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Staff:	Tiffany S. Tauber
Staff Report:	August 25, 2006
Hearing Date:	September 15, 2006
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.:	A-1-MEN-94-105-A3
APPLICANT:	Michael Garrison
PROJECT LOCATION:	Bluff top parcel west of Highway One, approximately one mile south of Albion at 2000 North Highway One, Albion, Mendocino County (APN 123-300-05)
DESCRIPTION OF ORIGINAL APPROVED PROJECT:	Construction of a single-family residence, garage, barn, driveway, well, and septic system.
DESCRIPTION OF AMENDMENT NO. 1:	Relocate the water source to obtain water from APN 123-320-03 located east of Highway One and conveyed via an existing conduit.
DESCRIPTION OF AMENDMENT NO. 2:	Redesign the approved barn to (a) reduce the size from 5,376 square feet to 1,240 square feet, (b) reduce the height from 28 feet to approximately 22 feet, and (c) reduce the number of windows consistent with plans prepared by Zijlstra Architecture dated June 28, 2004.

**DESCRIPTION OF PROPOSED
AMENDMENT:**

Installation of (1) a 3kw wind turbine mounted on an approximately 60-foot-high, one-square-foot lattice structure stabilized with guy wires, and (2) 200-240 square feet of free-standing solar panels.

GENERAL PLAN DESIGNATION: Remote Residential

ZONING DESIGNATION: Remote Residential – 40 acres (RMR: L-40)

LOCAL APPROVALS RECEIVED: None Required

SUBSTANTIVE FILE DOCUMENTS: Mendocino County LCP; CDP File No. A-1-94-105

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission take one vote adopting a two-part resolution, which would approve a portion of the applicant's proposed amendment and deny another portion of the proposed amendment. The existing Special Conditions 1-10 of CDP No. A-1-MEN-94-105 as amended remain in full force and effect and staff recommends that the Commission further impose Special Condition No. 11 as described below.

The proposed amendment request seeks approval to install (1) a 3kw wind turbine mounted on an approximately 60-foot-high, one-square-foot lattice structure stabilized with guy wires, and (2) 200-240 square feet of free-standing solar panels.

The subject property is located west of Highway One, in an area designated "highly scenic" in the County's LCP. The project site is visible to travelers headed northbound on Highway One and is less visible heading southbound on Highway One due to a dense stand of trees along the northern edge of the property. The site is also visible from the Navarro Headlands blufftop public access area recently acquired by the Mendocino Land Trust and located just south of the subject site. Thus, the primary issue raised by the project as proposed to be amended is the protection of visual resources.

Staff recommends approval of the project component that involves the installation of 200-240 square feet of solar panels. Staff believes that with the attachment of new Special Condition No. 11 that requires the applicant to plant trees to screen the proposed solar panels consistent with the proposed landscape plan submitted by the applicant, the project can be found to be consistent with the visual resource protection policies of the LCP. Specifically, the plan provides for fifteen Monterey Cypress trees planted in

various locations, which in addition to landscaping recently planted at the site pursuant to the original permit (CDP No. A-1-MEN-94-105), would effectively result in screening on three sides of the proposed solar panel location, thereby minimizing any view of the solar panels from public vantage points. As a result, the proposed solar panels would be screened such that they would be visually compatible with the character of the surrounding area, subordinate to the natural setting, and the visibility of any reflective surfaces would be minimized as required by the LCP.

Staff recommends denial of the project component involving the installation of a 3kw wind turbine mounted on an approximately 60-foot-high, one-square-foot lattice structure stabilized with guy wires. Although the proposed lattice tower has a small footprint, (one-square-foot), the design is such that it would not be compatible with the character of the surrounding area or subordinate to the natural setting. With crisscross supporting members and approximately eight diagonal guy wires, the design instinctively draws one's eye to the structure in contrast to the predominantly vertical elements of the forested backdrop. Additionally, the galvanized steel lattice structure has a distinct "industrial" appearance that makes it stand out as being a type of development not ordinarily expected to be seen in conjunction with residential development in a scenic natural setting. Thus, as proposed, the wind turbine would not be visually compatible with the character of the surrounding area or subordinate to the natural setting as required by the LCP. Furthermore, staff recommends that the Commission find that there are feasible less environmentally damaging alternatives to this component of the applicant's amendment request.

The motion to adopt the staff recommendation to approve in part and deny in part is found on page 4.

STAFF NOTES:

1. Procedural Note

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if: (a) it lessens or avoids the intent of the approved permit; unless (b) the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted.

On August 11, 1995, the Commission approved revised findings for Coastal Permit No. A-1-MEN-94-105 for the construction of a single-family residence, garage, barn, driveway, well, and septic system. The permit was approved with ten special conditions intended to assure consistency with the provisions of the Coastal Act regarding the

protection of environmentally sensitive habitat and visual resources. Two amendments to this permit were subsequently approved, but these amendments did not result in changes to the ten special conditions originally imposed by the Commission.

The proposed amendment originally submitted by the applicant involved installation of (1) a 3kw wind turbine mounted on a free-standing, 60-foot-high, 4-inch-diameter, black monopole, (2) 200-240 square feet of free-standing solar panels, and (3) landscaping to screen the development. The Executive Director determined that the originally proposed amendment could be conditioned in a manner that would not increase the visual impact of the project. Accordingly, staff believed the development as originally proposed to be amended would conform to the policies and standards of the certified Mendocino LCP with respect to designing and siting development so as to be consistent with the visual resource policies. Since the originally submitted amendment request would not result in a lessening or avoidance of the intent of the originally approved permit, the Executive Director accepted the amendment request for processing.

Subsequent to the Executive Director accepting the amendment request, the applicant revised the project description to change the design of the proposed wind turbine tower in a manner that staff believes would not conform with the visual resource protection policies of the LCP. Therefore, staff is recommending denial of this component of the applicant's amendment request.

2. Standard of Review

The Coastal Commission effectively certified Mendocino County's LCP in October of 1992. Pursuant to Section 30604 of the Coastal Act, after effective acceptance of a certified LCP, the standard of review for all coastal permits and permit amendments for developments located between the first public road and the sea is the certified LCP and the public access policies of the Coastal Act.

I. MOTION and RESOLUTION:

The staff recommends that the Commission adopt the following two-part resolution. The motion passes only by an affirmative vote of a majority of the Commissioners present.

MOTION: I move that the Commission adopt the staff recommendation to approve in part and deny in part the amendments to Coastal Development Permit A-1-MEN-94-105-A3 requested by the permittee, with approval subject to the conditions recommended by staff, by adopting the two-part resolution set forth in the staff report.

RESOLUTION:

Part 1: Approval with Conditions of a Portion of the Proposed Development

The Commission hereby **GRANTS, as conditioned**, an amended coastal development permit for the portion of the project consisting of:

- 1) Installation of 200-240 square feet of free-standing solar panels

and adopts the findings set forth below on grounds that the amended development as conditioned will be in conformity with the Mendocino County LCP and the public access policies of the Coastal Act and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Proposed Development

The Commission hereby **DENIES** a coastal development permit for the portion of the proposed development consisting of:

- 1) Installation of a 3kw wind turbine mounted on an approximately 60-foot-high, one-square-foot lattice structure stabilized with guy wires

and adopts the findings set forth below, on the grounds that the amended development will not be in conformity with the Mendocino County LCP and the public access policies of the Coastal Act and would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable amount of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

Special Condition Nos. 1 through 10 of the original permit (CDP No. A-1-MEN-94-105) remain in full force and effect. The full text of these conditions is included in Exhibit No. 5 attached to this staff report. New Special Condition No. 11 is hereby imposed, and set forth below.

11. Additional Landscaping Requirements

1. The permittee shall undertake development in accordance with the proposed landscape plan attached to the staff report as Exhibit No. 3. All plantings shall occur within 60 days of completion of the project.
2. No limbing or pruning of the visually screening trees already existing or planted pursuant to the approved landscaping plan shall occur unless a permit amendment is obtained and issued prior to the commencement of limbing and pruning.
3. All plantings and all existing trees on the parcel shall be maintained in good growing conditions throughout the life of the project, and to ensure continued compliance with the approved landscaping plan. If any of the existing trees or any of the trees to be planted according to the plan die or are removed for any reason, they shall be immediately replaced in-kind or with native non-invasive species common to the area of local genetic stock that will grow to a similar or greater height.
4. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the governments of the State of California or the United States shall be utilized within the property.
6. No rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone, Brodifacoum or Diphacinone shall be utilized within the property.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Site Description, Background, & Proposed Amendment

Site Description

The subject property is located west of Highway One in the Navarro Headlands in an area designated "highly scenic" in the County's LCP. This area, just north of where Highway 128 intersects with Highway One at the coast, has been characterized in the past by the Commission as "perhaps the most scenic of the entire Mendocino coast," offering dramatic views of rocky, open headlands and breathtaking ocean vistas. The area is generally undeveloped with mostly vacant parcels on both sides of Highway One with the exception of some low density residential development. The Navarro Headlands public access area recently acquired by the Mendocino Land Trust is located just south of the subject property.

The 13-acre property slopes gently from the highway to the ocean bluffs, which are approximately 150-190 feet in height. The property is traversed by an approximately 10 to 15-foot deep gulch with flowing water along the northwest corner. Additionally, an east-west trending watercourse bisects the property approximately 200 feet south of the northern property line. A wet boggy area 20 feet or more in width is adjacent to this channel, widening considerably on the westerly half of the lot. The southern portion of the parcel is primarily open and provides unobstructed ocean views while the northern portion of the parcel is vegetated with a dense stand of coniferous pine trees.

The subject property is zoned in the County's LCP as Remote Residential-40 acre minimum (RMR:L-40), meaning that there may be one parcel for every 40 acres, and that the parcel is designated for residential use or light agriculture. The subject parcel, which is approximately 13 acres in size, is a legal, non-conforming lot.

The site is currently developed with a recently constructed single-family residence pursuant to the original permit (CDP No. A-1-MEN-95-105), a well house, and a shed that encloses a diesel generator currently used to supply power to the residence.

Background

The original permit application was approved by the Commission on June 14, 1995 with revised findings adopted on August 11, 1995. The approved permit authorized the construction of a single-family residence, garage, barn, driveway, well, and septic system.

The permit was approved with ten Special Conditions that required (1) submittal of a revised site plan locating the house and appurtenant structures outside the 50-foot riparian buffer area; (2) submittal of plans for the driveway and proposed riparian crossing that avoid the use of fill, (3) submittal of a final landscaping/tree maintenance plan that provides for tree planting to screen the residence and barn from public view from Highway One while maintaining views of the ocean, (4) design restrictions requiring low-watt, downcast lighting, natural exterior materials of dark earthtone colors, and non-reflective roof and windows, (5) recordation of an open space deed restriction over the riparian habitat, (6) recordation of a deed restriction to prohibit use of the barn as a second residential structure, (7) submittal of final foundation and site drainage plans, (8) installation of fencing along the riparian buffer area prior to placing livestock on the property, (9) no tree removal other than for roadway encroachment or CDF purposes without a permit or permit amendment, and (10) recordation of a future development deed restriction.

Two immaterial amendments were approved subsequent to the original project approval. On January 10, 1997 CDP Amendment No. A-1-MEN-94-105-A was reported to the Commission and involved relocating the water source to obtain water from APN 123-320-03 located east of Highway One and conveyed via an existing conduit. On October 12, 2004, CDP Amendment No. A-1-MEN-94-105-A2 was reported to the Commission and involved modifications to the approved barn including (1) reducing the size from 5,376 square feet to 1,240 square feet, (2) reducing the height from 28 feet to approximately 22 feet, and (c) reducing the number of windows consistent with plans prepared by Zijlstra Architecture dated June 28, 2004. These immaterial amendments did not include any additional special conditions.

