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Filed:	July 21, 2005
49 <sup>th</sup> Day:	September 8, 2005
Hearing Opened:	August 12, 2005
Staff:	Tiffany S. Tauber
Staff Report:	August 31, 2006
Hearing Date:	September 15, 2006

**STAFF REPORT: APPEAL**  
**DE NOVO HEARING**

APPEAL NO.:	<b>A-1-MEN-05-035</b>
APPLICANTS:	<b>Gordon Wardlaw</b>
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	In the Town of Mendocino, approximately 1/4 mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 and 44650 Little Lake Road (APNs 119-090-42, -43, & -44), Mendocino County.
PROJECT DESCRIPTION:	Construction of (1) an approximately 2,418-square-foot, 28-foot-high, single-family residence, (2) an approximately 690-square-foot attached garage, (3) a 10-foot-wide, approximately 380-foot-long gravel driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and -44, (4) installation of utilities within a 3-foot-corridor along each side of the driveway, (5) creation of a 0.068-acre wetland on APN 119-090-43 as 1:1 mitigation for wetland fill

resulting from construction of the driveway; and (6) record a deed restriction prohibiting any further development on the middle parcel (APN 119-090-43).

APPELLANTS:

Commissioners Bonnie Neeley and Sara Wan

SUBSTANTIVE FILE  
DOCUMENTS:

(1) Mendocino County CDP No. 111-02;  
(2) Mendocino County Local Coastal Program;  
(3) Coastal Development Boundary Line  
Adjustment No. 43-99; (4) Certificates of  
Compliance No. 20-97; (5) CDP No. A-1-MEN-03-  
029 (Claiborne & Schmitt)

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**SUMMARY OF STAFF RECOMMENDATION *DE NOVO*:**  
**APPROVAL WITH CONDITIONS**

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project. Staff believes that as conditioned, the development as amended for purposes of the Commission's de novo hearing will include measures to mitigate all significant adverse impacts to the wetland ESHA to the greatest extent feasible consistent with the Mendocino County LCP and the Coastal Act while providing for a reasonable economic use of the property that will avoid an unconstitutional taking of private property for public use.

The proposed development is located in the Town of Mendocino, approximately 1/4 mile east of Highway One, on the north side of Little Lake Road at 44658, 44654 and 44650 Little Lake Road. The applicant owns three adjoining parcels with three separate APNs (119-090-42, -43, & -44). (See Exhibit No. 3). The southern parcel adjacent to Little Lake Road (APN 119-090-44) is 0.65 acres and is developed with an existing single-family residence that was constructed prior to the Coastal Act. The middle parcel (APN 119-090-43) is 0.81 acres and is undeveloped. The proposed residence would be located on the northernmost parcel (APN 119-090-042), which is approximately 0.30-acres and is also undeveloped.

The proposed project includes the construction of (1) an approximately 2,418-square-foot, 28-foot-high, single-family residence, (2) an approximately 690-square-foot attached garage, (3) a 10-foot-wide, approximately 380-foot-long gravel driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and -44, 44, (4) installation of utilities within a 3-foot-corridor along each side of the driveway, and (5) creation of a 0.068-acre wetland on APN 119-090-43 as 1:1

mitigation for wetland fill resulting from construction of the driveway. Additionally, as further wetland mitigation, the applicant has proposed a deed restriction on APN 119-090-43 prohibiting any future development on this parcel that is comprised primarily of freshwater wetland and the site of the proposed mitigation wetland.

The applicant's biological consultant, Wetlands Research Associates, Inc., conducted a wetland delineation study at the subject property and determined that the site contains an approximately 0.68-acre freshwater wetland that extends across two of the three parcels owned by the applicant. The wetlands cover virtually all of the middle parcel (APN 119-090-043), and approximately the northern half of the developed parcel adjacent to Little Lake Road (APN 119-090-44). The northern parcel where the proposed residence would be located (APN 119-090-042) does not contain wetlands or any other environmentally sensitive habitat areas.

Due to configuration of the parcels relative to the existing wetlands and the location of an established access and utility easement along the western edge of the southern and middle parcels, any driveway from Little Lake Road crossing the southern and middle parcels to access the northernmost parcel where the applicant is proposing development of a residence would encroach into wetlands. The proposed project involves construction of a 380-foot-long, 10-foot-wide driveway with 3-foot-wide utility corridors on each side that would cross APNs 119-090-44 and 119-090-43 to access the northernmost parcel, APN 119-090-42. Approximately 251 feet of the driveway would be located within wetlands and would result in approximately 0.062-acres of wetland fill (257 cubic yards).

Wetlands are defined as an "environmentally sensitive habitat area" by the County's LCP. LUP Section 3.1-4 and CZC Section 20.496.025 limit the types of development allowable within wetland areas and do not include driveways for residential use. Furthermore, CZC Section 20.496.015 states that a project has the potential to impact an ESHA if development is proposed to be located within the ESHA. CZC Section 20.496.015(D) further restricts development in an ESHA to only those instances where: (1) agreement as to the extent of the ESHA has been reached among the members of the site inspection party; and (2) findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1). That section further indicates that no development shall be allowed in an ESHA unless: (a) the resource will not be significantly degraded by proposed development, (b) no feasible, environmentally less damaging alternative exists; and (c) all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. In addition, CZC Section 20.496.015(E) states that if findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.

At the Substantial Issue hearing in August 2005, the Commission continued the project and directed staff to further analyze the project's potential impacts to wetland habitat. Since the August 2005 hearing on the Substantial Issue determination, the applicant has

provided considerable additional information including: (1) an alternatives analysis of potentially feasible less environmentally damaging alternative driveway designs or locations, (2) the historic chain of title for the subject property to evaluate the legality of the subject lots; and (3) information regarding the applicant's acquisition of the property to allow the Commission to evaluate whether a denial of the project would result in a "takings" inconsistent with Section 30010 of the Coastal Act.

An alternatives analysis was prepared by the applicant's biologist and additional information was provided by the applicant to evaluate potential alternatives to accessing the northern parcel that would avoid placing fill in wetlands. The applicant provided evidence from surrounding property owners effectively denying him permission to access the property from the residential subdivision to the north (Hills Ranch), from the property to the west (Grindle Park) owned by the Mendocino Fire Protection District, or from the private landowner to the east. Additionally, an evaluation of constructing a bridge over the wetlands demonstrates that this alternative would result in significant adverse impacts to the wetland habitat. Therefore, staff determined that there is no less environmentally damaging feasible alternative to siting a driveway along the western edge of the southern and middle parcels in the wetland habitat to access the northern parcel and proposed residential building site.

Thus, because (a) a driveway for residential use is not an allowable form of development in wetlands, and (b) the proposed project would significantly degrade the ESHA, the Commission finds that the proposed development is inconsistent with the provisions of LUP Policy 3.1-4 and CZC Section 20.496.025. As findings for approval cannot be made consistent with these LCP policies, CZC Section 20.532.100(A)(1) and CZC Section 20.496.015(E) mandate that the project be denied. However, when the Commission denies a project, a question may arise whether the denial results in an unconstitutional "taking" of the applicant's property without payment of just compensation pursuant to Coastal Act Section 30010.

As a threshold matter, before a taking claim can be analyzed, it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be aggregated as a single parcel for takings purposes. In determining whether lots should be aggregated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition and the extent to which the parcel has been treated as a single unit (e.g., *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 [nine individual lots treated as single parcel for takings purposes]; *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318).

In this case, the applicant owns the subject vacant parcel proposed to be developed with a

single-family residence (APN 119-090-42), as well as the two adjacent parcels (APNs 119-090-43 and 119-090-44). The southernmost parcel adjacent to Little Lake Road (-44) is developed with an existing residence and the middle parcel (-43) is undeveloped.

In applying the factors above, staff recommends that the Commission find that the evidence supports that only two of the three parcels can be aggregated as a single unit for takings purposes and that the Commission should treat APN 119-090-42 and APN 119-090-43 as a single parcel for the purpose of determining whether a taking occurred. Because this single unit is currently undeveloped, is planned and zoned for residential use, and there is no other substantial economic use of the parcel, the Commission's project denial of all residential development on the middle and northern parcels would constitute a taking. However, because the middle and northern parcels constitute a single unit for purposes of takings analysis, the Commission need only approve one additional single-family residence on the non-wetland parcel rather than two additional residences.

To ensure that APN 119-090-42 and APN 119-090-43 are always considered a single economic unit for purposes of determining whether a taking has occurred, as well as ensure that the two APNs are never placed into divided ownership with a future owner separately owning the wetland parcel over which all development rights have been extinguished, staff recommends Special Condition No. 11 requiring that APN 119-090-42 and APN 119-090-43 be recombined and treated as a single parcel of land for all purposes and that APN 119-090-42 and APN 119-090-43 never be divided or sold separately. The imposition of this condition by the Commission is necessary to ensure both that the non-developable wetland parcel is never conveyed separately and that the non-developable wetland parcel is never the subject of a takings challenge by the current or future owner.

To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, staff recommends that the Commission allow construction of a residential development to provide a reasonable economic use of combined APN 119-090-42 and 119-090-43. Staff believes, based on the evidence provided by the applicant, that the combined APN 119-090-42 and 119-090-43 was purchased with the expectation of residential use, that such expectation is reasonable, that the investment was significant, that the proposed development is commensurate with such investment-backed expectations for combined APN 119-090-42 and 119-090-43, and that none of the uses otherwise allowable under the certified LCP would provide an economic use.

