submitted building plans that did not comply with several conditions of the permit. The plans showed no wetland buffer, nor the required parking for the new parcel. The wetlands were delineated and flagged by MGW Biological Services in December 2004 and the 100' wetland setback flagged. The developers caused this flagging to be removed, bulldozed within the wetland setback and had the wetlands delineated a second time by Winzler & Kelly in January 2005. No report from the first wetland delineation was submitted to the Planning Division. The wetland delineation that was submitted suggested that a 10' buffer would be adequate to protect the wetlands. Coincidentally, a 10' setback is what would be needed to gain access to any potential building site on the parcel, and almost the entire parcel is within 100' of the wetland area. It is not clear whether or not the second wetland delineation is consistent with the first, but it is clear that the wetland delineation submitted failed to note that the wetlands in question are estuarine in nature and are subject to tidal flow. It also failed to include areas critical to access to any development within the boundary of the wetlands despite the presence of many wetland plant species in this area.

(continued on Attachment 1)

4 of 5

Attachment 1

Section IV, continued from page 3:

The applicant requested a modification to the CDP to allow the reduced setback. Again, the documentation submitted by the developers contained significant errors and omissions and again, Planning Division staff inaccurately described the nature and uses of both the existing and adjoining parcels. Only as a result of public participation in the process, the Humboldt County Planning Commission added additional conditions to require dedication of a public easement in the 10' wetland buffer area, monitoring of the nearby osprey nest, some native plant re-vegetation and others and approved the requested modifications on July 21, 2005 after requesting and receiving a report from County Counsel on potential takings issues if the requested modifications were denied. The report opined that such denial would come "perilously close to takings."

While the modified and conditioned development proposal may be better than the original, the process and information by which it was approved was fundamentally flawed and will result in an effective 0' setback from the wetland as well as removal of vegetation growing in the wetland to allow continued public access. Additionally, the modifications were approved by the Planning Commission under threat of a takings lawsuit. At the time of the original subdivision and CDP approval, the developers agreed to conditions required by law to protect wetland and other public trust values such as that found at this location. Their inability to comply with those conditions is a result of their own lack of due diligence and inadequate Planning Division oversight and has resulted in a new precedent being set for allowing as little as a 10' setback (0' effective) from the edge of the wetlands at the edge of Humboldt Bay in non-urban areas. It also sets a precedent for applicants to be able to submit substantially inaccurate information, for Planning Division staff to omit or obfuscate facts relevant to the decision making process, and for the threat of lawsuits to compel the Planning Commission to allow development in new parcels created out of what should be a 100' wetland setback. This proposed development would individually and by precedent cumulatively have a significantly adverse impact on the already significantly reduced remaining wetlands around Humboldt Bay.

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PLANNING DIVISION
COMMUNITY DEVELOPMENT SERVICES

COUNTY OF HUMBOLDT

3015 H STREET

EUREKA, CALIF. 95501-4484

PHONE (707) 445-7541

Dear Applicant:

This is to advise you of the Planning Commission's approval of the modification to your project as described in the Agenda Item Transmittal and to inform you of the conditions of approval which are attached.

The modification does not effect the current expiration date or other conditions or terms of the original permit/map approval except as otherwise noted.

The Planning Commission's decision on the project modification may be appealed to the Board of Supervisors by any aggrieved person within ten (10) working days of the Planning Commission's action. If no appeals are received, the permit/map approval is effective on the day following the last day to appeal. For more information about the appeal process or for filing an appeal, please contact the Planning Division at 445-7541. (Appeals must be filed in the Planning Division office, Clark Complex, Mondays through Fridays, 8:30 a.m. to 5:00 p.m. and possibly with the Clerk of the Board depending on the type of permit modified.)

The modified permit/map approval may be revoked or rescinded, in whole or in part, if grounds are found to exist in accordance with terms and proceedings of the County Code. Please note that other permits may be required before the proposed development is commenced.

Kirk A. Girard, Director
PLANNING DIVISION OF THE HUMBOLDT COUNTY
COMMUNITY DEVELOPMENT SERVICES DEPT.

cc: ☐ Owner ☐ Agent (if any)

EXHIBIT NO. 5

APPEAL NO. (KABLE)

A-1-MEN-05-41

NOTICE/FINAL ACTION

(Page 1 of 8)

KABLE, Phillip

APN 401-011-03 (Parcel 2)

Case No: CDP-02-106 M

AGENDA ITEM TRANSMITTAL

TO: HUMBOLDT COUNTY PLANNING COMMISSION

FROM: Kirk A. Girard, Director of Community Development Services

MEETING DATE: 4/21/05	AGENDA ITEM: <input type="checkbox"/> Public Hearing Item <input checked="" type="checkbox"/> Consent Agenda COASTAL DEVELOPMENT PERMIT Modification	CONTACT: Michael Richardson
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Before you is the following:

PROJECT DESCRIPTION: Modification to an approved coastal development permit for construction of a single family residence. The original coastal development permit CDP-02-106 was required for the subdivision and extension of public facilities to the project site. The modification allows for construction of a single family home on the site. The new home is proposed to be approximately 1,600 square feet in size and up to 20' in height. The siding material will be "Hardie Plank", and roofing will be composition shingles. The parcel is served by public water and sewer.