Permit Amendment Description

The proposed amendment request seeks approval to install (1) a 3kw wind turbine mounted on an approximately 60-foot-high, one-square-foot lattice structure stabilized with guy wires, and (2) 200-240 square feet of free-standing solar panels. The wind turbine and solar panels would be located north of the existing generator shed between

the residence and the shed along the northern edge of the property. The proposed amendment also includes a landscaping plan that involves planting fifteen Monterey Cypress trees; four to the northwest of the residence, six along the eastern edge of the generator shed, and five south of the shed to screen the proposed development. (See Exhibit No. 3).

The applicant currently utilizes an on-site diesel generator to supply power to the residence, but is proposing to abandon use of the generator due to the associated noise and high cost and convert to wind and solar power. The applicant has indicated that power from PG&E is not available to his site without securing utility easements from neighboring landowners.

B. APPROVAL FINDINGS AND DECLARATIONS

The findings in this section apply only to that portion of the proposed project that is described in Part 1 of the Commission's resolution on this permit application, which portion is therefore being conditionally approved.

The portion of the applicant's amendment request recommended for approval with conditions includes the proposed installation of 200-240 square feet of free-standing solar panels.

1. Visual Resources

Summary of LCP Policies

Section 30251 of the Coastal Act has been specifically incorporated into LUP Policy 3.5-1 of the Mendocino LCP and states in part:

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

LUP Policy 3.5-3 states in applicable part:

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

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

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

NOTE 1: The LUP Maps designate the area west of Highway One in the project vicinity as highly scenic.

NOTE 2: Coastal Zoning Ordinance 20.504.015(A) reiterates that this section of coastline is a "highly scenic area."

Zoning Code Section 20.504.015(C)(1) states that:

Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

Zoning Code Section 20.504.015(C)(2) states that:

In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

Zoning Code Section 20.504.015(C)(3) states that:

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

Zoning Code Section 20.444.025 Height Exceptions states in applicable part:

(A) Radio and television aerials and antennae, and similar utility structures and necessary mechanical appurtenances may be built and used to a height not more than twenty-five (25) feet above the height limit established for the district in which the structures are located, provided, however, that no such structure in excess of the allowable building height shall be used for any commercial or

advertising purposes. Wind generators and their associated towers, air emission towers and smoke stacks may be built and used to a height of one hundred (100) feet as measured from the ground to the highest point of the system consistent with environmental constraints and in conformance with all applicable regulations of this Division.

Discussion

Policy 3.5-1 of the County's LUP provides for the protection of the scenic and visual qualities of the coast, requiring permitted development to be sited and designed to protect views to and along the ocean and to be visually compatible with the character of surrounding areas. Policy 3.5-3 states that new development west of Highway One in designated "highly scenic areas" should be subordinate to the natural setting. The County's Zoning Ordinance reiterates these policies. Specifically, Coastal Zoning Ordinance Section 20.504.015(C)(1) requires that new development in highly scenic areas protect coastal views from public areas including roads and trails. Section 20.504.015(C)(2) of the Zoning Code requires an 18-foot height limit for parcels located west of Highway One in designated highly scenic areas, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Coastal Zoning Ordinance Section 20.504.015(C)(3) requires that new development be subordinate to the natural setting and minimize reflective surfaces and requires that in highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

As noted above, the subject property is located west of Highway One, in an area designated "highly scenic" in the County's LCP. The project site is visible to travelers headed northbound on Highway One and is less visible heading southbound on Highway One due to a dense stand of trees along the northern edge of the property. The site is also visible from the Navarro Headlands blufftop public access area recently acquired by the Mendocino Land Trust located just south of the subject site.

The applicant proposes to install 200-240 square feet of free-standing solar panels near the northern edge of the property between the existing generator shed and the residence. The applicant also proposes to plant fifteen Monterey Cypress trees in various locations to further screen the development (see Exhibit No. 3).

The proposed solar panels would be mounted on posts in the ground rather than on the roof of the residence and would be sited against a backdrop of the existing mature stand of trees. As the solar panels would be low to the ground, they would be less prominently visible than panels mounted on the roof of the residence. However, the 200-240 square feet of solar panels would add another structure to the viewshed.

As noted above, the LCP requires that new development in highly scenic areas minimize reflective surfaces. A common visual impact associated with the development of solar

panels is their tendency to be of reflective materials that cause glare when viewed from certain angles. The technology of solar panel construction has advanced to allow for the availability of various designs and materials that are less reflective than older models. For example, certain models of newer solar panels are a dark glassy blue color, often appearing black, that tend to be less reflective than older models. It is not clear whether the proposed solar panels proposed by the applicant would be of materials designed to minimize reflective surfaces as required by CZC Section 20.504.015(C)(3).

However, as noted above, the applicant proposes to plant additional trees in areas that would minimize the view of the solar panels from public vantage points. The landscape plan submitted by the applicant provides for five trees to be planted in a north-south orientation just south of the existing generator shed. These trees would screen the proposed solar panels from view of Highway One. The plan also provides for four additional trees to be planted in an east-west orientation west of the residence in an area that would provide screening from the blufftop trails of the public access area to the south. The plan also provides for a row of east-west oriented trees behind the location of the proposed solar panels, which in addition to landscaping recently planted at the site pursuant to the original permit (CDP No. A-1-MEN-94-105), would effectively result in screening on three sides of the proposed solar panel location, thereby minimizing any view of the development from public vantage points. As a result, the proposed solar panels would be screened such that they would be visually compatible with the character of the surrounding area, subordinate to the natural setting, and the visibility of any reflective surfaces would be minimized.

To ensure that the landscape plan is implemented as proposed, the Commission attaches Special Condition No. 11 that requires the applicant to undertake development in accordance with the proposed landscape plan within 60 days of project completion and prohibits limbing or pruning of the visually screening trees already existing or planted pursuant to the approved landscaping plan without a permit amendment.

Furthermore, installation of the proposed solar panels would not involve significant grading or alteration of topographic features consistent with the provisions of LUP 3.5-1 requiring that permitted development minimize the alteration of natural landforms.

Therefore, the Commission finds that as conditioned, the portion of the proposed amendment involving installation of 200-240 square feet of free-standing solar panels is consistent with Policies 3.5-1 and 3.5-3 of the LUP and with Section 20.504.015(C) of the Zoning Code, as the amended development would (1) be within applicable height limits for the designated highly scenic area, (2) be sited and designed to protect coastal views from public areas, (3) be visually compatible with the character of surrounding areas, (4) be subordinate to the natural setting, and (5) minimize alteration of natural landforms.

2. Introduction of Exotic Invasive Plants

The subject property contains wetland and riparian ESHA located outside of the proposed location of the proposed solar panels. These environmentally sensitive habitat areas were protected by special conditions of the original permit and would not be affected by the proposed solar panels, as the solar panels would be located outside of the ESHA buffer area established by the original permit. However, the ESHA could be adversely affected if non-native invasive plant species were introduced to the site. The use of non-invasive plant species adjacent to environmentally sensitive habitat areas (ESHAs) is critical to protecting such areas from disturbance. If invasive species are planted adjacent to an ESHA they can displace native species and alter the composition, function, and biological productivity of the ESHA.

The applicant proposes to plant fifteen Monterey Cypress trees to screen the proposed solar panels from public vantage points as discussed above. However, the proposed landscaping plan does not specifically preclude the planting of other plant species beyond those identified in the permit application. Therefore, the Commission attaches Special Condition No. 11 that specifically prohibits the planting of any plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. Furthermore, no plant species listed as a 'noxious weed' by the governments of the State of California or the United States are to be utilized in the revegetation portion of the project. Moreover, to assure the genetic integrity of the plant community within the project area and the adjacent ESHA, Special Condition No. 11 requires that all landscaping be native, non-invasive species obtained from local genetic stocks.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/ wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species.

To avoid this potential cumulative impact to environmentally sensitive wildlife species, imposed Special Condition No. 11 contains a prohibition on the use of such anticoagulant-based rodenticides.

3. Public Access

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

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

The subject parcel is located west of Highway One and sits atop a steep bluff that rises to approximately 150-190 feet. There is no physical access from the subject parcel to the shoreline due to the very steep bluff. In addition, the Commission did not require public access as a condition of the original permit for development of the home, barn, and appurtenant structures. Furthermore, there is no evidence of any public use of the subject site for blufftop or beach access. Therefore, the proposed amended development would not interfere with existing public access. Furthermore, the proposed amended project would not create any new demand for public access or otherwise create any additional burdens on public access. Public access to the coast is available nearby at the Navarro Point area recently acquired by the Mendocino Land Trust located just south of the site along Highway One.

Therefore, the Commission finds that the portion of the proposed amended development involving installation of solar panels does not have any significant adverse impact on existing or potential public access, and that the amended development as proposed, which does not include provision of public access, is consistent with the requirements of the Coastal Act Sections 30210, 30211, and 30212 and the public access policies of the County's certified LCP.

4. California Environmental Quality Act (CEQA)

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

The Commission incorporates its findings on LCP and Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the development as amended has been conditioned to be found consistent with the policies of the certified Mendocino County LCP and the public access and recreation policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been required as permit amendment special conditions.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the development as amended and conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

C. DENIAL FINDINGS AND DECLARATIONS

The findings in this section apply only to that portion of the proposed development that is described in Part 2 of the Commission's resolution on this permit amendment application, which portion is hereby being denied.

The portion of the permittee's amendment request recommended for denial includes the proposed installation of a 3kw wind turbine mounted on an approximately 60-foot-high, one-square-foot lattice structure stabilized with guy wires.

1. Visual Resources

Summary of LCP Policies:

(See LCP Policies cited in Finding B(1) above).

Discussion

Policy 3.5-1 of the County's LUP provides for the protection of the scenic and visual qualities of the coast, requiring permitted development to be sited and designed to protect views to and along the ocean and to be visually compatible with the character of surrounding areas. Policy 3.5-3 states that new development west of Highway One in designated "highly scenic areas" should be subordinate to the natural setting. The County's Zoning Ordinance reiterates these policies. Specifically, Coastal Zoning Ordinance Section 20.504.015(C)(1) requires that new development in highly scenic areas protect coastal views from public areas including roads and trails. Section 20.504.015(C)(2) of the Zoning Code requires an 18-foot height limit for parcels located west of Highway One in designated highly scenic areas, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Coastal Zoning Ordinance Section 20.444.025 sets forth provisions for height exceptions and provides, in applicable part, that wind generators and their associated towers may be built and used to a height of one hundred (100) feet as measured from the ground to the highest point of the system consistent with environmental constraints and in conformance with all applicable regulations of the Ordinance. Coastal Zoning Ordinance Section 20.504.015(C)(3) requires that new development be subordinate to the natural setting and minimize reflective surfaces and requires that in highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

As discussed above, the subject property is located west of Highway One, in an area designated "highly scenic" in the County's LCP. The character of the surrounding area is largely defined by the vast expanse of grassy coastal terrace with sweeping blue water views of the ocean and scattered stands of dense coniferous trees. The area to the north is also characterized by low-density, earthtone-colored residential development.

The applicant proposes to install a 3kw wind turbine mounted on an approximately 60-foot-high, one-square-foot lattice structure stabilized with guy wires. (See Exhibit No. 4). The proposed structure would not significantly block views to and along the coast from any public vantage point because although the tower would be quite tall, it would be one-square-foot in area and is not a solid structure. Thus, it would not create a significant lateral obstruction and glimpses of blue water views would still be available through the structure itself. Rather, the visual issues center around whether the development would be compatible with the character of the surrounding area and subordinate to the natural setting. The wind turbine would be prominently visible from Navarro Headlands public access area as well as from northbound Highway One, and minimally visible from southbound Highway One.

The applicant originally proposed a 3kw wind turbine mounted on a free-standing, black, 60-foot-high, 4-inch-diameter, tubular monopole. Based on a photo-simulation submitted by the applicant and a visit to the site, Commission staff determined that this design

could potentially be found to be compatible with the character of the surrounding area and subordinate to the natural setting as required by the visual resource protection policies of the LCP. The black, free-standing monopole would be set against the dense background of mature trees located along the northern edge of the property where the color and height of the pole would blend visually with the color and dominant vertical line of the dark-colored trunks of the trees.