Although the applicant is entitled under Coastal Act Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to completely avoid application of the policies and standards of the certified LCP. Instead, the Commission is only directed to avoid construing these applicable policies in a way that would take private property for public use. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the LCP. Therefore, in this situation, the Commission must still comply with LUP

Section 3.1-4, CZC Section 20.496.025, and 20.535.100 by requiring (1) the least environmentally damaging feasible alternative, and (2) measures to mitigate adverse environmental effects.

The applicant proposes to create a new 0.068-acre wetland area directly adjacent to the existing wetland on the middle parcel (APN 119-090-43) to mitigate for the 0.062 acres of fill in freshwater wetland for the proposed driveway construction, or a slightly greater than 1:1 ratio. With regard to the mitigation ratio, the Commission generally requires mitigation ratios of habitat creation to habitat loss of at least 2:1 or greater to account for some mitigation failure and the temporal loss of habitat values that occurs before the mitigation site provides comparable function and value. In this particular case, however, there is not enough upland area within the project site to create additional new wetland area without significant excavation into the slope on the eastern edge of the property. The wetland creation area has been designed to maximize the amount of on-site area that can be excavated to create new wetland habitat.

Although the proposed wetland creation would significantly improve wetland values at the site to a level greater than the values provided by the wetlands to be filled, staff believes that the proposed development would still result in a loss of wetland habitat values until the time that the created wetlands are established and functioning at a level comparable to the existing wetlands. Staff believes that because of the net loss of wetland habitat values resulting from the project as proposed, the mitigation proposal does not provide adequate wetland mitigation and must be supplemented by providing greater mitigation that includes enhancing the value of the existing wetland. Therefore, staff recommends that the Commission attach Special Condition No. 1(A)(1) requiring the applicant to submit a revised wetland mitigation plan that includes provisions for the removal of non-native, invasive plant species within and adjacent to the existing wetland habitat. Special Condition No. 1 also requires the revised wetland mitigation plan to include additional detailed provisions regarding a schedule for the creation of the 0.068-acre wetland area, timing of construction and planting, submittal of “as built” plans within 30 days of completion of the wetland mitigation work, monitoring and reporting, and performance standards.

Furthermore, the applicant has proposed to record a deed restriction on APN 119-090-43 as an additional mitigation measure to prohibit any future development on this parcel that is comprised primarily of existing freshwater wetland and the proposed mitigation wetland area to be created. Relinquishing development rights on this middle parcel would ensure the protection of the wetland ESHA from significant degradation resulting from future development and the continuance of the existing wetland and the mitigation site. Staff also believes it is necessary to deed restrict other portions of the existing wetland and the wetland creation area to ensure (1) that the full extent of the wetland creation area needed for mitigation will be protected from future development, (2) that the full area where wetland enhancements are required (i.e. removal of non-native, invasive vegetation) to further mitigate project impacts will also be preserved and

protected from future development, and (3) that the required 100-foot wetland buffer area will be protected from future development that may adversely affect the adjacent ESHA. Thus, staff recommends Special Condition No. 3 that restricts development in the existing wetlands, wetland mitigation area, and wetland buffer areas on APNs 119-090-42, 119-090-43, and 119-090-44 as shown on Exhibit No. 3 to the construction of the proposed driveway, installation of utilities, construction of the wetland mitigation area, removal of non-native, invasive vegetation and planting of native wetland plants. These restrictions will ensure that the minimum amount of sensitive wetland habitat is disturbed and that the use of the deed restricted area is limited to natural open space for habitat protection and conservation uses.

Staff also recommends Special Condition No. 6 which requires the applicant to record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property, including this development prohibition on APN 119-090-43.

To further minimize and mitigate adverse impacts to the wetland ESHA to the greatest extent feasible, staff recommends further conditioning the development in the following manner:

To ensure the protection of the quality and biological productivity of the ESHA by minimizing the volume of stormwater runoff that could potentially drain to the ESHA, staff recommends Special Condition No. 4 that requires the applicant to submit an erosion and runoff control plan for the review and approval of the Executive Director demonstrating that the runoff from the site is collected and directed away from the ESHA in a non-erosive manner into pervious areas on the site to achieve infiltration to the maximum extent practicable and also requires implementation of erosion control measures. Special Condition No. 2 would require all driveway and wetland site excavation and grading work to be performed and completed during the non-rainy season between May 1 and October 15 to further minimize erosion and water quality impacts.

Additionally, although a large portion of the area adjacent to the proposed building site and the ESHA itself is vegetated with existing non-native invasive plant species, the wetland ESHA could be adversely affected by the development if additional non-native, invasive plant species were introduced from landscaping at the site. Therefore, staff recommends Special Condition No. 5 that requires only native and/or non-invasive plant species of local genetic stock be planted at the property governed by CDP No. A-1-MEN-05-035. Special Condition No. 5 also prohibits the use of specified rodenticides on the property to minimize potential cumulative impacts to environmentally sensitive wildlife species.

The proposed residence and garage have been sited to provide a 100-foot buffer from the edge of the existing wetlands (see Exhibit No. 3) as required by the LCP. However, the northernmost portion of the proposed driveway and underground utilities adjacent to the

roadbed would be located within a portion of the ESHA buffer. LUP Policy 3.1-7 and CZC Section 20.496.020 require development permitted within a buffer area to generally be the same as those uses permitted in the adjacent ESHA, and shall be (1) sited and designed to prevent impacts which would significantly degrade such areas, (2) compatible with the continuance of the habitat, and (3) allowed only if no other feasible site is available on the parcel and mitigation is provided to replace any particular value of the buffer lost by the development. Although the proposed driveway is not an allowable use within the wetland ESHA buffer, as discussed above, staff recommends that the Commission allow a reasonable residential development on APN 119-090-42 and APN 119-090-43 to avoid an unconstitutional taking of the applicant's property without payment of just compensation. Staff believes that Special Condition Nos. 3, 4, and 5 discussed above will also ensure the protection of the values of the ESHA buffer in a manner that is compatible with the continuance of the habitat as required by the LCP.

Therefore, staff believes that as conditioned to require (1) creation of a new 0.068-acre wetland adjacent to existing wetlands on the site; (2) enhancement of the existing wetlands by the removing invasive exotic vegetation, (3) prohibiting development in the existing wetlands, wetland mitigation area, and wetland buffer areas on APNs 119-090-42, 119-090-43, and 119-090-44, and (4) other specific mitigation measures to further protect the environmentally sensitive wetland habitat by requiring a CDP for future improvements, directing runoff away from the ESHA, prohibiting the introduction or further spreading of invasive exotic species, and prohibiting the use of specified rodenticides, the project will include measures to mitigate all significant adverse impacts to the wetland ESHA to the greatest extent possible consistent with LUP Section 3.1-4 and CZC Section 20.496.025, and 20.535.100 while providing for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use.

**The motion to adopt the staff recommendation of approval with conditions is found on page 9.**

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#### **STAFF NOTES:**

##### **1. Procedure**

On August 12, 2005, the Commission found that the appeal of the County of Mendocino's approval of a local coastal development permit for a house, garage, and driveway raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the application *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which



the Commission has certified a Local Coastal Program and is not located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the Mendocino County certified Local Coastal Program (LCP). Testimony may be taken from all interested persons at the *de novo* hearing.

**2. Submittal of Additional Information by the Applicant**

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of: (1) an alternatives analysis of potentially feasible less environmentally damaging alternative driveway designs or locations, (2) the historic chain of title for the subject property to evaluate the legality of the subject lots; and (3) information regarding the applicant's acquisition of the property to allow the Commission to evaluate whether a denial of the project would result in a "takings" inconsistent with Section 30010 of the Coastal Act. Additionally, the applicant has revised the proposed project for purposes of the Commission's *de novo* review of the project to include an open space deed restriction on APN 119-090-43 to prohibit future development on this parcel that is comprised primarily of freshwater wetland and the site of the proposed mitigation wetland. The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit.

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**I. MOTION, STAFF RECOMMENDATION *DE NOVO*, AND RESOLUTION:**

**Motion:**

I move that the Commission approve Coastal Development Permit No. A-1-MEN-05-035 subject to conditions.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve Permit:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Mendocino County LCP. Approval of the permit complies with the California Environmental

Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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**I. STANDARD CONDITIONS: See Attachment A.**

**II. SPECIAL CONDITIONS:**

**1. Revised Wetland Mitigation Plan**

**A. Within 90 days of Commission approval or such additional time the Executive Director may grant for good cause, and prior to construction of the single-family residence and garage,** the applicant shall submit, for review and written approval of the Executive Director, a final revised wetland mitigation plan that substantially conforms with the mitigation plan submitted to the Commission entitled "*Wetland Mitigation Plan, Wardlaw/Huff Property 44650 Little Lake Rd., Mendocino, CA*" dated April 2004 and prepared by Wetlands Research Associates, Inc. except that it shall be revised to include the following provisions:

- (1) Provisions for enhancement of existing wetland habitat as shown on Exhibit No. 3 by removing invasive, exotic plants including, but not limited to, Himalayan blackberry, scotch broom, and perennial grasses;
- (2) A description of monitoring methods and a monitoring schedule;
- (3) Provisions for ensuring achievement of performance standards including (1) 100% vegetative cover within the wetland creation area of the wetland plant species composing the surrounding wetland vegetation within five years, and (b) no presence of invasive exotic plants in both the wetland creation and enhancement areas;
- (4) Provisions for submittal of annual monitoring reports to the Executive Director by November 1 of each of the five years of monitoring following completion of the mitigation site. The monitoring reports shall be prepared by a qualified wetland biologist and shall evaluate whether the mitigation site conforms with the goals, objectives, and performance standards set forth in the approved final revised wetland mitigation plan;

- (5) A schedule for the creation of 0.068-acres of wetland area that demonstrates that (a) the required excavation and grading at the wetland creation site shall only commence after completion of the driveway approved under CDP No. A-1-MEN-05-035, be performed during the non-rainy season between May 1 and October 15, and be completed within three months of completion of construction of the access driveway approved under CDP No. A-1-MEN-05-035, (b) the wetland vegetation planting shall be performed between November 1 and April 15 during the first rainy season following completion of the mitigation site excavation and grading work, and (c) that removal of invasive exotic plants from the wetland enhancement area shall be completed within one year of the commencement of construction;
  - (6) Submittal within 30 days of completion of the wetland mitigation work at the site of the following:
    - (a) "As built" plans shall be submitted demonstrating that the wetland mitigation work has been completed in accordance with the approved mitigation plan including site elevations;
    - (b) A description of the number, types, location, and condition of vegetation planted at the mitigation site.
- B. The permittee shall undertake the mitigation program in accordance with the approved final revised wetland mitigation plan. 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.
- C. If the final monitoring report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the performance standard of achieving (a) 100% ground cover of the wetland plant species composing the surrounding vegetation within five years, and (b) no presence of invasive exotic plants in both the wetland creation and enhancement areas, the applicant shall submit a revised or supplemental mitigation program to compensate for those portions of the original program which did not meet the performance standard. The revised mitigation program shall be processed as an amendment to this coastal development permit.