The applicant is requesting a reduction in the required 100 foot setback from wetlands to enable construction of the new home; the proposed setback is 15 - 50 feet from the wetland, consistent with the recommendations of the biological report submitted with the application.

PROJECT LOCATION: The project site is located in Humboldt County, in the Manila area, on the west side of Peninsula Drive, approximately 500 feet north from the southern intersection of Peninsula Drive with New Navy Base Road, on the property known as 1401 Peninsula Drive.

PRESENT PLAN LAND USE DESIGNATION: Residential Low Density (RL). Humboldt Bay Area Plan (HBAP). Density: 3 to 7 units per acre. Slope Stability: A₀: Relatively Stable.

PRESENT ZONING: Residential Single Family specifying a minimum lot size of 5,000 sq. ft. in addition to the Manufactured Home and Archaeological Resource Area combining zone (RS-5-M/A).

ASSESSOR PARCEL NUMBER: 401-011-03 (Parcel #2)

APPLICANT

KABLE, PHILLIP
2031 Hwy. 36
Fortuna, CA 95540
Phone: 768-1971

OWNER(S)

SAME

AGENT**ENVIRONMENTAL REVIEW:**

Environmental review is required.

MAJOR ISSUES:☒ Wetland buffer setbacks.**STATE APPEAL STATUS:**☒ Project is appealable to the California Coastal Commission.2 of 8

KABLE, Phillip

APN 401-011-03 (Parcel 2)

Case No: CDP-02-106 M

EXECUTIVE SUMMARY

KABLE Coastal Development Permit Modification
Case No.: CDP-02-106M; File No.: APN 401-011-03 (Parcel #2)

This project proposes a modification to an approved coastal development permit for construction of a single family residence. The original coastal development permit CDP-02-106 was required for the subdivision and extension of public facilities to the project site. The modification allows for construction of a single family home on the site.

The applicant is requesting a reduction in the required 100 foot setback from wetlands to enable construction of the new home; the proposed setback is 15 - 50 feet from the wetland, consistent with the recommendations of the biological report submitted with the application.

Water and sewer services are provided by Manila Community Services District. Access to the parcels is via County maintained Peninsula Road, a 22 foot paved road within a 40 foot right of way. There are 2 foot shoulders on either side of the road. There are no curbs, gutters or sidewalks on Peninsula Road.

The site is designated Residential Single Family (RL) by the Humboldt Bay Area Plan (HBAP), and is zoned Residential Single Family (RS-5) with an archaeological resources combining zone. The RL designation is applied in more urban areas of the County where topography, access, utilities and public services make the area suitable for low density residential development. Lands to the north are designated, zoned and developed for residential use. Land to the west is zoned and planned for resource protection.

The property occupies a relatively flat area (2-3% slope). The site lies to the north of a wetland located on APN 401-011-23, and designated Natural Resources under the Humboldt Bay Area Plan. Policies of the HBAP require that a development buffer of 100 feet be established from the wetland boundary.

The original coastal development permit acknowledged the presence of this wetland and the required buffer, which was shown on the approved Tentative Map consistent with the wetland maps of the Humboldt Bay Area Plan on file with the Planning Division. The staff report for the project stated, "This buffer setback will limit development on Parcel 2 but adequate area exists for a single building site. This wetland buffer setback will be depicted on a Development Plan to be required as a condition of the subdivision."

Based on the site specific wetland delineation submitted with this application, the wetland and required buffer areas occupy more area than what is shown on the wetland maps of the Humboldt Bay Area Plan, and what was shown on the approved tentative map. Accordingly, a reduction of the required setback is necessary to allow construction of a home on the parcel.

There has historically been some public use of a footpath across the front of the property to access an easement owned by the Manila Community Services District, which lies along the south of the property, and leads to the beach. According to verbal comments from two Manila residents, the footpath to the trail is an important linkage between the easement and Peninsula Drive as it enables pedestrians to avoid a portion of the easement that is regularly flooded during the winter. The applicant affirmed the historical use of the footpath, and also stated he believes he and successive owners of the property have a right to prevent the use of it in the future.

While the trail is generally mapped in the access inventory of the HBAP, the trail is shown as deleted from the inventory as it passes through sensitive dune areas. Accordingly, staff is not recommending the applicant be required to dedicate an additional public access easement along

KABLE, Phillip

APN 401-011-03 (Parcel 2)

Case No: CDP-02-106 M

this existing footpath. Instead, staff is recommending standard conditions prohibiting construction of structures (including fences) within the mapped wetlands and wetland buffer area. Also, an informational note has been added explaining that issuance of the permit and completion of the development does not prejudice any future assertion of rights of implied dedication.