However, following filing of the application, the applicant amended the project description to revise the design from a monopole tower to the currently proposed 60-foot-high lattice tower supported by guy wires. The applicant indicates that further research revealed that the originally proposed monopole design had inherent limitations with regard to the size and weight of the turbine it can support. Based on the applicant's calculated need for a 3kw turbine to supply his power needs and the need for a turbine that can withstand the corrosive coastal environment, the applicant concluded that there was only one manufacturer that met his needs and could provide a high quality product. The proposed turbine weighs 209 pounds and is required to be supported on the proposed guyed lattice tower. The applicant asserts that turbines that could be supported on a monopole are either not sufficient to meet his power needs (i.e., 1kw), or are of poor quality.

Although the proposed lattice tower has a small footprint, (one-square-foot), the design is such that it would not be compatible with the character of the surrounding area or subordinate to the natural setting. With crisscross supporting members and approximately eight diagonal guy wires, the design instinctively draws one's eye to the structure in contrast to the originally proposed monopole design that blends with the predominantly vertical elements of the forested backdrop. Additionally, the galvanized steel lattice structure has a distinct "industrial" appearance that makes it stand out as being a type of development not ordinarily expected to be seen in conjunction with residential development in a highly scenic natural setting. In contrast, the originally proposed monopole design is more reminiscent of a flagpole, which is not as strikingly unusual of a feature at a residential site and would blend better with the vertical elements of the forested backdrop.

Additionally, LUP Policy 3.5-3 and Coastal Zoning Code Section 20.504.015(C)(2) limit the height of new development in highly scenic areas west of Highway One to eighteen (18)-feet above average natural grade unless an increase in height would not affect views to the ocean, or be out of character with surrounding structures. The proposed wind turbine tower would be approximately 60 feet high and would be significantly higher than any other surrounding development. As noted above, the tower would not block views to or along the ocean. However, as discussed above, the design of the lattice tower and supporting guy wires would be out of character with surrounding structures, as the surrounding structures are residential in nature and the proposed wind turbine design is more characteristic of industrial development rather than low density, rural residential development. Although the applicant proposes to plant additional trees at the site to

provide screening of the tower, the proposed landscaping would not be sufficient to screen the tower of the proposed design, as it would take many years for newly planted trees to grow to a sufficient height to screen the 60-foot-high tower. Therefore, the proposed 60-foot-high lattice tower with supporting guy wires is inconsistent with the height limitations of LUP Policy 3.5-3, and Coastal Zoning Code Section 20.504.015(C)(2), as it would be out of character with surrounding structures.

The Commission notes that CZC Section 20.444.025 sets forth provisions for height exceptions and states, in applicable part, that "...Wind generators and their associated towers...may be built and used to a height to one hundred (100) feet as measured from the ground to the highest point of the system consistent with environmental constraints and in conformance with all applicable regulations of this Division." Although this provision suggests that the proposed 60-foot-high wind tower may be acceptable as a use for which height exceptions may be made, as discussed above, the proposed tower does not conform with the other applicable visual resource policies of the LCP, and thus, does not meet the requirements of this exception.

Furthermore, the Commission finds that because there are no wind turbines comparable to the proposed guyed lattice tower located along the highly scenic Mendocino coastline, the proposed project, if approved, would set a precedent for any similar future proposals in highly scenic areas, which would have a significant adverse cumulative effect on visual resources provided by this stretch of coastline.

Therefore, for all of the reasons set forth above, the Commission finds that the portion of the amended development discussed in this Section of the Commission's findings is not consistent with LUP Policy 3.5-1, 3.5-3, and CZC Section 20.504.015 and therefore must be denied.

2. Environmentally Sensitive Habitat

LCP Policies

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

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

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

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

Discussion:

It is widely recognized that alternative energy, such as wind-generated energy as the applicant proposes, is considered to have certain environmental advantages over traditional power sources in that it eliminates pollution and hazardous air emissions associated with burning fuel. However, wind energy facilities can adversely impact wildlife, especially birds and bats, and their habitats (United States Fish and Wildlife Service, 2003). Direct killing can occur to bats and birds, particularly raptors, from striking moving blades. When birds approach spinning turbine blades, a phenomenon called "motion smear" occurs, which is caused by the inability of the bird's retina to process high speed motion stimulation. This occurs primarily at the tips of the blades, making the blades deceptively transparent at high velocities. This increases the likelihood that a bird will fly through this arc, be struck by a blade and be killed (Hodos et al. 2001).

Environmentally Sensitive Habitat Areas (ESHA) are defined in the Mendocino County LUP as "*any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*" CZC Section 20.496.010 further defines ESHA as including, in part, habitats of rare and endangered animals. It is not known at this time whether the project site contains habitat for any rare or endangered bird or bat species, as no wildlife surveys or other biological investigations have been conducted at the site for purposes of identifying the presence of any special status bird or bat species. However, the site is known to contain wetland and riparian habitats, which commonly support abundant and diverse bird populations and the coast serves as a corridor for migratory birds.

The US Fish and Wildlife Service (USFWS) prepared a guidance memo entitled, "*Service Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines,*" dated May 2003. The memo sets forth guidelines prepared to assist Service staff in providing technical assistance to the wind energy industry to avoid or minimize impacts to wildlife and their habitats through: (1) proper evaluation of potential wind energy development sites; (2) proper location and design of turbines and associated structures within sites selected for development; and (3) pre- and post-construction research and monitoring to identify and/or assess impacts to wildlife. The memo further indicates that implementation of the USFWS recommendations by the wind industry is voluntary and that use of the guidelines is on a case-by-case basis.

The Commission notes that regarding turbine design and operation, the USFWS guidelines recommend, in part, as follows:

Use tubular supports with pointed tops rather than lattice supports to minimize bird perching and nesting opportunities. Avoid placing external ladders and platforms on tubular towers to minimize perching and nesting. Avoid use of guy wires for turbine...support towers. (emphasis added)

As noted above, it is not known at this time whether the project site contains habitat for any rare or endangered bird or bat species, and thus, Commission staff has not consulted with the USFWS regarding the proposed project. The Commission notes that although the USFWS guidelines and recommendations are not binding policy, the recommendations seem to suggest that the proposed lattice tower design supported by guy wires is not a favorable design with regard to the protection of wildlife. Similarly, the American Bird Conservancy recommends that “wind turbines...be monopoles, and not of lattice construction, and use no guy wires” (www.abcbirds.org/policy/windenergy.htm).

Although the Commission finds that the proposed wind turbine supported by a lattice tower and guy wires must be denied due to inconsistencies with the Mendocino County LCP policies regarding visual resource protection as discussed in finding C(1) above, the Commission notes that any future application for a revised wind turbine design must be evaluated for potential impacts to ESHA. The American Bird Conservancy (ABC), for example, emphasizes that before approval and construction of new wind energy projects, potential risks to birds and bats should be evaluated through site analyses, including assessments of bird and bat abundance, timing and magnitude of migration, and habitat use patterns.

3. Alternatives to the Proposed Wind Turbine

i) Existing Diesel Generator

As noted previously, the applicant currently relies on a diesel generator to supply electrical power to his residence. The applicant has indicated that this means of power supply is both costly and noisy. However, the Commission’s denial of the proposed wind turbine does not preclude the applicant from continuing to utilize this arrangement for providing power at the site. As he has relied on the existing generator for several years, it is an established and demonstrably feasible alternative.

ii) Biodiesel Generator

As the applicant has clearly expressed an interest in alternative energy and, as noted above, is concerned in part with the cost of diesel fuel to run his existing generator, another feasible alternative would be to fuel the existing generator with “biodiesel.”

Biodiesel is made by reacting oils or fats, such as vegetable oil, with alcohol, yielding methyl and ethyl esters for fuel, and generating glycerin as a by-product. Bio-diesel is non-toxic, biodegradable and can be used in all diesel engines with little or no modifications to the engine (Noland and Baily, 2005). A primary limitation to the use of biodiesel is often its lack of availability. However, of the eleven retail outlets in northern California, four are located in Mendocino County.¹

iii) Additional Solar Panels

As discussed in Section B(1) above, the Commission finds that with conditions to ensure the protection of visual resources, the proposed solar panels can be found to be consistent with the policies of the Mendocino LCP. Thus, depending on the siting and design, expanding the solar panel array may be a feasible option for providing an additional power source at the site.

iv) Easements from Neighboring Property Owners

The applicant has indicated that PG&E connections are not available to the subject site without obtaining utility easements from neighboring property owners. Although the applicant asserts that the neighboring property owners have declined to provide easements for this purpose, the applicant has not provided any conclusive evidence that this alternative would not be feasible.

v) Alternative Wind Turbine Tower Design

The applicant asserts that the proposed lattice tower supported by guy wires is the only feasible design alternative to support a 3kw wind turbine that can withstand the corrosive conditions of the coastal environment. However, it is not clear that the applicant has exhausted all feasible design options potentially available. Wind energy is a vastly growing technology that, if not now, may in the near future provide for designs that are more suitable for a highly scenic coastal landscape. There may be various designs, or combinations of designs, that would be more aesthetically compatible with the area. For example, in certain locales, cellular towers have been designed as faux trees to blend with the natural surroundings. This type of design alternative may be feasible for the highly scenic project site. Additionally, as discussed in finding C(1) above, the originally proposed free-standing monopole design could potentially be considered to be consistent with the visual resource protection policies of the LCP although such a design may require a supplemental power source (i.e., in addition to a smaller 1kw turbine), and/or additional maintenance to meet the applicant's project objectives. Furthermore, as noted in the Environmentally Sensitive Habitat finding above, any future application that involves a wind turbine or guy wires must be evaluated for potential impacts to ESHA

¹ From the 21st Century Green Alternative Fuel Consultants web site: Community Energy Park in Willits; Eel River Fuels in Ukiah; Yokayo Biofuels in Ukiah; Solar Living Institute in Hopland.

and the results of such an evaluation could affect the feasibility of a monopole or other design. However, a feasible and suitable design may emerge.

Conclusion

For all of the reasons set forth above, the Commission finds that there are feasible less environmentally damaging alternatives to the portion of the applicant's amendment proposal involving the installation of a 3kw wind turbine mounted on a 60-foot-high lattice tower structure supported by guy wires, including continued use of the existing generator and the possible use of a biodiesel generator, additional solar panels, traditional power if easements can be secured from neighboring property owners, and less environmentally damaging alternative wind turbine tower designs. Therefore, the Commission finds that feasible less environmentally damaging alternative to the proposed project exist for the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the policies of the certified LCP.

4. California Environmental Quality Act (CEQA)

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would significantly lessen any significant effect that the activity may have on the environment.

The Commission incorporates its findings on Mendocino County LCP consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report.

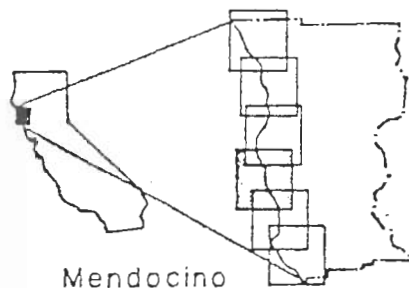
As discussed herein, in the findings addressing the consistency of the above-referenced portion of the proposed amendment with the Mendocino County LCP and the public access policies of the Coastal Act, the portion of the proposed amendment involving the proposed wind turbine is not consistent with the policies of the Mendocino County LCP regarding visual impacts of new development in designated highly scenic areas.