**2. Timing of Development**

All driveway and wetland site excavation and grading work must be performed and completed during the non-rainy season between May 1 and October 15. Planting of vegetation in the wetland mitigation site shall be performed between November 1 and April 15 during the first rainy season following completion of the driveway and wetland mitigation site excavation and grading work. Removal of invasive exotic plants from the wetland enhancement area shall be completed within one year of the commencement of construction.

**3. Open Space Restriction**

A. No development, as defined in Section 30106 of the Coastal Act, shall occur anywhere on APN 119-090-43 or in the existing wetlands, wetland mitigation area, and wetland buffer areas on APNs 119-090-42, 119-090-43, and 119-090-44 as shown on Exhibit No. 4 and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

1. construction of the driveway, installation of utilities, construction of the wetland mitigation area, removal of non-native, invasive vegetation and planting of native wetland plants as approved under CDP No. A-1-MEN-05-035.

B. **Within 90 days of Commission approval of CDP No. A-1-MEN-05-035 or such additional time as the Executive Director may grant for good cause, and prior to construction of the single-family residence and garage,** the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit No. 3 attached to this staff report.

**4. Erosion and Runoff Control Plan**

A. **Within 90 days of Commission approval or such additional time the Executive Director may grant for good cause, and prior to construction of the single-family residence and garage,** the applicant shall submit to the Executive Director, for review and written approval, an erosion and runoff control plan demonstrating the following:

- (1) Straw bales and/or silt fencing shall be installed to contain runoff from construction areas;

- (2) Native on-site vegetation shall be maintained to the maximum extent feasible during construction;
  - (3) Any disturbed areas shall be replanted or seeded with native vegetation of local genetic stock following project completion;
  - (4) All on-site stockpiles of construction debris shall be covered and contained to prevent polluted water runoff; and
  - (5) Runoff from the roof and other impervious surfaces of the development shall be collected and directed away from the wetland environmentally sensitive habitat areas (ESHA) and ESHA buffer area as shown on Exhibit No. 4 in a non-erosive manner into pervious areas of the site (i.e. undeveloped areas, landscaped areas) to achieve infiltration to the maximum extent practicable.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**5. Landscaping Restrictions**

- A. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist within the property governed by CDP No. A-1-MEN-05-035. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property governed by CDP No. A-1-MEN-05-035.
- B. No rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone, Brodifacoum or Diphacinone shall be utilized within the property governed by CDP No. A-1-MEN-05-035.

**6. Deed Restriction**

**Within 90 days of Commission approval of CDP No. A-1-MEN-05-035 or such additional time as the Executive Director may grant for good cause, and prior to construction of the single-family residence and garage,** the applicant shall submit to the Executive Director for review and approval, documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, the California Coastal Commission has authorized development on

the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as amended, as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**7. Design Restrictions**

- A. All exterior siding and roofing of the proposed structure shall be composed only of the colors proposed in the application or darker earth tone colors. The current owner or any future owner shall not repaint or stain the house or other approved structures with products that will lighten the color of the house or other approved structures without an amendment to this permit. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare;
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

**8. U.S. Army Corps of Engineers Approval**

**Within 90 days of Commission approval of CDP No. A-1-MEN-05-035 or such additional time as the Executive Director may grant for good cause, and prior to construction of the single-family residence and garage,** the permittee shall provide to the Executive Director a copy of a permit issued by the U.S. Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

**9. Department of Fish and Game Approval**

**Within 90 days of Commission approval of CDP No. A-1-MEN-05-035 or such additional time as the Executive Director may grant for good cause, and prior to construction of the single-family residence and garage,** the applicant shall submit a

copy of any necessary Section 1603 Streambed Alteration Agreement or other approval required by the Department of Fish and Game for the project, or evidence that no approval is required. The applicant shall inform the Executive Director of any changes to the project required by the Department of Fish and Game. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**10. Conditions Imposed By Local Government**

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

**11. Lot Combination of APN 119-090-42 and APN 119-090-43**

- A. (1) All portions of the two parcels, APN 119-090-42 and APN 119-090-43, shall be recombined and unified, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, development, taxation or encumbrance, and (2) the single parcel created herein shall not be divided or otherwise alienated from the combined and unified parcel.
- B. **Within 90 days of Commission approval of A-1-MEN-05-035, or such additional time as the Executive Director may grant for good cause, and prior to construction of the single-family residence and garage,** the applicant shall execute and record a deed restriction, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of the two parcels being recombined and unified. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

**12. Permit Expiration and Condition Compliance**

Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

### **III. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

#### **1. Incorporation of Substantial Issue Findings**

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report, dated July 29, 2005.

#### **2. Project History / Background**

On June 23, 2005, the Mendocino County Coastal Permit Administrator conditionally approved the coastal development permit for the proposed project (CDP #111-02) (Exhibit No. 5). The permit approved (1) the construction of an approximately 2,418 - square-foot single-family residence with a maximum height of 28 feet above grade; (2) construction of an approximately 690 - square-foot garage with a maximum height of 16 feet above grade; (3) construction of a 16-foot-wide, approximately 380-foot-long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and -44; and (4) a 1:1 wetland mitigation plan. The approved driveway would cross a wetland on APNs 119-090-44 & -43 to access the undeveloped parcel (APN 119-090-42) to be developed with the proposed residence. Electrical, telephone, and sewer services would be extended underground along the proposed driveway corridor.

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

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by the Commission staff on July 7, 2005. The County's approval of the project was appealed to the Coastal Commission on July 21, 2005 by Commissioners Wan and Neely.



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

On August 12, 2005, the Commission found that a Substantial Issue had been raised with regard to the consistency of the project as approved and the applicable policies of the LCP concerning development in wetlands, an environmentally sensitive habitat area (ESHA) as defined by the County’s LCP.

The Commission continued the *de novo* portion of the appeal hearing so that the applicant could provide additional information relating to the substantial issue. The applicant has submitted an alternatives analysis to evaluate potential access alternatives that would avoid impacts to the wetland ESHA, information relating to the legality of the parcels, and information needed to evaluate the application of Coastal Act Section 30010 regarding the unconstitutional taking of private property for public use. Additionally, the applicant has revised the proposed project for purposes of the Commission’s *de novo* review of the project to include an open space deed restriction on APN 119-090-43 to prohibit development on this parcel that is comprised primarily of freshwater wetland and the site of the proposed mitigation wetland.

### **3. Site and Project Description**

The proposed project is located in the Town of Mendocino, approximately 1/4 mile east of Highway One, on the north side of Little Lake Road at 44658, 44654 and 44650 Little Lake Road. The applicant owns three adjoining parcels with three separate APNs (119-090-42, -43, & -44). (See Exhibit No. 3). The parcels were historically considered to be one parcel, but four Certificates of Compliance approved by the County in 1998 recognized four separate parcels, and a subsequent boundary line adjustment approved by the County in 2001 resulted in the current configuration of three separate parcels. The southern parcel adjacent to Little Lake Road (APN 119-090-44) is 0.65 acres and is developed with an existing single-family residence that was constructed prior to the Coastal Act. The middle parcel (APN 119-090-43) is 0.81 acres and is undeveloped. The proposed residence would be located on the northernmost parcel (APN 119-090-042), which is approximately 0.30-acres and is also undeveloped. The project site generally slopes moderately from north to south (5 to 15%) at elevations ranging from 200 to 240 feet with a small grade on the east.

Wetlands Research Associates, Inc (WRA) prepared a wetland delineation dated September 2002 and determined that the subject property contains a 0.68-acre wetland, covering virtually all of the middle parcel (APN 119-090-043), and approximately the

northern half of the developed parcel adjacent to Little Lake Road (APN 119-090-44). Perennial wetland occurs in the lowest portion of the wetland area and is bordered by a topographically higher band of seasonal wetland. The northern parcel where the proposed residence would be located (APN 119-090-042) does not contain wetlands or any other environmentally sensitive habitat areas.