All of the reviewing agencies have either recommended approval or conditional approval of the project. Accordingly, the Department has prepared and circulated a draft Mitigated Negative Declaration and has determined that the project, as proposed, mitigated and conditioned, will not have a significant effect on the environment.

Based on the on-site inspection, a review of Planning Division reference sources, and comments from all involved referral agencies, Planning staff believes that the project will not result in a significant impact on the environment as proposed, and that the applicant has submitted evidence in support of making all of the required findings for approving the proposed subdivision.

STAFF RECOMMENDATIONS:

1. Describe the application as part of the Consent Agenda.
2. Survey the audience for any person who would like to discuss the application.
3. If no one requests discussion, make the following motion to approve the application as a part of the consent agenda:

"I move to adopt the Mitigated Negative Declaration and make all of the required findings, based on evidence in the staff report and public testimony, and to approve the project as described in the Agenda Item Transmittal, subject to the recommended conditions of approval."

ALTERNATIVES: The Planning Commission could elect not to approve the project. This alternative should be implemented if your Commission is unable to make all of the required findings. Planning Division staff is confident that the required findings can be made. Consequently, planning staff does not recommend further consideration of this alternative.

4 of 8

KABLE, Phillip

APN 401-011-03 (Parcel 2)

Case No: CDP-02-106 M

**RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT
Resolution Number 05-55**

MAKING THE REQUIRED FINDINGS FOR CERTIFYING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CONDITIONALLY APPROVING THE KABLE COASTAL DEVELOPMENT PERMIT MODIFICATION APPLICATION: CASE NO.: CDP-02-106M; ASSESSOR PARCEL NUMBER 401-011-03 (Parcel #2).

WHEREAS, Phillip Kable submitted an application and evidence in support of approving the coastal development permit modification on APN 401-011-03 (Parcel #2), to allow the construction of a single family home; and

WHEREAS, the County Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, the project is subject to environmental review pursuant to of the California Environmental Quality Act (CEQA); and

WHEREAS, the County Planning Division prepared a draft Mitigated Negative Declaration, included in Attachment 3; and

WHEREAS, Attachment 2 in the Planning Division staff report includes evidence in support of making all of the required findings for approving the proposed subdivision as recommended in the Planning Division staff report in Attachments 1 and 2;

NOW, THEREFORE, be it resolved, determined, and ordered by the Planning Commission that:

1. The Planning Commission approves the proposed Mitigated Negative Declaration in Attachment 3, as required by Section 15074(b) of the CEQA Guidelines, and finds that there is no substantial evidence that the proposed project will have a significant effect on the environment.
2. The Planning Commission further makes the findings in Attachment 2 of the Planning Division staff report for Case No. CDP-02-106M based on the submitted evidence.
3. The Planning Commission approves the proposed subdivision applied for as recommended and conditioned in Attachment 1 and Attachment 2 for Case No. CDP-02-106M.

Adopted after review and consideration of all the evidence on July 21, 2005.

The motion was made by COMMISSIONER GEARHEART and seconded by COMMISSIONER MURGUIA.

AYES: Commissioners: EMAD, GEARHEART, HANSIS, HERMAN, KELLY, & MURGUIA

NOES: Commissioners: NONE

ABSTAIN: Commissioners: NONE

ABSENT: Commissioners: SMITH

I, Kirk Girard, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

Kirk Girard, Director of Community Development Services

By: 

Heather A. Walker, Clerk

Last Day to appeal to the Board of Supervisors: August 4, 2005 (file Appeal with the Planning Division)

THIS PROJECT IS NOT EFFECTIVE UNTIL ALL APPEAL PERIODS HAVE ENDED.

KABLE, Phillip

APN 401-011-03 (Parcel 2)

Case No: CDP-02-106 M

ATTACHMENT 1
CONDITIONS OF APPROVAL
REVISED 7/21/05*

APPROVAL OF THE COASTAL DEVELOPMENT PERMIT IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS WHICH MUST BE SATISFIED BEFORE THE BUILDING PERMIT CAN BE ISSUED

Conditions of Approval:

1. The applicant shall submit three (3) copies of a revised Development Plan to the Planning Division for review and approval by the Director. The plan shall be drawn to scale and shall give detailed specifications as to the development and improvement of the site, and shall include the following site development details:

A. Mapping

- (1) Topography of the land in 2-foot contours.
- (2) The building site and four independently accessible parking places on Parcel 2 outside of the required setback areas.
- (3) The Wetland Buffer Area and the wetlands shown as "non-buildable" as shown in the "Kable Wetlands Delineation" by Winzler and Kelly, dated Feb. 24, 2005..
- (4) ~~A landscaping plan in conformance with the recommendations of the wetland delineation.~~
Plantings consistent with the approved landscaping plan.
- (5) The osprey nest to the south of the property.
- (6) A 10 foot public accessway and wood fencing in the location shown on the approved plot plan.