As also discussed above in the findings addressing project alternatives, there are feasible alternatives available which would substantially lessen any significant adverse impact that the development may have on the environment. Therefore, the Commission finds that the above-referenced portion of the proposed amendment cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Proposed Landscape Plan
4. Photo of Proposed Guyed Lattice Wind Turbine Tower
5. Revised Findings for Original Permit (CDP No. A-1-MEN-94-105)

EXHIBIT NO. 1
APPLICATION NO.
 A-1-MEN-94-105-A3
 GARRISON
 REGIONAL LOCATION



Mendocino

APPROXIMATE LOCATION

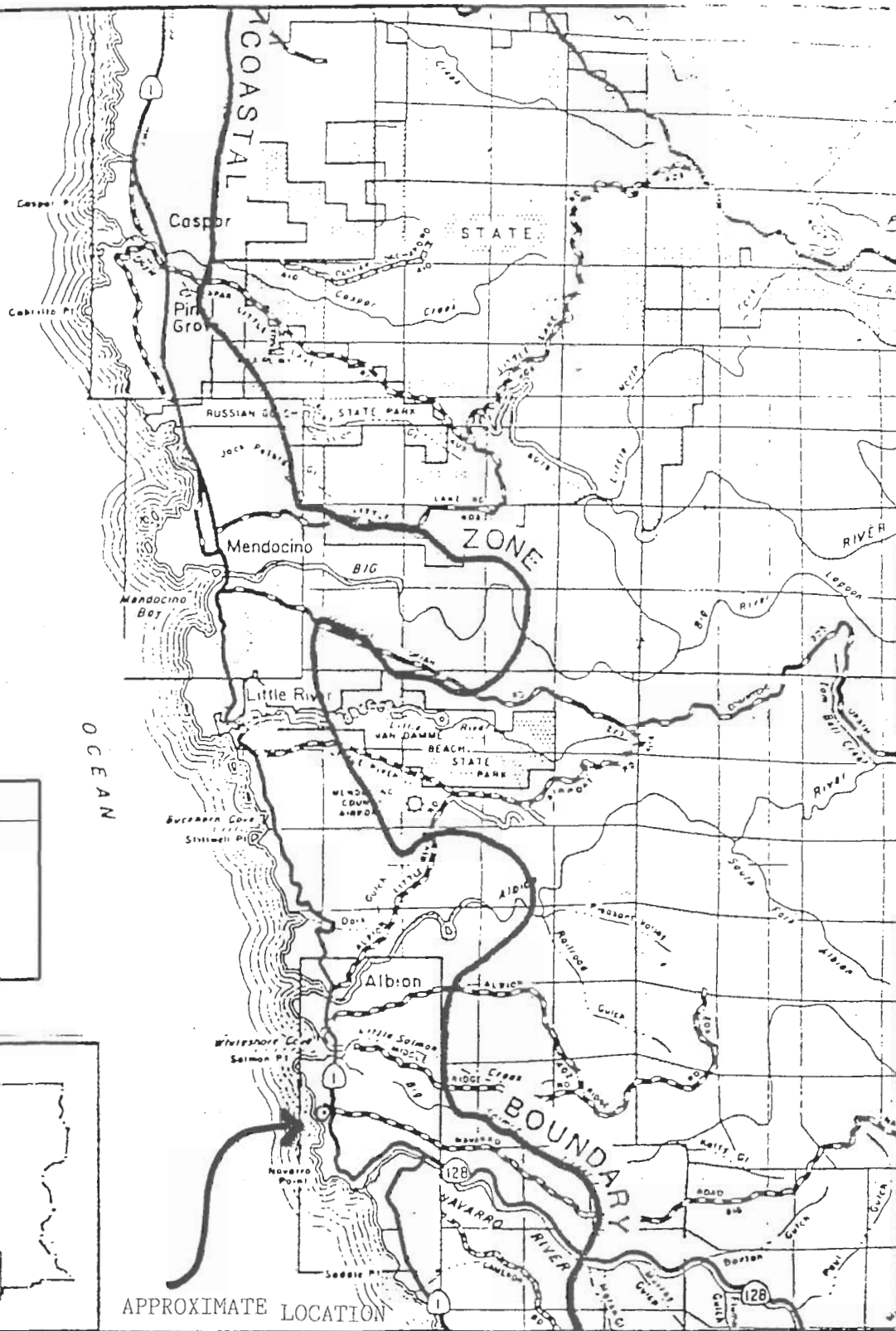
LOCATION MAP



California Coastal Commission

County of Mendocino

Sheet 4 of 6



GARRISON RESIDENCE

DATE: 05/15/2000 NAME: S. A. BONICA ARCH: 105-A3-09



1/4" = 20'
1/8" = 10'
1/16" = 5'
1/32" = 2.5'

TREES TO BE PLANTED (MONTEREY CYPRESS)
TREES RECENTLY PLANTED (MONTEREY CYPRESS)

EXHIBIT B

ELECTRIC PLUMBING
OUTLET AND
WATER LINE
1/2" DIA. WATER LINE
1/2" DIA. WATER LINE
1/2" DIA. WATER LINE

1/2" DIA. WATER LINE
1/2" DIA. WATER LINE
1/2" DIA. WATER LINE

Septic System

Centerline of Watercourse

Road Crossing (Bridge)

Driveway

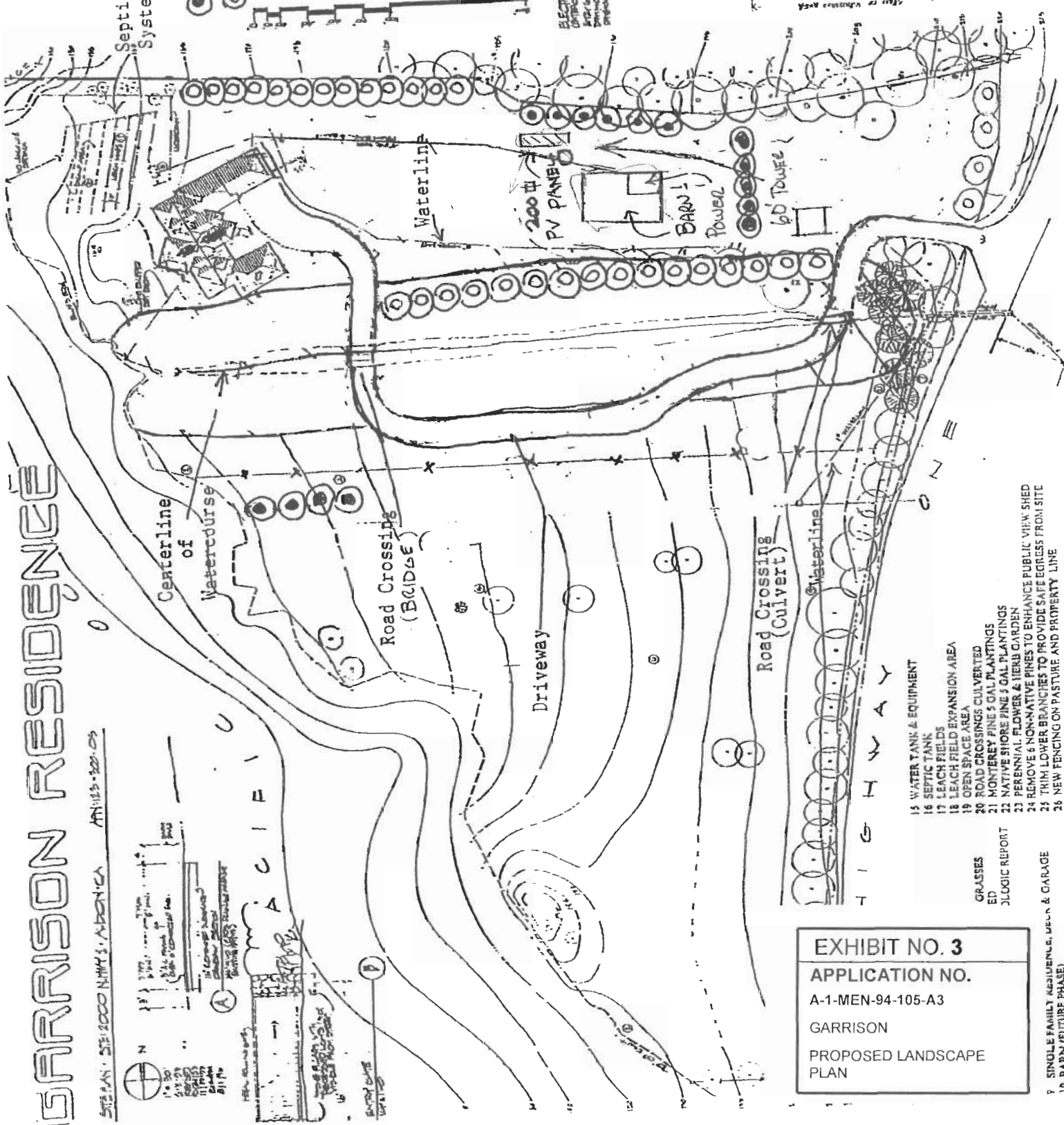
Road Crossing (Culvert)

EXHIBIT NO. 3
APPLICATION NO.
A-1-MEN-94-105-A3
GARRISON
PROPOSED LANDSCAPE
PLAN

GRASSES
ED
BIOLOGIC REPORT

- 15 WATER TANK & EQUIPMENT
- 16 SEPTIC TANK
- 17 LEACH FIELDS
- 18 LEACH FIELD EXPANSION AREA
- 19 OPEN SPACE AREA
- 20 ROAD CROSSINGS CULVERTED
- 21 MONTEREY PINE 5 GAL PLANTINGS
- 22 NATIVE SHORE PINE 5 GAL PLANTINGS
- 23 PERENNIAL FLOWER & HERB GARDEN
- 24 REMOVE 6 NON-NATIVE PINES TO ENHANCE PUBLIC VIEW SHED
- 25 TRIM LOWER BRANCHES TO PROVIDE SAFE EGRESS FROM SITE
- 26 NEW FENCING ON PASTURE AND PROPERTY LINE

- 9 SINGLE FAMILY RESIDENCE, BARN & GARAGE
- 10 BARN (FUTURE PHASE)



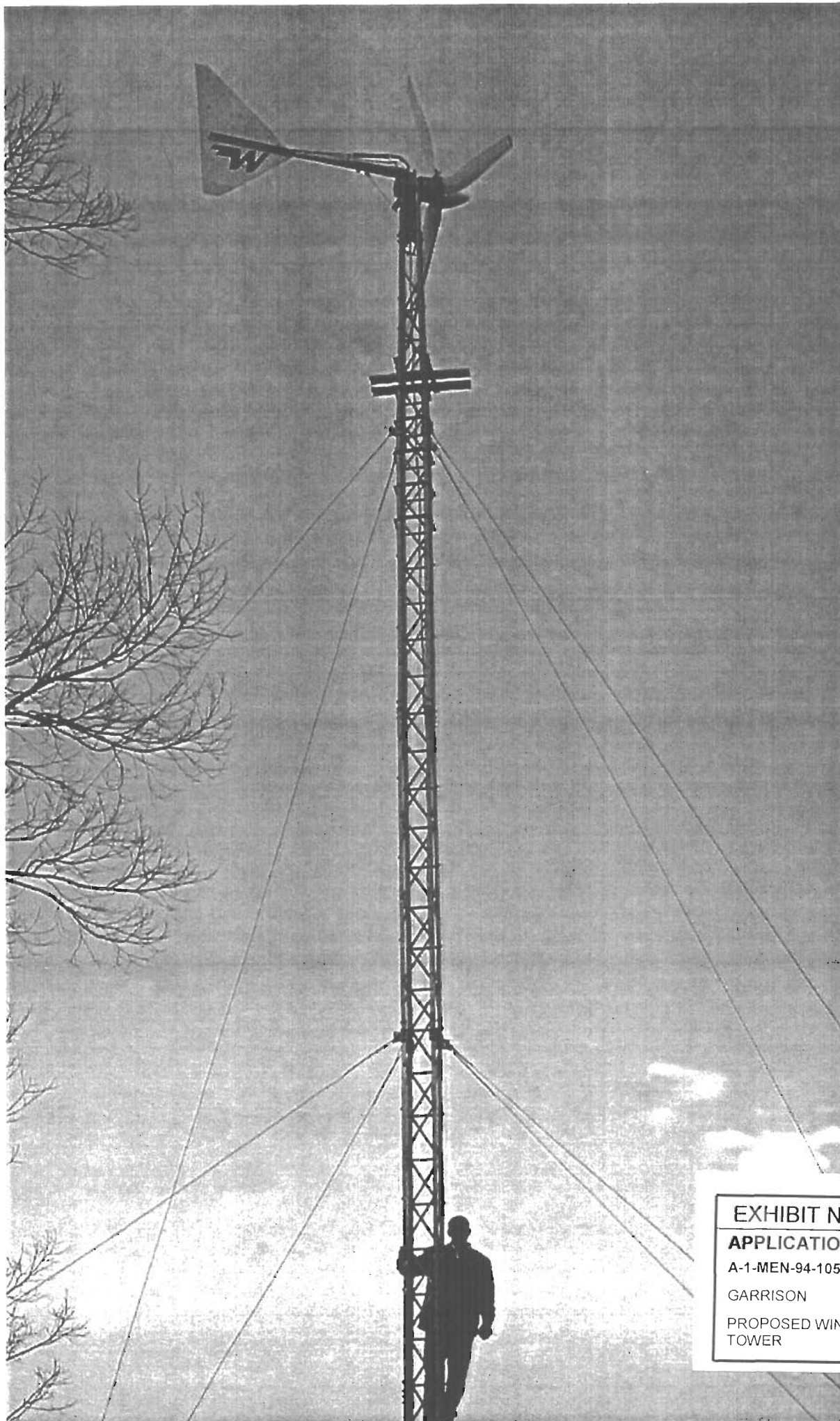


EXHIBIT NO. 4

APPLICATION NO.