The site is predominately comprised of three plant communities including North Coast Coniferous Forest, Non-native annual grassland, and Freshwater Wetland as noted above. North Coast Coniferous Forest occurs in the far northern portion of the site and is dominated by Grand fir (*Abies grandis*), Bishop pine (*Pinus Muricatus*), and Douglas fir (*Pseudotsuga menziesii*). Non-native grassland occurs predominantly in the northern and eastern portion of the site in drier locations and is dominated by velvet grass (*Holcus lanatus*), sweet vernal grass (*Anthoxanthum odoratum*), bracken fern (*Pteridium aquilinum*), and wild radish (*Raphanus sativus*). The freshwater wetland habitat is dominated by small-fruit bulrush (*Scirpus microcarpus*), tall flatsedge (*Cyperus eragrostis*), soft rush (*Juncus effuses*), water parsley (*Oenanthe sarmentosa*), and Himalayan blackberry (*Rubus discolor*).

The proposed project includes the construction of (1) an approximately 2,418-square-foot, 28-foot-high, single-family residence, (2) an approximately 690-square-foot attached garage, (3) a 10-foot-wide, approximately 380-foot-long gravel driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 and -44, 44, (4) installation of utilities within a 3-foot-corridor along each side of the driveway, and (5) creation of a 0.068-acre wetland on APN 119-090-43 as 1:1 mitigation for wetland fill resulting from construction of the driveway. Additionally, as further wetland mitigation, the applicant has proposed a deed restriction on APN 119-090-43 to prevent future development on this parcel that is comprised primarily of freshwater wetland and the site of the proposed mitigation wetland.

Prior to December 2002 and without a coastal development permit, a road was cleared from Little Lake Road, through the western edges of the southern and middle parcels to access the northern parcel and the proposed house site in the location of the currently proposed driveway. This road was cleared through a 0.036-acre portion of the 0.68-acre wetland, but did not involve placement of wetland fill. The unpermitted road impacted the wetland through vegetation removal and a decrease in water quality caused by erosion and sedimentation. The proposed driveway would be improved to County standards, which includes raising and widening the access road, including a 10-foot-wide road prism and 3-foot-wide utility corridors on either side. Approximately 251 lineal feet of the 380-foot-long driveway would be located in wetlands and would result in the direct fill of 0.062 acres of wetland habitat, including 0.036 acres of fill to be placed in the wetland area impacted by the initial road clearing and 0.026 acres of adjacent wetland area. Culverts would be installed under the proposed road to facilitate hydrologic continuity between the on-site wetland and wetlands on the adjacent parcel to the west during periods of stormwater runoff.

The proposed project would mitigate for the wetland area lost from the proposed fill associated with the road upgrade (0.026 acres) by creating a new 0.068-acre wetland area directly adjacent to the existing wetlands on the middle parcel (APN 119-090-43). The mitigation wetland would be created by excavating the upland grade at the northern edge of the existing wetland to the same elevation. The created wetland would be vegetated with locally occurring wetland plants using three methods: 1) topsoil stockpiling and re-spreading, 2) transplanting, and 3) natural revegetation. As the elevation rises slightly to the northeast and east of the area to be excavated, the slope next to the existing wetland would be held by a low rock retaining wall to prevent slumping into the created wetland. The success of the mitigation wetland is proposed to be measured using standard, vegetation-based criteria over a five-year period. The plan proposes that at the end of five years, the mitigation wetland should display 90% of the vegetation cover that is found in the reference wetland and half of the dominant plants in the mitigation wetland would be natives.

#### **4. Locating New Development**

##### Summary of LCP Provisions

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 the policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized. Mendocino Town Plan Policy 4.13-22 and Mendocino Town Zoning Code Section 20.744.020 require all new development be contingent upon proof of an adequate water supply during dry summer months which will accommodate the proposed development and will not deplete the ground water table of contiguous or surrounding uses. Mendocino Town Zoning Code Section 20.644 sets forth development standards for the Mendocino Rural Residential zoning district (MRR) and allows single-family residential development as a principal permitted use.

Policy 3.8-1 states that Highway One capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

##### Discussion

The subject property is designated in the Mendocino County LUP and Coastal Zoning Code as Rural Residential. As the proposed project involves the construction of a single-

family residence located in an area planned for single-family residential use, the proposed single-family residence is consistent with the LUP and zoning designation for the site.

Development of the site as a single-family residence is envisioned under the certified LCP. The significant cumulative adverse impacts on traffic capacity of Highway One from development approved pursuant to the certified LCP were examined at the time the LCP was certified. Therefore, as conditioned, the proposed single-family residence is located in an area able to accommodate traffic generated by the proposed development and would not result in significant adverse impacts to the traffic capacity of Highway One consistent with the applicable provisions of LUP Policy 3.8-1.

The property is located within the jurisdiction of the Mendocino City Community Services District (MCCSD), which provides sewer service and regulates groundwater extraction within the project area. The applicant has provided evidence of MCCSD approval of a Groundwater Extraction Permit and the MCCSD has indicated that it has sufficient capacity to treat the wastewater for the proposed residence. Electrical, telephone, and sewer services would be extended underground along the proposed driveway corridor.

As discussed below, the proposed development has been conditioned to include all available feasible mitigation measures, which will avoid significant adverse environmental impacts to the maximum extent feasible. Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.9-1, 3.8-1, 4.13-22, and with Zoning Code Section 20.744.020, because (a) there will be only one residential unit on the parcel, (b) there would be adequate services on the site to serve the proposed development, and (c) the project would avoid significant adverse cumulative impacts to highway capacity, scenic values, environmentally sensitive habitat areas, water quality, and other coastal resources to the maximum extent feasible.

## **5. Environmentally Sensitive Habitat Area**

### **LCP Policies**

Mendocino County LUP Policy 3.1-4 states:

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

- 1. Port facility construction or expansion, Section 30233(a)(1).*
- 2. Energy facility construction or expansion, Section 30233(a)(1).*
- 3. Coastal-dependent industrial facilities such as commercial fishing facilities, construction or expansion, Section 30233(a)(1).*
- 4. Maintenance or restoration of dredged depths or previously dredged depths in: navigational channels, turning basins, vessel berthing and mooring areas, and associated with boat launching ramps.*

5. *In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that in a degraded wetland, other boating facilities may be permitted under special circumstances, Section 30233(a)(3). New or expanded boating facilities may be permitted in estuaries, Section 30233(a)(4).*
6. *Incidental public services purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
7. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
8. *Nature study purposes and salmon restoration projects.*
9. *Aquaculture, or similar resource dependent activities excluding ocean ranching. (See Glossary)*

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

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

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural*

- pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
  - (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
  - (7) Restoration purposes.*
  - (8) Nature study, aquaculture, or similar resource dependent activities.*
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.*
- (c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

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

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

LUP Policy 3.1-7 in applicable part states:

*"A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not*

*be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*

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

Section 20.719.005 of the Mendocino Town Zoning Code States:

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

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

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

- (1) Port facility expansion or construction.*
- (2) Energy facility expansion or construction.*
- (3) Coastal-dependent industrial facilities, such as commercial fishing facilities, expansion or construction.*
- (4) Maintenance or restoration of dredged depths or previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and associated boat launching ramps.*

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

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

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

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

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

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

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

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

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

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

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

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

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



CZC Section 20.496.015 states in applicable part:

(A) *Determining Extent of ESHA. The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if: ...*

*(2) The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information; ...*

(B) *Disagreement as to Extent of ESHA. Where the Coastal Permit Administrator and representatives of the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain as to the extent of the sensitive habitat on any parcel, such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, county staff member and representatives from Fish and Game and the Coastal Commission...*

(D) *Development Approval. Such development shall only be approved if the following occurs:*

*(1) All members of the site inspection team agree to the boundaries of the sensitive resource area; and*

*(2) Findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1).*

(E) *Denial of Development. If findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied. [emphases added]*

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

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

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

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

*(A) Resource Protection Impact Findings.*

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

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

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

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

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

*“ESHA- Development Criteria*

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

*(1) Width.*

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

- (a) *Biological Significance of Adjacent Lands*  
...
- (b) *Sensitivity of Species to Disturbance*  
...
- (c) *Susceptibility of Parcel to Erosion*  
...
- (d) *Use of Natural Topographic Features to Locate Development*  
...
- (e) *Use of Existing Cultural Features to Locate Buffer Zones*  
...
- (f) *Lot Configuration and Location of Existing Development*  
...
- (g) *Type and Scale of Development Proposed*  
...
- (2) *Configuration*  
...
- (3) *Land Division. New Subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*
- (4) *Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:*
  - (a) *Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*
  - (b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*
  - (c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*
  - (d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their*

*ability to be self-sustaining and to maintain natural species diversity.*

- (e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*
- (f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*
- (g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*
- (h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.*
- (i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*
- (j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*
- (k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration,*

*including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.*

**a. Identification of the Presence, Extent, and Impacts of Development on Wetland ESHA**

The applicant's biological consultant, Wetlands Research Associates, Inc., conducted a wetland delineation study at the subject site ("*Delineation of Jurisdictional Wetlands Under the Mendocino County Local Coastal Program, Little Lake Road Project Site, Mendocino, Mendocino County, California*," dated September 2002) and determined that the site contains an approximately 0.68-acre freshwater wetland that extends across two of the three parcels owned by the applicant.

The wetland is composed of a broad concave area that is fed by a combination of surface runoff and groundwater discharge from the north and east. The area has predominantly seasonal wetland hydrology, with the exception of the southeastern portion which appears to have perennial hydrology fed partially by groundwater. The wetland drains toward the southwest, into a drainage channel, and into another wetland complex west of the property boundary. Vegetation in the wetland is dominated by small-fruit bulrush (*Scirpus microcarpus*), tall flatsedge (*Cyperus eragrostis*), soft rush (*Juncus effuses*), water parsley (*Oenanthe sarmentosa*), and Himalayan blackberry (*Rubus discolor*).