B. Notes to be Placed on the Development Plan:

- (1) "All flammable vegetation and fuels caused by site development and construction, road and driveway construction, and fuel modification shall be disposed of by chipping, burying, burning or removal to a landfill site approved by the County."
- (2) "No structures (including fences) are allowed within the wetlands or wetland buffer areas shown as "Non-Buildable" on the Development Plan except as shown on the approved development plan and as provided in §3.30 of the Humboldt Bay Area Plan and §313-125 of the Coastal Zoning Ordinance."
- (3) "The project site is not located within an area where known cultural resources have been located. However, as there exists the possibility that undiscovered cultural resources may be encountered during construction activities, the following mitigation measures are required under state and federal law:

If cultural resources are encountered, all work must cease and a qualified cultural resources specialist contacted to analyze the significance of the find and formulate further mitigation (e.g., project relocation, excavation plan, protective cover).

Pursuant to California Health and Safety Code §7050.5, if human remains are encountered, all work must cease and the County Coroner contacted."

6 of 8

KABLE, Phillip

APN 401-011-03 (Parcel 2)

Case No: CDP-02-106 M

(4) Development on the parcel shall conform to the following requirements, which shall also be conditions of building permit issuance:

a. No construction or other site work that could disturb the osprey may occur from February 15th until ten (10) days after all the viable eggs have hatched.

b. A qualified biologist shall be retained to monitor the osprey nest to identify the date when all the eggs have hatched.

c. From 10 days after hatching until August 1, a qualified biologist shall be retained to monitor the behavior of the osprey when new development is begun and when new activities are begun that significantly add to the ambient noise level, such as the use of heavy equipment, power tools, air compressors or hammering.

d. Any osprey behavior suggesting agitation or disturbance to the construction activities or other site work shall cause an immediate discontinuance of such operations. Operations before August 1 shall resume only upon the recommendation of a qualified biologist and with the consent of the Department of Fish and Game.

(Note #4 may be modified by the Planning Director based on 1) site specific recommendations by a biologist demonstrating limitations to construction activity are not necessary to protect the nesting ospreys, and 2) consultation with the Department of Fish and Game.)

(5) Plantings in the wetland buffer area shown on this development plan are required to be maintained by the property owner in a clean and healthy condition.

2. A landscaping plan shall be prepared for the wetland buffer setback area to the satisfaction of the Planning Director. The plantings shall be consistent with the recommendations of the Wetland Delineation prepared by Winzler and Kelly dated February 2005 (Section VII, Page 5) and the approved plot plan. Prior to energizing the electrical panel of the new home, the applicant shall complete installation of the landscaping shown on the approved landscape plan. The property owner is required to keep the landscaping in a clean and healthy condition consistent with the approved plot plan. One year after the landscaping is installed, the applicant shall submit a report prepared by a qualified biologist assessing the condition of the landscaping, and including recommendations necessary to keep it in a clean healthy condition consistent with the approved landscaping plan.

2b Prior to the beginning of site work and throughout the construction process, the applicant shall place and maintain construction fencing in the location of the permanent fencing along the wetland buffer plantings and public accessway as shown on the approved plot plan.

3. The applicant shall sign a statement acknowledging the measures necessary to protect cultural resources should they be encountered during construction.
4. The applicant shall obtain approval of an encroachment permit from the Public Works Department for construction of the driveway.
5. Plans submitted for building permit approval shall show the project is consistent with Section 313-125 of the zoning ordinance: a) the release rate of stormwater runoff to adjacent wetlands shall not exceed the natural rate of stormwater runoff for a 50-year storm of 10-minute duration; b) stormwater outfalls, culverts, gutters, and the like, shall be dissipated, and where feasible, screened; c) areas disturbed during construction, grading, etc., within the approved wetland buffer area shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area; and d) development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through construction of temporary.

KABLE, Phillip

APN 401-011-03 (Parcel 2)

Case No: CDP-02-106 M

and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from grading areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).

6. The applicant shall demonstrate, subject to the review and approval of the Planning Director, the project conforms to the public access provisions of the Humboldt Bay Area Plan §3.50B(2)(b) (Prescriptive Rights) by providing an equivalent accessway outside the mapped wetland to the same destination including dedication of an access easement as described in Section 3.50B(3).

Informational Notes:

1. By acceptance of this permit, the applicant agrees that: (a) the issuance of the permit and completion of the development does not prejudice any subsequent assertion of any public rights of access to the shoreline, such as rights of implied dedication over the subject property; and (b) approval of the development by the County shall not be used or construed, prior to the settlement of any claims of public rights, to interfere with any rights of public access to the shoreline acquired through use which may exist on the property.
2. The project site is not located within an area where cultural resources have been located. However, as there exists the possibility that undiscovered cultural resources may be encountered during construction activities, the following mitigation measures are required under state and federal law:

If cultural resources are encountered, all work must cease and a qualified cultural resources specialist contacted to analyze the significance of the find and formulate further mitigation (e.g., project relocation, excavation plan, protective cover).