A-1-MEN-94-105-A3

GARRISON

PROPOSED WIND TURBINE
TOWER

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

FREMONT, SUITE 2000

4 FRANCISCO, CA 94105-2219

5) 904-5260

F 8a



Staff: Jo Ginsberg
 Staff Report: July 21, 1995
 Hearing on Rev. Findings: August 11, 1995
 Commission Action on Findings:

STAFF REPORT: REVISED FINDINGS

EXHIBIT NO. 5
APPLICATION NO.
A-1-MEN-94-105-A3
GARRISON
ORIGINAL STAFF REPORT (1 of 28)

APPEAL NO.: **A-1-MEN-94-105**

APPLICANT: **MICHAEL GARRISON**

LOCAL GOVERNMENT: Mendocino County

DECISION: Approved with Conditions by Mendocino County on September 22, 1994

PROJECT LOCATION: 2000 North Highway One, Albion, Mendocino County, APN 123-300-05.

PROJECT DESCRIPTION: Construction of a single-family residence, garage, barn, driveway, well, and septic system.

APPELLANT: **Michael Garrison**

COMMISSION ACTIONS: November 18, 1994: Found the Appeal Raised a Substantial Issue

June 14, 1995: Approved the Application with Conditions

COMMISSIONERS ON THE PREVAILING SIDE (SUBSTANTIAL ISSUE): Commissioners Doo, Flemming, Moulton-Patterson, Rick, Wright, and Chairman Williams

COMMISSIONERS ON THE PREVAILING SIDE (DE NOVO REVIEW): Commissioners Areias, Calcagno, Doo, Flemming, Giacomini, Karas, Pavley, Rick, Staffel, Vargas, and Chairman Williams

SUBSTANTIVE FILE DOCUMENTS: Mendocino County LCP; Mendocino County CDP #83-93.

REVISED FINDINGS - A-1-MEN-94-105
MICHAEL GARRISON
Page Two

STAFF NOTE:

At the Commission meeting of November 18, 1994, the Commission found the appeal raised a substantial issue with regard to the project's conformance with the certified Mendocino County LCP, and directed the staff to come back with a recommendation on the project for a de novo hearing. At the meeting of June 14, 1995, the Commission held a de novo hearing on the project, and approved the project with conditions similar to the conditions the County imposed on its permit. However, as the Commission's actions on the substantial issue question at the November 18, 1994 meeting differed from the written staff recommendation, staff has prepared the following set of revised findings found in Part One, Section IV below, for the Commission's consideration as the needed findings to support its action. These findings reflect the action taken by the Commission at the meeting of November 18, 1994 on the Substantial Issue question. In addition, staff prepared an addendum for the June 14, 1995 de novo hearing which contained some changes to conditions recommended in the original staff report. Thus, staff has also prepared the following set of findings, found in Part Two, Section IV below, for the Commission's consideration as the needed findings to support its action at the meeting of June 14, 1995.

The purpose of the hearing is to consider the adequacy of the revised findings in supporting the Commission's previous actions rather than to reconsider whether the appeal raised a substantial issue or to reconsider the merits of the project or the appropriateness of the adopted conditions. Public testimony will be limited accordingly.

STAFF RECOMMENDATION:

1. The staff recommends that the Commission adopt the revised findings in Part One, Section IV below (pages 6-8) in support of the Commission's action on November 18, 1994, finding that a substantial issue exists as to conformity of the project with the policies of the certified Local Coastal Program.

(NOTE: Only those Commissioners on the prevailing side on the Commission's action on the permit at the November 18, 1994 hearing are eligible to vote. See the list on Page 1.)

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REVISED FINDINGS - A-1-MEN-94-105
MICHAEL GARRISON
Page Three

2. The staff recommends that the Commission adopt the revised findings in Part Two, Section IV below (starting on page 12) in support of the Commission's action on June 14, 1995, approving the project with conditions.

(NOTE: Only those Commissioners on the prevailing side on the Commission's action on the permit at the June 14, 1995 hearing are eligible to vote. See the list on Page 1.)

PART ONE - SUBSTANTIAL ISSUE

For reference, a summary of the appellant's contentions, a summary of the local government action, and the Commission's adopted resolution precede the proposed revised findings.

I. APPELLANT'S CONTENTIONS

The Commission received an appeal for this project from Michael Garrison, the applicant. The appellant gives the following statement as the reason for his appeal:

A narrow watercourse that bisects the property has been mislabeled riparian. The seasonal watercourse is clearly the artifact of a drainage culvert placed under Highway One at the time of construction.

The Botanical studies and subsequent report prepared by Dr. Gordon McBride dated December 1st, 1991 and October 12th, 1992, included in the coastal development permit application, states that;

"the habitat value of the watercourse and the associated hydrophytic or riparian vegetation is minimal."

"While the watercourse does not provide significant habitat value it does hold the potential for serious erosion because of the large amounts of runoff that can be concentrated in it by the Cal Trans culvert during a heavy rainfall event."

The watercourse and the suggested "buffer zone" would deprive the owner's use of a significant portion of their property.

Applicable coastal element policy 3.1-2.

Although the specifics are not clearly articulated, it appears that the applicant objects to the County designating the riparian habitat on his property as Environmentally Sensitive Habitat and objects to the imposition of special conditions that have been attached to the coastal permit to protect this habitat.

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II. LOCAL GOVERNMENT ACTION

The project was originally scheduled for a hearing before the Mendocino County Coastal Permit Administrator (CPA) on July 28, 1994. A staff report had been prepared with a number of special conditions attached. According to the County, the applicant was unsatisfied with several of these conditions, in particular, the special condition requiring that the driveway be relocated to avoid the riparian area to a location at least 50 feet from the edge of the riparian area, and that a 50-foot buffer area be maintained adjacent to the outside boundaries of the riparian area. No development or construction would be allowed within this buffer area or within the riparian area.

The applicant requested that the item be continued so that he could submit revised plans for the single-family residence, and also requested that the Coastal Permit Administrator (CPA) conduct a site view. The site view needed to be publicly noticed on the agenda and to adjacent property owners; thus it was scheduled for a hearing on September 22, 1994, at which time the applicant submitted revised plans and the CPA conducted a site view to consider visual impacts and to view the riparian corridor and buffer area. As a result of the site view, the CPA approved Coastal Development Permit CDP #83-93 for the project on September 22, 1994, having modified the special conditions of the initial staff report to allow the proposed driveway in the location originally proposed if the riparian crossings were bridged to avoid destruction of existing riparian habitat. Several additional special conditions were imposed, including a condition requiring installation of wire fencing along the 50-foot buffer areas from the identified ESHA prior to such time as livestock is placed on the property to prevent livestock from adversely impacting these areas. According to the CPA, the applicant expressed satisfaction with the modified conditions.

The applicant did not appeal the project to the Mendocino County Board of Supervisors. However, Section 13573 of the California Code of Regulations states that exhaustion of all local appeals shall not be required if the local government jurisdiction charges an appeal fee for the filing or processing of appeals. In this case, Mendocino County does charge an appeal fee, and so this appeal may properly be processed by the Coastal Commission.

In approving the project, the County imposed sixteen special conditions. The County's final findings and conditions of approval are included as Exhibit No. 8. Among the conditions are two conditions to which the applicant apparently objects. These are as follows:

Special Condition No. 2: Prior to issuance of the Coastal Development Permit, the applicant shall submit detailed plans for the driveway at the proposed riparian crossings demonstrating the bridges will avoid fill within the riparian area identified on Exhibit B and as evidenced

REVISED FINDINGS - A-1-MEN-94-105
MICHAEL GARRISON
Page Six

in the botanical studies prepared by Dr. Gordon McBride dated December 1, 1991, and October 12, 1992.

The area 30' ± from the bluff edge and a 50' buffer area as indicated in Exhibit B [which includes a 50-foot buffer around the watercourse] and the botanical reports as the location of Castilleja mendocinensis (Mendocino paintbrush) shall be protected from development. (Brackets added.)

Special Condition No. 10: Prior to the time any livestock are placed on the property the applicant shall install approved wire fencing along the 50' buffer areas from the identified Environmentally Sensitive Habitat Areas on the site. The purpose is to prevent livestock from adversely impacting these areas.

The North Coast Area office of the Commission received notice of the County's final action on October 11, 1994. The local decision was appealed in a timely manner to this Commission by Michael Garrison on October 24, 1994.

III. ADOPTED RESOLUTION

The Commission determines that a substantial issue exists as to conformity with the policies of the certified Local Coastal Program with respect to the grounds on which an appeal has been filed pursuant to Section 30603 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

1. Project Setting and Description.

The County of Mendocino approved construction of an approximately 4,000-square-foot, 20-1/2-foot-high, two-story single-family residence with an attached 18-foot-high, three-car garage; an approximately 5,300-square-foot, 28-foot-high barn with a loft and bathroom; a 700-foot-long, 10-foot-wide meandering asphalt driveway and four-space parking area; a well; a septic system; and an entry gate. In addition, the County authorized repair of the existing livestock fencing and provision for approximately 350 cubic yards of cut and fill.

The proposed driveway crosses an existing drainage and riparian habitat area in two places, where it will bridge the riparian areas. The botanist has identified riparian habitat in the area of the drainageway, and indicated that Castilleja mendocinensis (Mendocino paintbrush) may also be present in the area of the bluff faces, and in one location near the southern tip of the

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site, within 10 meters of the bluff. The County required a 75-foot blufftop building setback and 50-foot blufftop leachfield setback, as recommended by the geologist.

The subject property is zoned in the County's LCP as Remote Residential-40 acres minimum (RMR:L-40), meaning that there may be one parcel for every 40 acres, and that the parcel is designated for residential use or light agriculture. The subject parcel, which is approximately 13 acres in size, is a legal, nonconforming lot.

2. Substantial Issue Analysis.

The Commission finds that a substantial issue exists with regard to the project's conformance with the certified Mendocino County LCP, with respect to the area of concern raised by the appellant, as discussed below.

1. Environmentally Sensitive Habitat.

As noted above, while the applicant is not specific in his objections to the County-imposed special conditions of his coastal permit, he appears to object particularly to Special Conditions No. 2 and No. 10, which require protection of riparian habitat. Special Condition No. 2 requires the applicant to submit detailed plans for the driveway at the proposed riparian crossings demonstrating the bridges will avoid fill within the riparian area, and that a 30-foot blufftop setback and 50-foot riparian/plant buffer be established to protect Mendocino paintbrush and riparian habitat. Special Condition No. 10 requires that prior to placing any livestock on the property the applicant shall install wire fencing along the 50-foot buffer to prevent livestock from adversely impacting the habitat.