A wetland delineation map prepared by the applicant's biologist shows the wetlands extending from approximately the northern half of the southernmost parcel adjacent to Little Lake Road (APN 119-090-44; developed with an existing residence) through the majority of the middle parcel (APN 119-090-43) with the exception of the higher elevations along the northern and northeastern portions of the middle parcel. The northernmost parcel proposed for new residential development (APN 119-090-42) does not contain any delineated wetlands or other environmentally sensitive habitat areas. (See Exhibit No. 3). Due to the unusual configuration of the three parcels, the occurrence of wetland habitat on the southern and middle parcels effectively renders it impossible to develop a driveway to access the northern parcel without locating portions of the driveway within the wetlands.

Since the Commission's Substantial Issue determination in August 2005 that Appeal No. A-1-MEN-05-035 raised a substantial issue of conformance with the certified LCP, an alternatives analysis was prepared by the applicant's biologist and additional information was provided by the applicant to evaluate potential alternatives to accessing the northern parcel that would avoid placing fill in wetlands. The applicant provided evidence from surrounding property owners effectively denying him permission to access the property from the residential subdivision to the north (Hills Ranch), from the property to the west (Grindle Park) owned by the Mendocino Fire Protection District, or from the private

landowner to the east. Additionally, an evaluation of constructing a bridge over the wetlands demonstrates that this alternative would result in significant adverse impacts to the wetland habitat. Therefore, as discussed further in Section (f) below, it was determined that there is no less environmentally damaging feasible alternative to siting a driveway along the western edge of the southern and middle parcels in the wetland habitat to access the northern parcel and proposed residential building site.

**b. Development within Wetland ESHA**

As nearly half of the southern parcel and the majority of the middle parcel constitute wetlands, an environmentally sensitive habitat area (ESHA) as defined by Coastal Zoning Code (CZC) Section 20.496.010, any driveway from Little Lake Road crossing the southern and middle parcels to access the northernmost parcel where the applicant is proposing development of a residence would encroach into ESHA. LUP Section 3.1-4 and CZC Section 20.496.025 limit the types of development allowable within wetland areas and do not include driveways for residential use. Furthermore, CZC Section 20.496.015 states that a project has the potential to impact an ESHA if development is proposed to be located within the ESHA. CZC Section 20.496.015(D) further restricts development in an ESHA to only those instances where: (1) agreement as to the extent of the ESHA has been reached among the members of the site inspection party; and (2) findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1). That section further indicates that no development shall be allowed in an ESHA unless: (a) the resource will not be significantly degraded by proposed development, (b) no feasible, environmentally less damaging alternative exists; and (c) all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. In addition, CZC Section 20.496.015(E) states that if findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.

The proposed project involves construction of a 380-foot-long, 10-foot-wide driveway with 3-foot-wide utility corridors on each side that would cross APNs 119-090-44 and 119-090-43 to access the northernmost parcel, APN 119-090-42. Approximately 251 feet of the driveway would be located within wetlands and would result in approximately 0.062-acres of wetland fill (257 cubic yards).

Thus, because (a) a driveway for residential use is not an allowable form of development in wetlands, and (b) the proposed project would significantly degrade the ESHA, the Commission finds that the proposed development is inconsistent with the provisions of LUP Policy 3.1-4 and CZC Section 20.496.025. As findings for approval cannot be made consistent with these LCP policies, CZC Section 20.532.100(A)(1) and CZC Section 20.496.015(E) mandate that the project be denied.

c. **Need to Allow a Reasonable Residential Development to Avoid an Unconstitutional Taking of Property**

As discussed above, the proposed development is inconsistent with LUP Policy 3.1-4 and CZC Sections 20.496.025 and 20.532.100(A)(1) regarding development in wetlands. Therefore, CZC Section 20.496.015(E) requires that the project be denied. However, when the Commission denies a project, a question may arise whether the denial results in an unconstitutional “taking” of the applicant’s property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

*The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Coastal Act imposes on the Commission the duty to assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project with the assurance that its actions are consistent with Section 30010. If the Commission concludes that its action might constitute a taking, then Section 30010 requires the Commission to approve some level of development, even if the development is otherwise inconsistent with Coastal Act policies. In this latter situation, the Commission will propose modifications to the development to minimize its Coastal Act inconsistencies while still allowing some reasonable amount of development.<sup>1</sup>

In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, its denial of the project would constitute a taking. As discussed further below, the Commission finds that to avoid a takings in compliance with Section 30010, the Commission determines it will allow a reasonable residential development on combined APNs 119-090-42 and 119-090-43.

(i). **General Takings Principles**

The Fifth Amendment of the United States Constitution provides that private property shall not “be taken for public use, without just compensation.”<sup>2</sup> Article 1, section 19 of

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<sup>1</sup> For example, in CDP A-1-MEN-03-029 (Claiborne and Schmitt), the Commission in 2004 approved residential development on a site that was entirely ESHA even though it was not resource dependent development and thus was inconsistent with the LCP (which was the standard of review in that case).

<sup>2</sup> The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

the California Constitution provides that “[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner.”

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* ((1922) 260 U.S. 393). Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (see *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523). First, there are the cases in which government authorizes a physical occupation of property (see, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419). Second, there are the cases in which government merely regulates the use of property (*Yee, supra*, 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation (e.g., *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18). The Commission’s actions here would be evaluated under the standards for a regulatory taking.

The Supreme Court itself has recognized that case law offers little insight into when, and under what circumstances, a given regulation may be seen as going “too far” (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014). In its recent takings cases, however, the Court has identified two circumstances in which a regulatory taking might occur. The first is the “categorical” formulation identified in *Lucas, supra*. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a “case specific” inquiry into the public interest involved (*Id.* at p. 1014). The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only “in the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted” or the “relatively rare situations where the government has deprived a landowner of all economically beneficial uses” or rendered it “valueless” (*Id.* at pp. 1016-1017 [emphasis in original]) (see *Riverside Bayview Homes, supra*, 474 U.S. at p. 126 [regulatory takings occur only under “extreme circumstances”]).<sup>3</sup>

The second circumstance in which a regulatory taking might occur is under the three-part, ad hoc test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations (*Id.* at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur (see *id.* [rejecting *Lucas* categorical test where property retained value following regulation but

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<sup>3</sup> Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036).



remanding for further consideration under *Penn Central*]).<sup>4</sup>

(ii). **Before a Landowner May Establish a Taking, Government Must Have Made a Final Determination Concerning the Use to Which the Property May Be Put**

Before a landowner may seek to establish a taking under either the Lucas or Penn Central formulations, however, it must demonstrate that the taking claim is “ripe” for review. This means that the takings claimant must show that government has made a “final and authoritative” decision about the use of the property (e.g., *Williamson County Regional Planning Com. v. Hamilton Bank* (1985) 473 U.S. 172; *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348). Premature adjudication of a takings claim is highly disfavored, and the Supreme Court’s cases “uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it” (*Id.* at p. 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (e.g., *McDonald, supra*).

In this case, although the LCP instructs the Commission to deny the proposed driveway in wetlands that would provide access to the proposed residential building site, the Commission’s denial would preclude the applicant from applying for some other economic use on the site. APNs 119-090-42 and 119-090-43 are planned and zoned for residential use and these northern two parcels are not otherwise accessible by any other means. To deny the applicant an access driveway, and hence residential use of either of these northern two parcels, would leave no other economic use of the northern two parcels as discussed further in Section (iv) below. In these circumstances, the applicant could successfully argue that the Commission has made a final and authoritative decision about the use of APNs 119-090-42 and 119-090-43. Therefore, the applicant could successfully argue that the Commission’s denial is a taking because a taking claim is “ripe.”

(iii). **Determination of Unit of Property Against Which Takings Claim Will be Measured**

As a threshold matter, before a taking claim can be analyzed, it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which

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<sup>4</sup> The courts have mentioned a third standard – whether a regulation “substantially advances” a legitimate government interest. This “means/ends” formulation has been applied mostly in cases testing the legality of actions in which government exacts property or fees as a condition for approving development (see *San Remo Hotel L.P. v. City and County of San Francisco* (Mar. 4, 2002) 2002 Lexis 623, 37-60; *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 776). The United States Supreme Court itself has never applied this standard in a regulatory takings case (Cf. *City of Monterey v. Del Monte Dunes, Ltd.* (1999) 526 U.S. 687, 694, 704 [Court declines to decide applicability of standard where City failed to object to jury instruction]). The Court ignored the standard in its *Palazzolo* decision, and several years ago five members of the Court rejected its application to a regulatory takings case (see *Eastern Enterprises v. Apfel* (1998) 524 U.S. 498, 545, 546 [conc. in judg. & dis. opn. of Kennedy, J.]; *id.* at 554 [dis. opn. of Breyer, J.]).

development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be aggregated as a single parcel for takings purposes. In determining whether lots should be aggregated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition and the extent to which the parcel has been treated as a single unit (e.g., *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 [nine individual lots treated as single parcel for takings purposes]; *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318).

In this case, the applicant owns the subject vacant parcel proposed to be developed with a single-family residence (APN 119-090-42), as well as the two adjacent parcels (APNs 119-090-43 and 119-090-44). The southernmost parcel adjacent to Little Lake Road (-44) is developed with an existing residence and the middle parcel (-43) is undeveloped.