Pursuant to California Health and Safety Code §7050.5, if human remains are encountered, all work must cease and the County Coroner contacted.
3. The applicant is responsible for securing all required permits and authorizations from other involved state and federal agencies, including, but not limited to, the U.S. Army Corps of Engineers.

** The conditions of approval were revised by the Planning Commission at their continued public hearing on the item on July 21, 2005. The deleted text is shown in strikeout, and the added text is shown in bold underlined italics.*

8 of 8

RECEIVED

1004305001-11030

AUG 24 2005

CALIFORNIA
COASTAL COMMISSION

**KABLE WETLANDS DELINEATION,
ASSESSORS PARCEL NUMBER
(APN) 401-011-028
MANILA, CALIFORNIA**

February 2005

Prepared for:
Tina Christensen
2120 Campton Road
Eureka, California 95503

EXHIBIT NO. 6
APPEAL NO. (KABLE)
A-1-MEN-05-041
WETLAND DELINEATION
EXCERPTS (Page 1 of 11)

Prepared by:
Winzler & Kelly Consulting Engineers
633 Third Street
Eureka, California 95501-0417
(707) 443-8326

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LIST OF FIGURES

Figure 1: Wetlands Exhibit (wetlands boundary map)

Back Pocket

APPENDIX

Appendix A: Field Data Sheets

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I. SUMMARY

On February 7, 2005, a wetland delineation was performed on assessor's parcel number (APN) 401-011-028 and a portion of APN 401-011-023. The wetland delineation determined the extent of wetland-type vegetation (one parameter), and wetlands having wetland-type vegetation, hydric soils, and wetland hydrology (three parameters) near an existing obvious break in slope. No wetland type vegetation, soils, or hydrology was observed north of the wetland/upland boundary.

II. INTRODUCTION

The property identified by APN 401-011-028 is located west of Peninsula Drive, which is west of Highway 255, in Manila, California. The subject site is south of the Manila Community Center and is in the Coastal Zone. Figure 1 (back pocket) depicts the project location and delineation results (single parameter wetland/upland boundary), three parameter wetland boundary and proposed buffer.

III. DELINEATION PURPOSE

The purpose of this investigation was to determine the size and location of the wetland boundary in accordance with both the Army Corp of Engineers (COE) and California Coastal Commission (Coastal Commission) criteria on the south edge of APN 401-011-028 in preparation for a development project. A small northern portion of the adjacent parcel (APN 401-011-023) was also investigated as part of this wetland delineation.

IV. WETLAND DELINEATION METHODOLOGY

The wetlands delineation was conducted by Gary Lester of Winzler & Kelly, Consulting Engineers, on February 7, 2004, following the COE criteria from the Corps of Engineers Wetlands Delineation Manual (1987). To define a wetland, the COE (1987) requires that all three parameters (vegetation, soil, and hydrology) show wetland attributes. The California Coastal Commission requires only one parameter to be present in order to define the site as a wetland. Vegetation, soil, and hydrology data were collected at two transects (W1T1, and W1T6) with two plots (upland/wetland) per transect (see Appendix A, Field Data Sheets). Other wetland/upland boundaries were determined and marked by an "intermediate" stake, i.e., W1T2-INT. The wetland boundary was evaluated using both COE and Coastal Commission methodologies. Primary determination of the wetland boundary was made based on vegetation (Coastal Commission-single parameter) and vegetation, soil characteristics, and direct observation of hydrology (COE-three parameters).

A. Botanical Methodology

Vegetation data collection consisted of listing the species at each plot in each layer (herb, shrub, tree). All species within a radius of five feet were listed in the herb and shrub layers and all species within a radius of 30 feet were listed in the tree layer. The species were then classified as to whether or not they are wetlands indicators, using the standard reference for plant wetlands indicators, National List of Plant Species that Occur in

Wetlands: California (Region Q) (Department of the Interior 1988). That document classifies plants based on the probability that they would be found in wetlands, ranging from Obligate (almost always in wetlands), Facultative/wet (67% to 99% in wetlands), Facultative (34% to 66% in wetlands), Facultative/up (1% to 33% in wetlands) to Uplands (less than 1% in wetlands). Plants not listed are included in the uplands category. If 50% or greater of the dominant plant species at each plot are classified Obligate (OBL), Facultative/wet (FACW), or Facultative (FAC), the vegetation is determined to be hydrophytic (wetland plants).

B. Soils Methodology

Soil test pits were dug to an approximate depth of 15 inches. The 1987 Manual's procedures were combined with the Natural Resources Conservation Service's (NRCS) definition of hydric soils presented in Changes in Hydric Soils of the United States and Field Indicators of Hydric Soils in the United States (United States Department of Agriculture (U.S.D.A.) 1995 and 1998 respectively). Care was taken to observe mottling (iron concentrations) and to distinguish between chromas of 1 and 2.