The basis for an appeal is that the project, as approved by the local government, is not consistent with the local government's LCP. In this case, the applicant appears to feel that his project, as approved, is inconsistent with Mendocino County's certified LCP. Although he does not elaborate, the basis for his appeal appears to be the following:

1. The watercourse should not be considered "riparian" and should not be protected as "environmentally sensitive habitat" since it is not naturally occurring but the artifact of a drainage culvert placed under Highway One.
2. Since the habitat value of the watercourse and associated vegetation is minimal, it need not be protected.
3. Restricting development in the watercourse and in the buffer area would deprive the applicant of using a significant portion of his property.

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4. The project as conditioned by the County is inconsistent with LUP Policy 3.1-2.

Central to most of these contentions is the implication that the watercourse does not constitute Environmentally Sensitive Habitat requiring the level of protection required by the County. In his report of 12 October 1992, the botanist states that "It was apparent the watercourse is the result of a CalTrans culvert that shunts runoff from a considerable distance north and south on the east side of the Highway and focuses the culvert flow on one point in the Garrison site: it is not a natural watercourse." In addition, the botanist points out that while there are characteristic hydrophytic or riparian plant species present along the watercourse there is little significant difference between the plant association along the watercourse and adjacent Coastal Terrace Prairie. He notes that there are not willow, alder, or other species that indicate a significant riparian habitat, and apparently believes artificially created riparian habitat should not be subject to the same level of protection as naturally occurring riparian habitat.

The Commission thus finds that a substantial issue is raised as to whether there actually is environmentally sensitive habitat present that necessitates the special conditions imposed by the County on its coastal permit, and finds that it must be determined if the artificially created drainage constitutes environmentally sensitive habitat in need of protection. In so finding, the Commission makes neither a determination that the area in question is not an ESHA nor one that it is an ESHA; instead, the Commission merely finds that an issue is raised which requires full examination of the record through a de novo hearing on the project.

C. Conclusion.

In summary, for the reasons stated above, the Commission finds that the project as approved and conditioned by the County of Mendocino raises a substantial issue with regard to the project's conformance with the certified LCP, with respect to the grounds on which the appeal has been filed.

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PART TWO - DE NOVO ACTION ON APPEAL

For reference, the adopted resolution of approval and conditions precede the proposed revised findings.

I. ADOPTED RESOLUTION OF APPROVAL

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, is in conformance with the certified Mendocino County LCP, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. Revised Site Plan:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall submit, for the Executive Director's review and approval, a revised site plan that shall locate the house and appurtenant structures outside the 50-foot riparian buffer area required in Special Condition No. 5.

2. Riparian Crossings:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall submit, for the review and approval of the Executive Director, detailed plans for the driveway and the proposed riparian crossings. No solid fill shall be placed within the riparian area identified on Exhibit No. 9. The proposed crossings shall be either in the form of bridges that span the riparian area and avoid the placement of fill, or arched culverts, large-diameter culverts that are cut in half lengthwise and placed like an arch across the watercourse and then covered with earthen material to form a road crossing without requiring the placement of solid fill directly into the watercourse.

3. Landscaping Plan:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall submit, for the review and approval of the Executive Director, a final landscaping/tree maintenance plan that provides for tree planting to screen the residence and barn from public view from Highway One, while taking into account, to the maximum extent possible, maintenance of views of the ocean.

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The plan shall specify the kind of trees to be planted, and the mature height of the trees, which shall be at least 20 feet. The plan shall show the trees proposed to be planted as shown on the site plan submitted by the applicant, as well as additional trees along the northern property boundary to screen the barn and the house from view from Highway One.

The plan shall further include a tree maintenance program (e.g., pruning, fertilizing, watering, etc.) for existing and newly planted trees and shrubs and a tree replacement program on a one-to-one or greater ratio for the life of the project. The new trees and shrubs shall be planted within 60 days of completion of the project.

4. Design Restrictions:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall submit, for the review and approval of the Executive Director, an exterior lighting plan indicating the location and design specifications for all exterior lighting fixtures. All exterior lights, including any lights attached to the outside of the house, shall be low-wattage, non-reflective, and have a directional cast downward.

In addition, all exterior siding of the house and barn shall be of natural or natural-appearing materials of dark earthtone colors only, and the roofs shall also be of dark earthtone color and shall be of natural-appearing materials. In addition, all exterior materials, including the roofs and the windows, shall be non-reflective to minimize glare.

5. Open Space Deed Restriction:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall execute and record a deed restriction, subject to the review and approval of the Executive Director, stating that an open space area shall be created on the subject parcel that includes the following:

a small, unnamed watercourse that runs generally east-west through the property, its associated riparian habitat, and a riparian buffer area that extends 50 feet on both sides from the outward extent of the riparian habitat, as shown generally in Exhibit No. 9.

Within the open space area, all development activity is prohibited, including the alteration of landforms, removal of vegetation, use of heavy machinery or equipment, use of the area for livestock grazing, or the erection of structures of any type, except for (1) installation, repair, and maintenance of the driveway and bridges that cross the riparian area; and (2) installation, repair, and maintenance of the septic system to be located no closer than 50 feet from the bluff edge.

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The applicant shall submit an Exhibit Map, to scale, and consistent with the revised site plan as approved by the Executive Director pursuant to Special Condition No. 1, that shows the site, all proposed development, and the 50-foot riparian buffer area, which will be recorded with the deed restriction.

The deed restriction shall be recorded free of prior liens and encumbrances except tax liens, shall be irrevocable, running from the date of recordation, and shall run with the land binding the landowner, and his/her heirs, assigns, and successors in interest to the subject property.

6. Second Structure:

PRIOR TO ISSUANCE of the amended Coastal Development Permit, the permittee shall execute and record a deed restriction, subject to the review and approval of the Executive Director, stating that the barn shall be without kitchen or cooking facilities and shall not be separately rented, let, or leased, whether compensation be direct or indirect.

This deed restriction shall be recorded with the deed to the parcel APN 123-300-05 as a covenant running with the land and shall bind all successors and assignees of the permittee. Any change in the use of the barn shall require an amendment to Coastal Commission Permit No. A-1-MEN-94-105.

7. Final Foundation and Drainage Plans:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall submit for the Executive Director's review and approval final foundation and site drainage plans that incorporate all recommendations included in the geotechnical report dated January 27, 1992 and the addendum dated September 28, 1993 included with the County application regarding site grading, foundations, retaining walls, and site drainage. Any deviation from the approved plans will require an amendment to this coastal permit.

8. Fencing:

Prior to the time any livestock are placed on the subject property, the applicant shall install wire fencing along the south side of the 50-foot riparian buffer area for the purpose of preventing livestock from entering and adversely affecting these areas. Gates may be added as needed (no more than two) to the fence to be installed along the 50-foot riparian buffer so that livestock may be transferred from grazing areas south of the fence to the barn north of the riparian area. The fencing shall be limited to wire strand with wood or metal posts, no closer than six feet on center, and no more than five feet in height.

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9. Tree Removal:

This permit does not authorize the removal of any trees from the subject parcel, other than those required to be removed for the Caltrans Highway One encroachment, or to meet the fire safety regulations of the California Department of Forestry and Fire Protection. Any future removal of trees shall require a new coastal permit or an amendment to Coastal Permit No. A-1-MEN-94-105.

10. Future Development:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall execute and record a deed restriction, subject to the review and approval of the Executive Director, stating that the subject permit is only for the development herein described in the coastal development permit and that any future additions or other development on APN 123-300-05 as defined in Public Resources Code Section 30106, including the construction of fences, gates, additions, or outbuildings that might otherwise be exempt under Public Resources Code Section 30610(a), will require an amendment to this permit or will require an additional coastal development permit from the California Coastal Commission or from its successor agency. The document shall be recorded as a covenant running with the land binding all successors and assignees in interest to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

1. Project Setting and Description.

The subject property is located west of Highway One, in an area designated "Highly Scenic" in the County's LUP. This area, just north of where Highway 128 intersects with Highway One at the coast, has been characterized in the past by the Commission as "perhaps the most scenic of the entire Mendocino coast," offering dramatic views of rocky, open headlands and breathtaking ocean vistas. The area is generally undeveloped, with mostly vacant parcels on both sides of Highway One.

The applicant proposes construction of an approximately 4,000-square-foot, 20-1/2-foot-high, two-story single-family residence with an attached 18-foot-high, three-car garage; an approximately 5,300-square-foot, 28-foot-high barn with a loft and bathroom; a 700-foot-long, 10-foot-wide meandering asphalt driveway with two 24" culverts and a four-space parking area; a well; a septic system; and a rolling entry gate. In addition, the applicant proposes repair of the existing periphery livestock fencing and provision for approximately 350 cubic yards of cut and fill.

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The 13-acre property slopes gently from the highway to the ocean bluffs, which are approximately 150-190 feet in height. The property is traversed by an approximately 10- to 15-foot deep gulch with flowing water along the northwest corner. Additionally, an east-west trending watercourse bisects the property approximately 200 feet south of the north property line. A wet boggy area 20 feet or more in width is adjacent to this channel, widening considerably on the westerly half of the lot.

The proposed driveway crosses the watercourse and riparian habitat area in two places, where it is proposed to be culverted. The botanist has identified riparian habitat in the area of the watercourse, and has indicated that specimens of paintbrush (Castilleja) are present in the area of the bluff faces, and in one blufftop location near the southern tip of the site, within 10 meters of the bluff (see Exhibit No. 3). Because the botanical survey was not done during the blooming season, the botanist could not conclusively determine if the paintbrush on the site was the rare and endangered Castilleja mendocinensis (Mendocino coast paintbrush), or Castilleja wightii (Wight's paintbrush), which is not rare or endangered.

2. Locating and Planning New Development/Second Structure:

Policy 3.9-1 of the Mendocino County LUP states that new development shall be located in or in close proximity to existing areas able to accommodate it, and shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources. Policy 3.8-1 of the LUP requires consideration of Highway One capacity and availability of water and sewage disposal when considering applications for Coastal Development Permits. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The subject property is zoned in the County's LCP as Remote Residential-40 acres minimum (RMR:L-40), meaning that there may be one parcel for every 40 acres, and that the parcel is designated for residential use or light agriculture. The subject parcel, which is approximately 13 acres in size, is a legal, nonconforming lot. Section 20.380.025 of the Zoning Code states that the maximum dwelling density for parcels designated RMR:L-40 is one unit per 40 acres.

As described above, the proposed development consists of construction of a 4,000-square-foot residence with an attached garage, 5,300-square-foot barn with a loft and a bathroom, a well, a septic system, a driveway, and an entry gate. The County has not permitted more than one residential unit on most residential parcels in Mendocino County, because of a concern that the increase in density could potentially result in cumulative adverse impacts on highway capacity, groundwater resources, and scenic values, inconsistent with LUP Policies 3.9-1 and 3.8-1.

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Given the large size of the proposed barn (5,300 square feet) and the provision of plumbing in it, the potential exists for the barn to be converted in the future to a separate dwelling unit. The County had attached to their permit approval a condition prohibiting the barn from having a kitchen or cooking facilities, or from being separately rented, let, or leased. Similarly, to ensure that the barn will not be used at any time as an additional residential unit, the Commission attaches Special Condition No. 6, requiring recordation of a deed restriction stating that the barn shall not contain a kitchen or cooking facilities and shall not be separately rented, let, or leased, whether compensation be direct or indirect.

The Mendocino County Department of Environmental Health has approved a well and septic system for the subject parcel. The Commission thus finds that the proposed project is consistent with LUP Policies 3.9-1 and 3.8-1 to the extent that the parcel is able to accommodate the proposed development and that adequate services are available. In addition, the Commission finds that the proposed development, as conditioned, is consistent with these LUP policies and with Zoning Code Section 20.380.025 because Special Condition No. 6 will ensure that there will be only one residential unit on the parcel and the project will not contribute to adverse cumulative impacts on highway capacity, groundwater resources, and scenic values.