Based on a review of the chain of title, it was determined that all of these three APNs were historically transferred as a single parcel beginning in 1949. The applicant's purchase of the middle and northern APNs in 2004 was the first time APN 119-090-42 and APN 119-090-43 transferred separately from the southern APN (119-090-44). This separate conveyance was predicated on two prior actions by the County. In 1998, Mendocino County granted four Certificates of Compliance (COCs) to a previous owner that recognized the subject property as being comprised of portions of four lots from a subdivision originally recorded in 1912 (Hills Tract Subdivision). In 2001, Mendocino County approved a Boundary Line Adjustment (CDB #43-99) that reconfigured the four lots recognized by the COCs into three parcels comprising the current lot configuration containing parcels of 0.65 acres, 0.81 acres, and 0.30 acres from south to north, respectively. This Boundary Line Adjustment (BLA) and associated coastal development permit approved by the County was not appealed to the Coastal Commission. Thus, this action by the County became effective and established the three subject parcels as individual, separate lots. Due to the unusual configuration of the parcels, the BLA required establishment of a 40-foot-wide, non-exclusive easement along the western boundary of the southern and middle parcels to allow access and utility extensions to the northern parcel. The proposed driveway and utilities are proposed to be located within this existing easement.

In first applying the factors discussed above to determine whether all three lots should be aggregated as a single parcel for takings purposes, the Commission determines that only two of the three parcels can be aggregated as a single unit for takings purposes.

The Commission concludes that all three parcels cannot be considered a single unit for the following reasons. First, although all three parcels are contiguous, the applicant purchased the two vacant parcels separate from the third developed parcel. Only subsequent to purchasing the two vacant parcels in September 2004 did the third parcel and existing residence come up for sale. The applicant purchased the third parcel and existing residence in November 2004 at a separate purchase price. The applicant paid

cash for all three parcels and thus, the purchase of the first two parcels was not financially integrated with the purchase of the third. Second, the third parcel with the existing residence is valued much higher than the two vacant parcels as evidenced by the tax assessment, thereby reflecting its value as a separate, established residential use. The assessed value of the southern developed parcel is \$450,000 compared to the assessed value of \$80,000 and \$130,000 for the middle and northern parcels, respectively. Lastly, the applicant has not suggested that the third parcel is in any way a part of the development scheme proposed for the middle and northern parcel with the exception of locating the driveway to access the northernmost parcel within the existing easement that crosses the third (southern) parcel. If all three parcels were considered to be sufficiently related such that they could be considered aggregated as a single unit, it could be argued that the applicant has an existing use of the property with the existing single-family residence. For all of the reasons discussed above, all three parcels cannot be considered as a single economic unit for purposes of takings analysis. Thus, if the Commission denies the proposed project on the middle and northern parcels, the Commission cannot rely on the existing single-family residence on the southern parcel to avoid a takings claim.

In contrast, in applying the same factors to determine whether the middle and northern parcels should be aggregated as a single parcel for takings purposes, the Commission concludes that these two parcels can be aggregated as a single unit for the following reasons. First, these two parcels are contiguous and are subject to the same local land use designation (Mendocino Rural Residential, MRR). Second, the parcels have always been transferred together dating back through their chain of title to 1949. Third, the applicant also purchased both parcels together for a single purchase price of \$210,000 and the parties to the sale did not assign separate values or purchase prices to the two lots. Fourth, the lots are valued in a manner that reflects the presence of wetlands on the middle parcel and the associated development constraints on the northern parcel currently valued at \$80,000 and \$130,000, respectively. As acknowledged by the applicant in his correspondence to the Commission, comparable land sales in this time period exceed the applicant's purchase price and the market for land with ocean views is only improving. Lastly, the middle and northern parcels are the subject of a single development scheme proposed by the applicant as reflected in this permit application wherein the applicant proposes development of a residence on the northern parcel and the associated wetland mitigation on the middle parcel. In fact, the applicant entered into a 13-month-long escrow specifically to allow time to discuss regulatory requirements related, in part, to the presence of the wetlands on the property.

Therefore, the evidence establishes that the Commission should treat APN 119-090-42 and APN 119-090-43 as a single parcel for the purpose of determining whether a taking occurred. Because, as discussed further below, this single unit is currently undeveloped, is planned and zoned for residential use, and there is no other substantial use of the parcel, the Commission's project denial of all residential development on the middle and northern parcels would constitute a taking. However, because the middle and northern parcels constitute a single unit for purposes of takings analysis, the Commission need

only approve one additional single-family residence on the non-wetland parcel rather than two additional residences.

To ensure that APN 119-090-42 and APN 119-090-43 are always considered a single economic unit for purposes of determining whether a taking has occurred, as well as ensure that the two APNs are never placed into divided ownership with a future owner separately owning the wetland parcel over which all development rights have been extinguished, the Commission attaches Special Condition No. 11 requiring that APN 119-090-42 and APN 119-090-43 be recombined and treated as a single parcel of land for all purposes and that APN 119-090-42 and APN 119-090-43 never be divided or sold separately. As such, Special Condition No. 11 will ensure that (1) all portions of the two parcels, APN 119-090-42 and APN 119-090-43 will be recombined and unified such that they will be considered and treated as a single parcel of land for all purposes, including but not limited to sale, conveyance, development, taxation or encumbrance, and (2) the created single parcel will not be divided or otherwise alienated from the combined and unified parcel. The condition requires the applicant to execute and record a deed restriction, free and clear of prior liens, and including a legal description and graphic depiction of the two parcels being recombined and unified, reflecting the restrictions set forth above. The imposition of this condition by the Commission is necessary to ensure both that the non-developable wetland parcel is never conveyed separately and that the non-developable wetland parcel is never the subject of a takings challenge by the current or future owner.

(iv). **The Commission Will Allow a Reasonable Residential Development on Combined APN 119-090-42 and APN 119-090-43 to Avoid a Takings in Compliance with Section 30010 of the Coastal Act**

Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in Lucas v. South Carolina Coastal Council (1992).

In Lucas, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that is considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the Lucas decision, to mean that if an applicant demonstrates that Commission denial of the project would deprive his or her property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act or LCP provision would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, unless the proposed project would constitute a public nuisance under state law, CZC Sections 20.532.100(A)(1), 20.496.025, and 20.496.015(E) of the certified LCP cannot be read to deny all economically beneficial or productive use of land because these sections of the certified LCP cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property owner of some economically viable use.

Even if a regulatory decision does not constitute a taking under *Lucas*, a court may consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This ad hoc inquiry generally requires an examination into factors such as the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations.

**Sufficiency of Interest.** In the subject case, the applicant purchased APNs 119-090-42 and 119-090-43 for \$210,000 with a closing date of September 9, 2004. On September 23, 2004, a *Grant Deed* was recorded in Volume 2004, page 21571 of the Official Records, Mendocino County Records Office, effectively transferring and vesting fee-simple ownership to the applicant. Based upon an examination of copies of this document and related entries within the current property tax rolls of the County of Mendocino's Assessor's Office, the Commission concludes that the applicant has demonstrated that they have sufficient real property interest in the subject parcel to allow pursuit of the proposed project.

**Reasonable Investment-Backed Expectations.** In this case, the applicant's proposal to construct a residence on APN 119-090-42 was both a reasonable expectation and an investment-backed expectation.

To determine whether the applicant had an investment-backed expectation to construct a house on APN 119-090-42, it is necessary to assess what the applicant invested when he purchased that lot. The applicant purchased both APN 119-090-42 and APN 119-090-43 (approximately 1.1 total acres) for a single purchase price of \$210,000. A review of comparable properties in the Mendocino Town area that were sold around the same time as the applicant's purchase of the subject property indicate sale prices of \$249,000 for a 1.2-acre parcel and \$290,000 for a one-acre parcel. These comparable parcels are similarly zoned for rural residential use.

The applicant was aware at the time of purchase that there were wetlands on the middle parcel and that development of this parcel would be constrained. For example, the

Multiple Listing Service information provided to the applicant indicated that a wetland report had been prepared for the property prior to the applicant's purchase of the lots. Additionally, according to the County public record, in July 2003, prior to the applicant's purchase of the property in September 2004, the applicant viewed a coastal development permit file at the County which involved a similar proposal to construct a driveway through an area of wetlands on the subject property by the previous owner (CDP File #111-02). The applicant entered into a 13-month escrow specifically to allow time to discuss regulatory requirements related, in part, to the presence of the wetlands on the property. However, there was no indication that development of a single-family residence on the northern parcel would not be possible. Consequently, the applicant did have an *investment-backed* expectation that he had purchased one developable lot (APN 119-090-42). His investment reflected that the future development of a residential use could be accommodated on APN 119-090-42.

In addition, the expectation that APN 119-090-42 could be developed with a single-family residence would be reasonable. To determine whether an expectation is reasonable, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed for the applicant's proposed use, taking into account all the legal, regulatory, economic, physical and other restraints that existed when the property was acquired. In this case, the Boundary Line Adjustment approved by the County that created the existing configuration of the three parcels required establishment of a 40-foot-wide, non-exclusive easement for access and utility purposes to cross the western edge of the southern and middle parcels to reach the northern parcel, thereby leading a reasonable person to conclude that future residential development of the northern parcel was envisioned and feasible. Viewed objectively, a reasonable person would thus have had a reasonable expectation that APN 119-090-42 could be developed with a separate residential parcel.

Therefore, the applicant had both a reasonable, and an investment-backed expectation that he could develop APN 119-090-42 with a residence as he is currently proposing.

**Economic Impact.** In this case, the evidence demonstrates that the Commission's action would have substantial impact on the value of combined APNs 119-090-42 and 119-090-43.

As noted previously APNs 119-090-42 and 119-090-43 are planned and zoned Rural Residential (MRR-2) in the County's LCP. According to the LCP, the intent of the MRR district is to create and enhance low density residential areas. Section 20.644.010 of the CZC sets forth the principal permitted use types in the MRR district and include (1) single-family residential, (2) light agriculture, and (3) open space and passive recreation.