Soils/hydrology data sheets were prepared for use as supplements to the 1987 Manual's Data Sheet 1 (as modified by Winzler & Kelly, Consulting Engineers). Data sheets are attached (Appendix A). Color indicators of hydric soils were used in this delineation and are as follows:

1. Matrix chroma of 2 or less in mottled soils (1987 Manual)
2. Matrix chroma of 1 or less in unmottled soils (1987 Manual)
3. Colors (evidence of saturation) determined at 12 inches depth in poorly drained or very poorly drained soil (NRCS)

Colors were described for the entire depth of the test pit and were compared to the above parameters at a depth of 10 inches. Colors were determined on moist ped surfaces, which had not been crushed, using the Munsell Color Chart (Gretag Macbeth, 2000). Soils with low chromas were verified as being hydric or upland with Field Indicators of Hydric Soils in the United States, Version 5.0, 2002, using indicators for dark surface horizons (F5).

C. Hydrology Methodology

The delineation was performed during mid-winter. Direct evidence of ground water (soil saturation, standing water, etc.) was present in most of the wetland plots when the delineation was performed. Wetland hydrologic conditions were based on direct observation of the water table within 12 inches of the surface and on topography.

D. Wetland Determination

The wetland determination was made with an emphasis on redoximorphic soil features and the presence of wetland hydrology and wetlands vegetation. An area was determined to be a wetland when soil, vegetation, and hydrology met the wetlands criteria defined above (three parameter approach) as well as the existence of any one indicator (to satisfy Coastal Commission one-parameter approach). An area was determined to be uplands based on absence of wetland hydrology, hydrophytic vegetation, or wetland soil indicators (one-parameter approach). All wetland plots exhibited a predominance of FAC or wetter vegetation. All upland plots exhibited a predominance of FAC-up or drier vegetation.

Once wetland characteristics were determined for a transect, a flag was placed to delineate the limits of the wetland/upland boundary. Plot numbers were written on each flag. Flag locations were surveyed by Omsberg and Company, the results of which are attached as a APN 401-011-028 Wetlands Exhibit (back pocket).

V. RESULTS OF WETLAND DELINEATION

The parameters used to identify a wetland are characteristics of the soil, hydrology, and vegetation. To define a wetland, the COE (1987) requires that all three parameters show wetland attributes. The California Coastal Commission jurisdiction defines a wetland based on the presence of any one parameter. A wetland boundary line that satisfies the Coastal Commission methodology was identified, marked with flagging, surveyed and placed on the wetlands map (Figure 1, back pocket). A separate COE wetland boundary was placed on the delineation map. Results of analysis of the three on-site parameters, vegetation, soils and hydrology, are described below and presented on Figure 1 (back pocket).

Hydrophytic vegetation was dominant within the wetland area (see Appendix A, Data Sheets). Typical vegetation associated with Palustrine Persistent Emergent Seasonally Flooded wetlands include:

- Arroyo willow (*Salix lasiolepis*)
- Slough sedge (*Carex obnupta*)
- Hairy willow-herb (*Epilobium ciliatum*)
- California blackberry (*Rubus ursinus*)
- Common horsetail (*Equisetum arvense*)

All the above aforementioned species are OBL, FACW, or FAC designated indicator species (U.S. Fish and Wildlife Services, 1988). Upland vegetation (FAC-up or upland) was dominant or at least 50% present in all the upland plots. All upland plots were confirmed by upland soils, lack of wetland groundwater parameters, and lack of predominance of hydrophytic vegetation (obligate, FAC-wet, or FAC).

Soils in the area delineated were sandy loam in texture with the subsoil consisting of either sand or loamy sand. Wetland soils exhibited redoximorphic features typically found in hydric soils. These features included mottles (iron concentrations) at or above 10 inches from the soil surface,

gley soil color and sulfidic odor in two of the wetland plots. Wetland (hydric) soils had a matrix color of 2.5Y 2/1 at the surface underlain by soils with matrix colors of 2.5Y 3/2 and 5GY 4/1. Iron concentrations with a color of 10YR 3/3 existed in two of the wetland plots within 10 inches of the surface. Upland soils had surface colors of 2.5Y 2/1 underlain by soils with matrix colors of 2.5Y 3/2 and no redoximorphic features within 10 inches of the surface, the low chroma of which is due to organic matter inputs from the dune vegetation and overhanging trees (see Appendix A, Data Sheets).

Hydrologic conditions were present in the wetland plots to confirm the wetland/upland boundary. Each of the three wetland plots exhibited one primary hydrology indicator. The primary indicators of hydrology noted during this delineation consisted of drainage patterns at transect W1T1 and water table encountered within 12 inches of the surface at transect W1T6. The secondary indicators noted on at least one of the wetland plots were a pass on the FAC-neutral test, positive α , α' -dipyridyl test and oxidized root channels.