3. Environmentally Sensitive Habitat Areas:

A small, unnamed watercourse crosses the subject property in an east-to-west direction, supporting riparian habitat, as identified by the applicant's botanist who surveyed the property. A wet, boggy area lies adjacent to the channel, widening in the western portion of the lot.

Section 3.1 of the LUP defines "Riparian Habitat" as:

An area of riparian vegetation. This vegetation is an association of plant species which grows adjacent to freshwater watercourses, including perennial and intermittent streams, lakes, and other bodies of fresh water.

Since the subject drainage is a "watercourse" which supports riparian vegetation, it is "riparian habitat."

Section 3.1 of the County's certified LUP defines "Environmentally Sensitive Habitat Areas" as:

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

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Policy 3.1-10 of the LUP states that:

Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources.

The riparian and wetland areas on the subject parcel meet the definition of Environmentally Sensitive Habitat Areas contained in Policies 3.1 and 3.1-10 of the certified LCP. Riparian and wetland areas provide valuable habitat for a wide variety of wildlife, and are particularly sensitive to degradation from human activity or development.

In addition, the botanist has indicated that specimens of paintbrush (Castilleja) are present in the area of the bluff faces, and in one blufftop location near the southern tip of the site, within 10 meters of the bluff (see Exhibit No. 3). Because the botanical survey was not done during the blooming season, the botanist could not conclusively determine if the paintbrush on the site was the rare and endangered Castilleja mendocinensis (Mendocino coast paintbrush), or Castilleja wightii (Wight's paintbrush), which is not rare or endangered.

Rare plants are considered valuable because they are of limited distribution, they occur in such small numbers that they are seldom reported, or they occur in very few highly restricted populations; endangered plants are considered such because they are threatened with extinction and not likely to survive unless some protective measures are taken. All are easily degraded by human activities. Thus, areas where these plants occur on the subject property meet the definition of ESHA contained in Section 3.1 of the County's certified LCP.

Thus, the watercourse, the surrounding riparian habitat, the wet, boggy area, and any areas that actually contain Mendocino coast paintbrush constitute Environmentally Sensitive Habitat Areas, and are subject to protection under the policies of the County's certified LCP.

Policy 3.1-10 of the LUP states that no structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor, except for some specialized uses such as permitted channelization for flood control, pipelines, etc. Zoning Code Section 20.496.035 reiterates this policy and states that development in riparian habitat areas is only allowed if no other feasible, less environmentally sensitive alternative exists.

Policy 3.1-7 of the LUP states that a buffer area shall be established adjacent to all environmentally sensitive habitat areas to provide for a

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sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width, and development shall be allowed within the buffer area only if there is no other feasible site available on the parcel. Zoning Code Section 20.496.020 reiterates this policy, and discusses in detail standards for determining buffer width and what types of development are permitted within buffer areas.

The County determined that the watercourse and surrounding riparian and wetland habitat, as well as the areas where Castilleja mendocinensis (Mendocino coast paintbrush) occurs, constitute Environmentally Sensitive Habitat Areas (ESHA's), requiring protection. The County attached several special conditions to their permit approval to protect this sensitive habitat, such as requiring establishment of a 50-foot riparian buffer area on each side of the watercourse, establishing a buffer area around the Mendocino paintbrush, requiring bridge crossings over the riparian area rather than culverts, and requiring fencing along the buffer areas prior to the placement of livestock on the subject property.

In his objection to the County-imposed conditions regarding protection of the riparian area, the applicant has stated that the watercourse should not be considered "riparian" and should not be protected as "environmentally sensitive habitat" since it is not naturally occurring but rather is the artifact of a drainage culvert placed under Highway One by Caltrans.

While it may be true that the watercourse was created artificially, the County's LUP does not distinguish between naturally occurring or artificially created riparian areas, and requires protection for all riparian areas. In his reports of 1 December 1991, 12 October 1992, and 12 December 1993, the applicant's botanist consistently refers to the assemblage of plants that grow in the area of the watercourse as "riparian habitat." While the applicant's botanist apparently believes artificially created riparian habitat should not be subject to the same level of protection as naturally occurring riparian habitat, he acknowledges that the habitat is "riparian" habitat.

Since the subject drainage supports riparian vegetation and is riparian habitat, pursuant to Policy 3.1-10 the Commission concludes that the drainage is an environmentally sensitive habitat area, and the policies of the LUP require that the area be protected. The Commission notes that the LUP was certified as being consistent with the Chapter 3 policies of the Coastal Act which also do not distinguish between naturally occurring and artificially created riparian areas. In past permit actions, the County's practice in approving projects that involve riparian areas has been, as has the Commission's, to protect riparian areas whether natural or artificially created, since it is the riparian area's value as habitat that is significant, not its origin.

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The applicant further states that since the habitat value of the watercourse and associated vegetation is minimal, it need not be protected. However, even if the LUP or Coastal Act distinguished between habitats where the value is minimal versus major, the premise that the riparian area has only minimal habitat value is not necessarily true. Since the Commission hearing on the substantial issue portion of the appeal in November of 1994, staff visited the site with a wildlife biologist from the California Department of Fish and Game. The biologist indicates that the watercourse supports a wetland corridor that begins near the westerly boundary of Highway 1 and terminates at an ocean bluff where stream flow cascades into the Pacific Ocean (see Exhibit No. 10). He states that several freshwater crustaceans were found inhabiting the watercourse, and an adult Pacific treefrog (*Hyla regilla*) was located on the bank of the watercourse in the area of the proposed road crossing. In discussions with staff, he further indicates that these are indicator species signifying a functioning ecosystem, and that the riparian/wetland area, although physically small in size, no doubt provides habitat for a variety of wildlife species, such as salamanders, garter snakes, raccoons, deer, and resident and migratory birds who use wetland corridors for nesting, feeding, and predator avoidance. He recommends that the project be conditioned to protect all existing wetland habitat, including designating a buffer zone along either side of the wetland, with road crossings that span the wetlands as opposed to inundating them with fill.

In addition, it is important to consider the cumulative value that many small wetland areas such as that found on the applicant's property have and the cumulative impact that has occurred to coastal wetlands. Coastal wetlands, including riparian areas, provide essential habitat for many species of fish and wildlife, some of which are rare and endangered. Wetlands are a valuable resource that has been vastly diminished. Since the 1850's, approximately 85 percent of California's original coastal wetland acreage has disappeared, and many of the remaining wetlands are in danger of being further degraded or destroyed due to landfill, diking, dredging, pollution, and other human disturbances.

As the LCP makes no distinction between protecting wetlands or ESHA of minimal habitat or major habitat value, and as the wetland on the site does contain important habitat values, as determined by a Fish and Game wildlife biologist, the Commission concludes that the wetland area should be protected from development consistent with the Mendocino County LCP.

The Commission finds that the project, as proposed, which includes a substantial amount of residential construction and construction of a driveway that crosses riparian habitat in two locations, would have significant adverse impacts on environmentally sensitive habitat and must therefore be mitigated to minimize these impacts. To protect the ESHA, the Commission imposes several special conditions, which differ slightly from those conditions imposed by the County.

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Special Condition No. 5 requires recordation of a deed restriction establishing a riparian buffer area to protect the environmentally sensitive habitat consisting of riparian and wetland habitat in the area of the watercourse. This condition prohibits development within the protected areas, including the alteration of landforms, removal of vegetation, use of heavy machinery or equipment, use of the area for livestock grazing, or the erection of structures of any type, except for (1) installation, repair, and maintenance of the driveway and bridges that cross the riparian area; and (2) installation, repair, and maintenance of the septic system to be located no closer 50 feet from the bluff edge.

The Fish and Game biologist who surveyed the site recommends a buffer area be established on both sides of the riparian habitat. The purpose of a buffer area is to provide an area immediately adjacent to the environmentally sensitive habitat area (ESHA) within which no development may take place. Buffer areas protect the fish and/or wildlife species who inhabit the ESHA by reducing or eliminating adverse impacts caused by disturbance from noise, trampling from human intrusion, impacts from construction debris, and other disturbance. In this case, human activity associated with the construction and habitation of new structures in or immediately adjacent to the riparian area could frighten wildlife from inhabiting or otherwise using the ESHA. In addition, livestock grazing in or adjacent to the watercourse could adversely affect the water quality of the watercourse and trample the sensitive habitat. A buffer provides an added zone of protection surrounding the ESHA. Further, vegetated riparian buffer areas help maintain water quality by filtering out sediments from runoff before they enter the watercourse; providing protective cover to reduce erosion adjacent to the watercourse; regulating water flow year-round to maintain optimum hydrological conditions; providing thermal protection from the sun for such species as amphibians; and maintaining a healthy food chain by providing food (forage) for wildlife species.

In determining during the LCP process what an appropriate buffer width would be to protect ESHA's from the impacts of development, the County arrived at a standard of 100 feet, with a minimum of no less than 50 feet, after consultation with biologists and the Department of Fish and Game. The Commission finds it necessary to have a specific standard that is applied to this site so that any future landowners are informed of development restrictions prior to planning a project. In this case, the County required a 50-foot buffer, and the Fish and Game biologist concurs that this is appropriate. Therefore, the Commission finds that a 50-foot buffer is an appropriate buffer width to protect the sensitive habitat on the site from the impacts of development.

The proposed project, as currently submitted, includes two culverts crossing the riparian area. According to the applicant, both crossings are proposed to

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be 14 feet from the outside of the headwall to the riprap. The eastern crossing will be constructed at the easternmost point possible where the wet area narrows to approximately 1-2 feet wide; the impacted area from this crossing is approximately 30 feet. The western crossing is proposed to be constructed at a point where the wet area is 16-18 feet wide; the total impacted area from this crossing is 240 square feet.

The Commission finds that the construction of culverts (fill) affecting a total of 270 square feet of riparian/wetland habitat constitutes a significant adverse impact on the environmentally sensitive habitat, as it would obliterate the habitat areas covered by the proposed fill, inconsistent with Policy 3.1-10 of the certified LUP. In addition, the proposed project shows the residence as being closer than 50 feet to the outward edge of the sensitive habitat, and thus encroaching into the buffer area recommended by the Department of Fish and Game. In this case, there is more than ample room to locate a large house of the size proposed by the applicant outside the required buffer area. Therefore, feasible alternatives exist that would reduce adverse impacts to the riparian area.

To reduce adverse impacts to the ESHA, the Commission finds that it is more appropriate to install bridges or bridge-like structures that span the riparian area rather than solid fill with small-diameter culverts over the riparian area, to avoid fill in sensitive habitat. To avoid fill in the ESHA, the County had also required that the applicant construct bridges rather than culverts across the riparian area, and, according to the County, the applicant agreed to the change at the time his permit was approved. In fact, the applicant had prepared preliminary plans for the required bridge crossings, which are shown as Exhibit No. 8.

Consistent with the County's requirement and with the policies of the LCP, the Commission thus attaches Special Condition No. 2, which requires submittal of detailed plans for the driveway and the proposed riparian crossings, which shall be in the form of bridges that avoid the placement of fill in the riparian area, or, alternatively, in the form of arched culverts, large-diameter culverts that are cut in half lengthwise and placed like an arch across the watercourse and then covered with earthen material to form a road crossing without requiring the placement of solid fill in the watercourse. The Commission notes that the arched culvert alternative is less costly to the applicant than the bridge alternative, which was required by the County. In addition, the Commission attaches Special Condition No. 1, which requires submittal of a revised site plan that locates the house and appurtenant structures outside the 50-foot riparian buffer area required in Special Condition No. 5.

The applicant has indicated a desire to have livestock on the subject property. According to the LCP, up to four such animals are permitted.