The Commission finds that in this particular case, other allowable uses at APN 119-090-42 and 119-090-43 which might arguably avoid the significant degradation of the wetland habitat, such as a passive recreational park, a nature preserve, or light agriculture are not feasible and would not provide the owners an economic return on their investment. The

applicant attests that no public agency has indicated any interest in purchasing the property for natural resource conservation or other resource-compatible public uses. The property is likely too small to be of value as a habitat preserve or for any viable agricultural uses and is not contiguous with any other significant habitat area or open space. Additionally, the property is located within an established residentially-developed area with several large state and regional parks and other conservation areas nearby that contain and preserve environmentally sensitive habitats such as wetlands (i.e., Mendocino Headlands State Park, Van Damme State Park, Big River State Park, Russian Gulch State Park) and numerous small open space easement-deeded areas along the Mendocino County coastline). Thus, there is little impetus for such public agencies to purchase the lot.

In these circumstances, it is reasonable to conclude that the denial of the proposed residential use would have a substantial economic impact on the value of combined APN 119-090-42 and 119-090-43. For all of these reasons, the Commission determines it will allow a reasonable residential development on combined APN 119-090-42 and APN 119-090-43 to avoid an unconstitutional takings in compliance with Section 30010 of the Coastal Act.

(v). **The Project Could Not Be Prohibited Under Background Principles of State Property Law**

Finally, *Lucas* provides that a regulatory action does not constitute a taking if the restrictions inhere in the title of the affected property; that is, “background principles” of state real property law would have permitted government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036). These background principles include a State’s traditional public nuisance doctrine or real property interests that preclude the proposed use, such as restrictive easements. Here, the proposed project would not constitute a public nuisance, so as to preclude a finding that the Commission’s denial of the project would constitute a taking.

California Civil Code Section 3479 defines a nuisance as follows:

*Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.*

California Civil Code Section 3480 defines a public nuisance as follows:

*A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.*

There is no evidence that construction of a residence on combined APN 119-090-42 and 119-090-43 would create a nuisance under California law. The site is located in a rural residential area where the proposed single-family residential development would be compatible with surrounding land uses. Additionally, the Mendocino City Community Services District (MCCSD) has reviewed and approved groundwater extraction and connection to the existing municipal sewer system for the proposed residence, thereby ensuring that the proposed new residence would not create public health problems in the area. Furthermore, the proposed use is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance.

Therefore, the Commission finds the proposed project would not constitute a public nuisance that would preclude a finding that the regulatory action constitutes the taking of private property without just compensation.

**d. Conclusion**

To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows for the construction of a residential development to provide a reasonable economic use of combined APN 119-090-42 and 119-090-43. This determination is based on the Commission's finding in this staff report that the combined APN 119-090-42 and 119-090-43 was purchased with the expectation of residential use, that such expectation is reasonable, that the investment was significant, that the proposed development is commensurate with such investment-backed expectations for combined APN 119-090-42 and 119-090-43, and that none of the uses otherwise allowable under the certified LCP would provide an economic use.

For all of the above reasons, the Commission determines it will allow a reasonable residential development on combined APN 119-090-42 and APN 119-090-43 to avoid an unconstitutional takings consistent with Coastal Act Section 30010.

**e. Maximizing LCP Conformity while Avoiding Takings**

Though applicants are entitled under Coastal Act Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to completely avoid application of the policies and standards of the certified LCP, including LUP Section 3.1-4 and CZC Sections 20.496.025, 20.496.015, and 20.532.100(A)(1). Instead, the Commission is only directed to avoid construing these applicable policies in a way that would take private property for public use. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the LCP. Therefore, in this situation, the Commission must still comply with LUP Section 3.1-4, CZC Section 20.496.025, and 20.535.100 by requiring (1) the least environmentally damaging feasible alternative, and (2) measures to mitigate adverse environmental effects.



## **1. Alternatives Analysis**

Commission staff considered several alternatives to the proposed project including (1) a clear-span bridge crossing, (2) alternate access routes, and (3) no project. The Commission finds, as discussed below, that there is no feasible less environmentally damaging alternative to the project as conditioned.

### **(i) Bridge Crossing**

The applicant's biologist prepared an evaluation of installing a pile supported or cantilevered bridge over the wetlands to access the northern parcel as an alternative to placing fill in the wetlands for construction of a driveway. The evaluation determined that whether pile supported or cantilevered, a bridge crossing would cause significant habitat impacts during initial construction and would continue to have long-term impacts to the wetlands.

It was estimated that a pile-supported bridge would require 1.5-foot diameter pilings spaced 8 feet on center for a total of 64 pilings to span 251 linear feet of wetland area, assuming abutments at each end are not placed in wetlands. The area of each piling would result in 1.8 square feet of direct wetland fill for a total of approximately 115 square feet of fill.

While a bridge may reduce the amount of direct wetland fill as compared to the proposed alternative, the applicant's biologist notes that the shadowing effect of a bridge would preclude the long-term growth of wetland plants under and adjacent to a bridge resulting in adverse impacts to the wetland habitat. The biologist's assessment notes that in order to allow wetland plants to continue to grow under a bridge structure, the bridge deck would need to be high enough above the soil surface to allow sufficient light penetration. The required height was estimated to be at least ten feet and likely more due to the north-south orientation. While a bridge would be used primarily for private vehicle access, it would also need to be constructed to allow heavy vehicles, such as fire trucks, to cross. Such loads for a higher, relatively narrow bridge would require a greater number of pilings and extensive cross bracing which would add to the shadowing effect that would adversely impact plant growth. A cantilevered bridge would also require massive bracing and probably would likely still require large support piles within the wetland for additional support. Bracing structures for a cantilevered bridge would also add substantial height above the bridge deck, and such a structure would be aesthetically inappropriate for this rural residential location.

Additionally, the alternatives evaluation determined that construction of a bridge crossing would require a minimum 20-foot-wide construction corridor adjacent to the bridge itself for equipment access during construction, which would cause a minimum 5,100-square-foot (0.12-acre) impact in addition to the area covered by the bridge. The 5,100-square-foot estimate of impact is based on approximately 251 linear feet of wetland and a 20-

foot-wide access lane with impacts from vehicles moving back and forth along the construction area. While this area would not be impacted by fill, permanent damage to the wetland habitat would occur.

Furthermore, the bridge crossing alternative was also determined to be infeasible due to high construction costs. Construction of a bridge at a height adequate to allow light penetration for plant growth under the bridge and accommodate heavy emergency vehicles was conservatively estimated to cost around \$100.00 per square foot based on similar costs for construction of pile supported boardwalks across wetlands. With a 10-foot-wide driving lane for a length of 251 feet, a post and pile supported bridge was estimated to cost \$255,000. With the addition of height and heavy load requirements, or construction of a cantilevered bridge, the cost would increase even more, making this alternative infeasible for a small scale single-family residential project.

Therefore, the Commission finds that construction of a bridge over the wetlands to access the proposed residential building site is not a less environmentally damaging feasible alternative to the proposed access driveway.

**(ii). Alternative Access Routes**

The applicant also investigated the potential for establishing an alternative access route to the northern parcel that would avoid having to place a driveway through the wetlands on the southern and middle parcels by obtaining an access easement through adjacent property to the north, west, or east.

The property to the north is a residential subdivision (Hill's Ranch) that could potentially provide access along its private roads to reach the subject parcel from the north. The property directly west of the applicant's property, known as Grindle Park, is owned by the Mendocino Fire Protection District. The property directly adjacent to the east is a privately owned residential property. The applicant inquired of each of these adjacent property owners as to the potential for obtaining an access easement to reach his parcel. In response, the applicant received and submitted to the Commission letters from the Hills Ranch Homeowners' Association, the Board of Directors of the Mendocino Fire Protection District, and Thomas Leonard, the property owner to the east, all denying the applicant alternative access through any of these adjoining properties.

Therefore, the Commission finds that although these alternative access routes would be less environmentally damaging because they would avoid the need to place fill in wetlands for driveway construction, these alternatives are not feasible because the applicant does not have the legal right to cross adjacent properties under separate ownership.

(iii). **No Project**

As discussed in Section (iv) above, the no project alternative would deny the applicant an economically viable use of his property, thereby resulting in an unconstitutional “taking” of the applicant’s property without payment of just compensation inconsistent with Coastal Act Section 30010. Therefore, the Commission finds that this alternative is not a feasible less environmentally damaging alternative to the proposed project.

Therefore, for all of the above reasons, the Commission finds that as conditioned, the proposed project is the least environmentally damaging feasible alternative consistent with LUP Section 3.1-4 and CZC Sections 20.496.025, 20.496.015, and 20.532.100(A)(1).

**2. Wetland Mitigation**

The proposed driveway has been sited and designed to minimize impacts to wetland habitat to the maximum extent feasible. The driveway is proposed to be constructed along the far western property boundary at the narrowest part of the wetland so as to impact the least amount of existing wetlands and be of the minimum width to meet California Department of Forestry (CDF) and County standards. Additionally, the proposed driveway has been designed to minimize adverse impacts to water quality and the existing drainage regime. Best management practices (BMPs) would be implemented to control erosion into the adjoining wetland including the installation of temporary silt fencing and restricting the use of heavy machinery to the areas directly on the road bed. A 12’ layer of clean 4” drain rock would allow the drainage to follow its natural course and facilitate the passage of water flow under the full length of the driveway. Non-woven, needle punched geotextile fabric would be used under the roadbed to minimize water displacement and loss of water holding capacity of the subsoil. To eliminate silt clogging between the drain rocks, an additional layer of geotextile fabric would be placed above the drain rock and below the road surface. Six-inch-diameter culverts would be installed at twenty-foot intervals along the length of the proposed road to facilitate hydrologic continuity between the on-site wetland and wetlands on the adjacent parcel beyond the western property boundary during periods of stormwater runoff. As noted previously, the construction of the driveway would result in approximately 0.062-acres of wetland fill.