VI. CONCLUSIONS

The wetland delineation of February 7, 2005 identified the wetland boundary on APN 401-011-028 and a portion of APN 401-011-028. The area with a single parameter (vegetation) was mapped as a Coastal Commission wetland. The area with hydrophytic vegetation, hydric soil characteristics, and in association with observable hydrology was classified as Palustrine Persistent Emergent Seasonally Flooded wetland COE-three parameters. The Coastal Commission wetland is the extent of established mature willow trees. The COE wetland area maintains a boundary at the base of the slope of a dune berm on the southeastern portion of the subject property (and northern edge of APN 401-011-023). The dash/dot wetland boundary line complies with the Coastal Commission definition of a wetland. The dash/double dot boundary line complies with the COE definition of a wetland. A "Wetland Exhibit" (wetlands boundary map) is included in the back pocket of this report. All field data sheets from the delineation area are included in Appendix A.

VII. RECOMMENDATIONS

On APN 401-011-028 (and adjacent APN 401-011-023) palustrine wetlands exist. These wetlands are influenced by accumulated rainfall, surface runoff and high groundwater. Plants that are tolerant to these conditions exist here and are outlined in section V above. The primary function of this wetland is flood control, as they attenuate flood waters, from surface runoff. During high precipitation events these wetlands act like sponges reducing flooding impacts. A secondary function of these wetlands is biological. Both wetlands house invertebrates that are fed upon by birds and mammals. The palustrine wetland has cover and breeding habitat for birds and small mammals, and may serve as a migratory corridor. No special-status species were observed during the delineation on February 7, 2005. The uplands and wetland edge of the palustrine wetland found on APN 401-011-028 appears to have been impacted by historic, natural or man made sand movement. An existing access driveway occurs adjacent to the existing wetlands. The three parameter COE wetlands delineation shows that there is a 15' to 65' wider wetlands edge using the one parameter wetland approach (created by the establishment of willows). Based on the values of the onsite wetlands, the proposed development and break in slope, a setback of 15

to 50 feet (average of 25') is recommended from the 1-parameter wetlands and 25' to 80' (average 45') from the 3-parameter wetlands. Through nearly the entire parcel length adjacent to the COE wetlands, a 4'-5' sand berm exists. The berm acts as a buffer itself from the proposed development. Therefore a 100' wide buffer for this property would not be necessary to protect the existing wetlands. The 15'-50' wide buffer, primarily vegetated with willows and California blackberry, shall be maintained and not reduced in size. Planting of native trees; red alder (*Alnus rubra*), willow (*Salix* sp.) wax myrtle (*Myrica californica*) and/or Sitka spruce (*Picea stichensis*) is recommended to enhance the existing buffer.

VIII. SPECIAL TERMS AND CONDITIONS

To achieve the delineation objectives stated in this report, we based our conclusions on the information available during the period of the investigation, February 7, 2005. This report does not authorize any individuals to develop, fill or alter the wetlands delineated. Verification of the delineation by jurisdictional agencies is necessary prior to the use of this report for site development purposes. Permits to affect wetlands must be obtained from the involved government agencies. If permits are obtained to develop the delineated wetlands after agency review, and written verification, the delineation is given a 5-year expiration period. If filling is used under permitted authority, care should be given to maintain and sufficient quantity of fill to prevent a reestablishment of wetlands. Land use practices and regulations can change thereby affecting current conditions and delineation results.

This report was prepared for the exclusive use of Tina Christensen and Phillip Kable. Winzler & Kelly is not liable for any action arising out of the reliance of any third party on the information contained within this report.

IX. REFERENCES

Gretag Macbeth, 2000. Munsell Soil Color Charts.

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WINZLER & KELLY
CONSULTING ENGINEERS

Ref: 10043-05001-11031

May 5, 2005

RECEIVED

Mr. Michael Richardson
Humboldt County Planning Division
Community Development Services
3015 H Street
Eureka, CA 95501

AUG 25 2005

CALIFORNIA
COASTAL COMMISSION

Re: CDP-02-106M, Kable Wetlands, Response to Comments

Dear Mr. Richardson:

This letter is in response to comments made regarding the Kable Wetlands Delineation report prepared February 2005 by Winzler & Kelly Consulting Engineers. This response was prompted by comments prepared by individuals in opposition to CDP-02-106M. This response will address the comments shown on Attachment 1 of the letter dated April 21, 2005 from the Residents of south Manila written to the Humboldt County Planning Commission. Winzler & Kelly's scope of work was to conduct a wetlands delineation and propose buffer recommendations. Winzler & Kelly is familiar with U. S. Army Corps of Engineers (COE) and California Coastal Commission (CCC) wetland parameters. Both parameters were used in this project for mapping purposes.

Staff Report Page #43: "Wetland type vegetation, soils and possibly hydrology exist north of the "wetland/upland boundary" and are easily observed by non-professionals." A photograph of the area that is being questioned is provided in Figure 1 of the April 21, 2005 letter.