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Should the applicant place livestock on the property, the livestock could have significant adverse impacts on the environmentally sensitive habitat areas by trampling or grazing on sensitive plants, and could affect water quality. To protect the sensitive habitat from livestock, the Commission attaches Special Condition No. 8, which requires that, prior to the time any livestock are placed on the subject property, the applicant install wire fencing along the south side of the 50-foot riparian buffer area, the side where the grazing land is located. Virtually no grazing land is located along the north side of the riparian area, which is heavily forested, so it is unlikely that livestock would be left in that area for any significant amount of time, except when being moved back and forth from the proposed barn. Thus, fencing is not necessary along the north side of the riparian area. Gates (no more than two) are permitted through the fencing at the riparian crossings so that the livestock may get to the barn, which is located on the north side of the riparian area. The fencing shall be limited to wire strand with wood or metal posts, no closer than six feet on center, and no more than five feet in height. The Commission notes that while the County required fencing on both sides of the riparian buffer area, the Commission is requiring fencing only on the south side, where it is most necessary.

In addition, the botanist has indicated that specimens of paintbrush (Castilleja) are present in the area of the bluff faces, and in one blufftop location near the southern tip of the site, within 10 meters of the bluff (see Exhibit No. 3). Because the botanical survey was not done during the blooming season, the botanist could not conclusively determine if the paintbrush on the site was the rare and endangered Castilleja mendocinensis (Mendocino coast paintbrush), or Castilleja wightii (Wight's paintbrush), which is not rare or endangered. To ensure that future development will not take place where it might adversely affect a rare and endangered plant species, the Commission attaches Special Condition No. 10. This condition requires recordation of a deed restriction stating that the subject permit is only for the development described in the permit and that any future additions or other development on the subject parcel, including the construction of fences, gates, additions, or outbuildings that might otherwise be exempt, will require an additional coastal development permit from the Commission or its successor agency. Thus, if any development is proposed in the area of the blufftop, the Commission can require an additional botanical survey to determine at that time if Castilleja mendocinensis is present, and, if so, can condition the permit accordingly to protect sensitive habitat.

As conditioned, therefore, the Commission finds the proposed project to be consistent with LUP Policies 3.1-7 and 3.1-10, and with Sections 20.496.020 and 20.496.035 of the Zoning Code, as all environmentally sensitive habitat will be protected.

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The applicant has stated that requiring a riparian buffer area on his property would restrict development in the watercourse and in the buffer area and would thus deprive him of using a significant portion of his property. The applicant indicates that approximately one acre of his parcel is unbuildable because of the requirement originally imposed by the County and now imposed herein that no development take place within the riparian area or surrounding buffer area. However, as stated above, the subject parcel is 13 acres in size. The Commission notes that the restricted area only represents approximately 8% of the applicant's property. The restricted area is the minimum area necessary to protect sensitive habitat in the least intrusive manner.

Furthermore, the Commission is approving a substantial amount of development, including developing a 4,000-square-foot residence and garage and a 5,300-square-foot barn, a driveway, a well, and a septic system. The approved residence and barn are quite a bit larger than any residences or barns built on surrounding or nearby parcels in the area, even though the legal nonconforming 13-acre parcel is significantly smaller than the 40-acre minimum parcel size. The Commission is approving virtually all of the development proposed by the applicant in his application, with the exception that the proposed roadway crossings of the riparian area are required to be spanned without solid fill.

Section 20.380.050 of the Zoning Code expressly limits development on parcels of the size of the applicant's (more than five acres) to 10% of the lot area, in order to protect the rural, open character of the scenic Mendocino coast. Moreover, the applicant has proposed no specific use for the required open space area, and since the parcel is 13 acres in size, any future proposed development permitted under the LCP could be accommodated outside the riparian and buffer areas, where a feasible, less environmentally damaging alternative would exist. Even with the Zoning Code's 10% lot coverage limit for the site, the applicant still could be allowed to develop as much as 47,328 square feet of additional building space, approximately five times the amount of development approved under this permit.

The applicant has indicated that at some future time, he may wish to graze livestock on the subject parcel. The property is not designated in the County's LCP for agricultural use, which would allow unlimited grazing of livestock, but is designated as Remote Residential. This designation, pursuant to Section 20.336.030 of the Zoning Code, permits the grazing of no more than four large animals, such as cattle, horses, sheep, goats, hogs, or other farm stock or animals, on the subject parcel. The Commission thus concludes that even though development is restricted in the environmentally sensitive habitat areas on the subject parcel, the applicant still retains adequate unrestricted area on the parcel to graze up to four horses or cows, the maximum number of large pasture animals allowed under the LCP to be grazed

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on the subject lot. Although the barn is proposed to be located north of the riparian corridor and potential pasture lies south of the corridor, the four horses or other livestock permitted on the parcel could pass back and forth over the two bridges or arched culverts, through the gates, as allowed by this permit.

Therefore, the Commission finds that the applicant is being allowed to perform a substantial amount of development, and retains a substantial amount of unrestricted acreage where development could be proposed in the future, even while environmentally sensitive habitat areas on the property are protected.

4. Visual Resources:

Policy 3.5-1 of the County's LUP states that the scenic and visual qualities of Mendocino coastal areas shall be considered and protected as a resource of public importance, and that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas shall be subordinate to the character of its setting.

Policy 3.5-3 states that development permitted in "highly scenic areas" shall provide for the protection of ocean and coastal views from public areas including highways, roads, etc. Policy 3.5-3 also states that in addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. New development should be subordinate to the natural setting and minimize reflective surfaces.

Policy 3.5-5 states that providing that trees will not block coastal views from public areas, tree planting to screen buildings shall be encouraged.

Section 20.504.015 (C) of the certified Zoning Code for Mendocino County states in relevant part:

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

(2) In highly scenic areas west of Highway One, new development shall be limited to 18 feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

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

Section 20.504.020(D) requires the protection of scenic and visual qualities of coastal areas, and states that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas.

As described above, the subject property is located on the west side of Highway One in an extremely scenic portion of the coast, just north of the mouth of the Navarro River. Motorists traveling along this portion of Highway One are provided breathtaking views of the primarily undeveloped headlands and of the ocean. There is one small residence on the property immediately north of the subject lot, but most of the other surrounding parcels on both sides of Highway One are vacant. The subject property is in an area designated "Highly Scenic" in the County LUP, and thereby subject to special protection of visual resources.

The house, as currently proposed, is 20'6" in height, and the barn is 28' in height. The applicant initially proposed to the County a 28-foot-high residence, but later reduced the height of the house to be more in keeping with surrounding development. Even at its reduced height, the residence will be visible from many vantage points along Highway One, while the barn, which is partially screened by existing trees, will be only partially visible from a few locations along Highway One. The scale of the house (4,000 square feet) and barn (5,300 square feet) is not visually compatible with the character of the surrounding area or subordinate to its natural setting. The house is significantly larger than the house on the adjacent parcel, and, as proposed, will be visible from Highway One.

The County had attached several special conditions to its permit approval to reduce the project's adverse impacts on visual resources, such as requiring design restrictions and additional landscaping. Similarly, to reduce the adverse impacts on visual resources, such that the project is subordinate to the natural setting and is in character with surrounding structures, as required by LUP Policies 3.5-1 and 3.5-3 and Zoning Code Sections 20.504.015(C) and 20.504.020(D), the Commission attaches several special conditions to this permit. Special Condition No. 3 requires submittal of a landscaping/tree maintenance plan that provides for tree planting to screen the residence and barn from public view, and for a tree maintenance program (e.g., pruning, fertilizing, watering, etc.) for existing and newly planted trees and shrubs and a tree replacement program on a one-to-one or greater ratio for the life of the project.

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There are a number of existing trees on the subject property that will serve to screen portions of the proposed development. Although the subject property is designated for tree removal in the LCP, in this case it is not appropriate to remove trees from the site. Existing trees and required new trees will screen the proposed development such that it does not detract from coastal views elsewhere along the property; the southern portion of the property is primarily open and provides mostly unobstructed ocean views. To ensure that all existing trees will remain, the Commission attaches Special Condition No. 9, which states that this permit does not authorize the removal of any trees from the subject parcel, other than those required to be removed for the Caltrans Highway One encroachment, or to meet the fire safety regulations of the California Department of Forestry and Fire Protection. Any future removal of trees shall require a new coastal permit or an amendment to Coastal Permit No. A-1-MEN-94-105.

Since the house will be visible from Highway One, at least initially until the required trees grow to a size where they will screen the project from view, the Commission attaches Special Condition No. 4, which requires submittal of an exterior lighting plan indicating the location and design specifications for all exterior lighting fixtures. All exterior lights, including any lights attached to the outside of the house, shall be low-wattage, non-reflective, and have a directional cast downward. In addition, all exterior siding of both structures shall be of natural or natural-appearing materials of dark earthtone colors only, and the roofs shall also be of dark earthtone color and shall be of natural-appearing materials. In addition, all exterior materials, including the roofs and the windows, shall be non-reflective to minimize glare.

As conditioned, therefore, the proposed project is consistent with County LUP Policies 3.5-1, 3.5-3, and 3.5-5, and with Zoning Code Sections 20.504.015(C) and 20.504.020(D), as (1) development has been sited and designed to be visually compatible with the character of surrounding areas and to be subordinate to the character of its setting, (2) impacts to visual resources have been minimized, and (3) coastal views have been protected.

5. Geologic Hazards:

Policy 3.4-7 of the LUP requires that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Section 20.500.020(B) of the Zoning Code reiterates this language, and states that construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.

As noted above, the subject property is located on a steep bluff of at least 150 feet in height. A geologic report was prepared in 1992 for the subject property, and an addendum in 1993. The geologist who surveyed the property

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has recommended that all buildings be set back at least 75 feet from the top of the slope to accommodate anticipated erosion for the life of the project. A 50-foot septic system setback has also been recommended. The geologist found that the proposed septic system could safely be sited 50 feet from the bluff edge, where it has been sited due to site constraints that limit possible locations for a conventional septic system, as the design life of septic system leach fields are typically only 15-25 years anyway. By the time the bluff retreat reaches the proposed leach field, an alternative septic system or method of treating sewage wastes from the project will by necessity have already been developed to serve the residence. In addition, the geologist made a number of recommendations regarding site drainage, site grading, and foundations.

The Commission attaches Special Condition No. 7, which requires submittal of final foundation and site drainage plans that incorporate all recommendations made in the geotechnical report intended to avoid creating a geologic hazard. This condition reiterates a similar County condition. In addition, the Commission attaches Special Condition No. 10, which requires recordation of a deed restriction stating that all future development on the subject parcel that might otherwise be exempt from coastal permit requirements under the California Code of Regulations requires an amendment or coastal development permit. This condition will allow future development to be reviewed to ensure that the project will not be sited where it might result in a geologic hazard.

As conditioned, therefore, the proposed development is consistent with LUP Policy 3.4-7 and Section 20.500.020(B) of the Zoning Code, as the proposed development will not have adverse impacts on the stability of the coastal bluff or on erosion, and the Commission will be able to review any future additions to ensure that development will not be located where it might result in the creation of a geologic hazard.

6. Public Access:

Projects located within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP.

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212

states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

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

The County's land use maps designate the subject parcel for public access. However, in applying the public access policies of the Coastal Act and the LCP, the Commission is limited by the need to show that any denial based on these policies or any decision to grant a permit subject to special conditions requiring public access is necessary to offset a project's adverse impact on existing or potential public access.

The subject parcel is located west of Highway One and sits atop a steep bluff that rises to approximately 150-190 feet. There is no evidence of any public use of the subject lot for blufftop or beach access, and there does not appear to be any safe vertical access to the beach down the steep bluffs. Since the proposed development will not increase significantly the demand for public access to the shoreline and will have no other impacts on existing or potential public access, the Commission finds that the project, which does not include provision of public access, is consistent with the public access policies of the Coastal Act and the County's LCP.

7. California Environmental Quality Act (CEQA).

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

The proposed project has been conditioned in order to be found consistent with the policies of the Mendocino County LCP and the public access and recreation policies of the Coastal Act. Mitigation measures, including requirements that (1) development be sited outside of environmentally sensitive habitat areas; (2) the site be planted with trees to minimize visual impacts; (3) riparian

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crossings be constructed using bridges rather than earthen crossings with culverts to minimize damage to riparian areas; and (4) development be constructed in accordance with geotechnical report recommendations will minimize all adverse environmental impacts.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

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ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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