Response: The area in question lies adjacent to and northwest of the wetlands boundary recognized by the delineation conducted by Winzler & Kelly. The wetlands boundary was placed on February 7, 2005 and verified on February 14, 2005 by Certified Professional Soil Scientist (03208), Misha Schwarz, Department Manager of Environmental Science, Planning and Permitting at Winzler & Kelly. Mr. Schwarz checked the delineation as part of Winzler & Kelly's field work quality control measures. Soil pits were dug adjacent to and within the area shown in Figure 1. There were no wetland soils present and no wetlands hydrology was observed. Vegetation located in the area is a composite of wetland plants and non-wetland plants. The vegetation in the area in question is a mix of both upland and wetland plant species growing within an area that has previously been graveled and used as an access road. When wetland methodologies are applied in soils high in gravel accumulation, those areas are often considered atypical situations and often are considered uplands.

Staff Report Page #44: "This delineation was performed after a long period of unusually dry conditions"

Response: The wetland delineation conducted by Winzler & Kelly on February 7, 2005. The yearly accumulated rainfall to that date for Eureka at the National Weather Service Forecast



Mr. Michael Richardson

May 5, 2005

Page 2

Office was 24.37", while the annual average accumulated rainfall for Eureka to that date is 23.00". The percent average rainfall for the year to date on February 7, 2005 was 106% of normal. Accumulated rainfall for the months of December and January was 9.43" (149% of normal) and 5.91" (99% of normal) respectively. Accumulated rainfall for Eureka in the two weeks prior to the delineation was 1.41". The Humboldt County Department of Health and Human Services opened Wet Weather testing period for the county on January 3, 2005. This is done when groundwater recharge has been reached after adequate rainfall has been received. This information is used by geologist and engineers to test the placement of individual sewage disposal systems. Winzler & Kelly is an engineering firm that uses the wet weather testing season for locating septic systems for clients. The county groundwater recharge criteria are often accounted for when determining if wetland delineations are being done at the proper season to observe groundwater hydrology at delineation site. It was determined that there was more than enough accumulated rainfall to have normal or above normal groundwater conditions at the Manila wetlands site.

Staff Report Page #46: "Palustrine wetlands are not subject to tidal flow"

Response: No disagreement to this comment. Palustrine wetlands are those found on the subject parcel which was delineated.

Staff Report Page #46: "Plants that are tolerant to these conditions exit (sic) here"

Response: This was a typographical mistake and "exit" should read "exist".

Staff Report Page #46: "No special-status species were observed during the delineation"

Response: The observation remains the same on February 7, 2005 and as of the present for the delineation wetlands. An Osprey has apparently begun nesting in a large spruce snag to the southwest of the subject parcel since the delineation fieldwork was conducted. The nest appears to approximately 300 feet away from the parcel.

Staff Report Page #46: "No existing access driveway occurs..."

Response: Gravel is present on either side of the gate located in the front of the parcel that is perceived to have been placed as road base rock. Although not maintained as a road presently there appears to be no impediment to any vehicle for the length of the graveled section.

Staff Report Page #46: "The setback on the development plan at the "existing driveway" is not marked but is clearly 0 feet in effect"

Response: The gravel access is an existing condition and recognized access for the parcel. No setback was proposed for the existing access.

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Mr. Michael Richardson

May 5, 2005

Page 3

Staff Report Page #47: "The "berm" referenced runs from about 40' in the wetland itself parallel with the property line which is almost 300' in length.

Response: The berm is a sand slope or break in slope, 4'-5' (or greater) in height, that is located approximately between the mapped COE wetlands line and the CCC wetlands line. The length of this sand slope opposite the proposed development is approximately 190' and not 300'. The berm is mostly covered in dense willow vegetation that has been mapped as CCC wetland although the willows are growing in non-wetlands soils (dune sand) or in any wetlands hydrologic regime (estimated 4'-5' from groundwater). The berm or sand slope is not readily seen on the parcel topographical map since the berm is located on the adjacent property (APN 401-11-010) and therefore not mapped.

Staff Report Page #47: "The premise of the berm is incorrect..."

Response: The berm, sand slope or break in slope which is 4'-5' high (or greater) and vegetated with dense willow cover would act as an adequate buffer from the COE wetlands. The proposed building site would be at an elevation similar to the next door house and situated farther (approximately 70') from COE wetlands than the adjacent house itself, which is located directly across Peninsula Drive from COE wetlands (about 50'). The buffer distance from the proposed house site and dense willows that are growing on the berm provide an effective buffer from activities which could conceivably occur in the subject parcel site.

Staff Report Page #47: "Planting of native trees is recommended to enhance the existing buffer"

Response: The planting of native trees in an existing easement, if an actual easement occurs, would need to be addressed between the parties that would be involved.

Staff Report Page #47: "The information available on February 7, 2005 is insufficient to support the findings and recommendations made and cannot be considered complete and reliable for the purposes of the findings required.

Response: There is no recognized omission of facts that would suggest any lack of sufficient information presented in the wetlands delineation conducted by Winzler & Kelly Consulting Engineers on February 7, 2005.

Thank you for an opportunity to respond to the presented questions to the Kable wetlands report.

Sincerely,
WINZLER & KELLY

A handwritten signature in dark ink, appearing to read "Gary S. Lester".
Gary S. Lester

11 of 12