The proposed project includes creating a new 0.068-acre wetland area directly adjacent to the existing wetland on the middle parcel (APN 119-090-43) to mitigate for the adverse impacts to the existing wetland as a result of the initial road clearing (0.036 acres) and the additional wetland area lost from the fill associated with the proposed road upgrade (0.026 acres). The mitigation wetland would be created by excavating the upland grade at the northern edge of the existing wetland to the same elevation. To establish a uniform grade and smooth transition from the existing wetland into the wetland creation area, the upper portion of the existing wetland would also be graded.

The mitigation wetland would be vegetated with locally occurring wetland plants using three methods: 1) topsoil stockpiling and re-spreading, 2) transplanting, and 3) natural revegetation. Six inches of topsoil would be scraped off of the upper portion of the existing wetland that would be graded and stockpiled. Once the mitigation wetland has been graded, the topsoil would be redistributed over the mitigation area. The majority of seeds and plants in the topsoil are expected to survive this redistribution. Perennial plants from the existing wetland would also be transplanted to the mitigation wetland. Additionally, natural revegetation from surrounding plants would augment the planting in the mitigation wetland. By using these three techniques, the plant composition of the mitigation wetland should closely mimic the composition of the existing wetland.

According to the applicant's biologist, a high success rate for establishment of the mitigation wetland is expected based on its connectivity with existing wetlands and its site-specific hydrology. The mitigation wetland would share a common boundary with the existing wetland and would be constructed in an area of natural hydrologic upwelling, which would provide a continual source of water and help ensure its establishment. As the elevation rises slightly to the northeast and east of the area to be excavated, the slope next to the existing wetland would be held by a low rock retaining wall to prevent slumping into the created wetland.

The success of the mitigation wetland is proposed to be measured using standard, vegetation-based criteria over a five-year period. The plan proposes that at the end of five years, the mitigation wetland will display 90% of the vegetation cover that is found in the reference wetland and half of the dominant plants in the mitigation wetland would be natives. For years one and two, a site visit would determine whether there is a positive amount of native wetland plant establishment. Year three would require the mitigation wetland to contain 50% of the vegetation composition found in the reference wetland with 75% and 90% required in years four and five, respectively.

In past permit actions in the Northern California coastal zone, the Commission has encouraged wetland mitigation proposals that provide (1) in-kind habitat replacement, (2) mitigation on-site whenever possible, (3) mitigation at ratios of habitat creation to habitat loss of at least 2:1 or greater, in recognition that wetland restoration projects are difficult to implement successfully and that there is often a significant time lag between the time when the wetlands are filled and the time when wetland vegetation at the mitigation site has grown to the point where it can provide comparable habitat values, and (4) that the mitigation proposal be adequately supported with appropriate success standards, a suitable monitoring program, and proposed remedial action. Wetland mitigation measures that fully conform to these goals are more likely to provide adequate mitigation as required by LUP 3.1-4 and CZC Sections 20.496.025, and 20.532.100.

The applicant's proposed wetland mitigation plan conforms with the objectives above to the extent that the proposed mitigation is on-site and in-kind. The proposed mitigation

would create approximately 0.068 acres of freshwater wetlands to mitigate for the 0.062 acres of fill in freshwater wetland for the proposed driveway construction and would be created on the same property where the impact would occur and directly adjacent to an area where wetlands currently exist.

With regard to the mitigation ratio, as noted above, the Commission generally requires mitigation at ratios of habitat creation to habitat loss of at least 2:1 or greater to account for some mitigation failure and the temporal loss of habitat values that occurs before the mitigation site provides comparable function and value. The mitigation plan proposed by the applicant proposes mitigating for the 0.062 acres of wetland fill by creating 0.068 acres of wetland, or a slightly greater than 1:1 mitigation ratio. In this particular case, however, there is not enough upland area within the project site to create additional new wetland area without significant excavation into the slope on the eastern edge of the property. The wetland creation area has been designed to maximize the amount of on-site area that can be excavated to create new wetland habitat.

Although the proposed wetland creation would significantly improve wetland values at the site to a level greater than the values provided by the wetlands to be filled, the Commission finds that the proposed development would still result in a loss of wetland habitat values until the time that the created wetlands are established and functioning at a level comparable to the existing wetlands. Therefore, the Commission finds that because of the net loss of wetland habitat values resulting from the project as proposed, the mitigation proposal does not provide adequate wetland mitigation and must be supplemented by providing greater mitigation that includes enhancing the value of the existing wetland.

The existing wetland is largely comprised of invasive, non-native species including Himalayan blackberry (*Rubus discolor*), scotch broom (*Cytisus scoparius*), and perennial grasses. Non-native species degrade wetland habitat by displacing native species and potentially altering the structure of wetland soils and hydrology. The infestation of non-native species can also adversely affect wildlife dependent on wetland habitats by modifying habitat characteristics such as cover and forage. Removal of these invasive, non-native species would allow recolonization by native wetland plants and provide greater habitat value for wildlife that would help mitigate the wetland fill impacts of the project. To provide this greater mitigation by enhancing the habitat value of the existing wetlands in addition to creating new wetland habitat, the Commission attaches Special Condition No. 1(A)(1) requiring that the applicant submit a revised wetland mitigation plan that includes provisions for the removal of non-native, invasive plant species within and adjacent to the existing wetland habitat. Special Condition No. 1(A)(5) also requires the revised wetland mitigation plan to include a schedule for the creation of the 0.068-acre wetland area that requires the driveway to be completed prior to completion of the wetland excavation and grading to provide necessary access for heavy equipment required to perform the excavation work. The condition further requires that (a) excavation and grading at the wetland creation site be performed during the non-rainy

season between May 1 and October 15 and completed within three months of commencement of construction of the access driveway, (b) the wetland vegetation planting be completed during the first rainy season following completion of the mitigation site excavation and grading work, and (c) removal of invasive exotic plants from the wetland enhancement area be completed within one year of the commencement of construction. These requirements will limit the amount of wetland habitat value lost due to time lag between when the impact occurs and when the mitigation wetland is in place.

Furthermore, to ensure that the proposed wetland creation at the site is constructed as proposed, Special Condition No. 1(A)(6)(a)-(b) requires submittal of “as built” plans within 30 days of completion of the wetland mitigation work including “as built” elevations and a description of the number, types, location, and condition of vegetation planted at the mitigation site. The Commission further finds that to ensure that the wetland creation site is successful and that the new habitat area becomes fully established, functioning wetland habitat, the area must achieve 100% vegetative cover. Therefore, Special Condition No. 1(A)(3) also requires that the revised mitigation plan includes provisions for monitoring the site for five years, or until the site achieves 100% vegetative cover. Although as submitted, the mitigation plan calls for monitoring, the plan does not provide for the submittal of monitoring reports to the Commission to ensure the mitigation site becomes established with wetland vegetation as proposed. The plan as submitted also does not include remedial measures for ensuring success should the monitoring determine that the success criteria are not being met. Therefore, Special Condition No. 1(A)(4) also requires the revised mitigation plan to include a schedule for monitoring and provisions for submittal of monitoring reports to the Commission by November 1 of each monitoring year following completion of mitigation at the site. If a monitoring report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant is required to submit a revised or supplemental revegetation program to compensate for those portions of the original program which did not meet the approved performance standard. The revised revegetation program shall be processed as an amendment to this coastal development permit.

The Commission further finds that construction of the proposed project during the rainy season when the wetlands are most sensitive to disturbance could result in adverse wetland impacts from sedimentation and compaction. Therefore, to further minimize potential adverse impacts to wetland habitat, the Commission attaches Special Condition No. 2, which requires construction of the driveway and the wetland mitigation area to be completed between May 1 and October 15. Special Condition No. 2 further requires that the wetland vegetation planting occur in the rainy season between November 1 and April 15 to ensure a better chance of survival and establishment of the plants.

Furthermore, as noted in the project description, the applicant has proposed to record a deed restriction on APN 119-090-43 as an additional mitigation measure to prohibit any

future development on this parcel that is comprised primarily of existing freshwater wetland and the proposed mitigation wetland area to be created. Relinquishing development rights on this middle parcel would ensure the protection of the wetland ESHA from significant degradation resulting from future development and the continuance of the existing wetland and the mitigation site.

The Commission also finds it necessary to deed restrict other portions of the existing wetland and the wetland creation area to ensure (1) that the full extent of the wetland creation area needed for mitigation will be protected from future development, (2) that the full area where wetland enhancements are required (i.e. removal of non-native, invasive vegetation) to further mitigate project impacts will also be preserved and protected from future development, and (3) that the required 100-foot wetland buffer area discussed in finding (f) below will be protected from future development that may adversely affect the adjacent ESHA. Thus, Special Condition No. 3 restricts development in the existing wetlands, wetland mitigation area, and wetland buffer areas on APNs 119-090-42, 119-090-43, and 119-090-44 as shown on Exhibit No. 3 to the construction of the proposed driveway, installation of utilities, construction of the wetland mitigation area, removal of non-native, invasive vegetation and planting of native wetland plants. These restrictions will ensure that the minimum amount of sensitive wetland habitat is disturbed and that the use of the deed restricted area is limited to natural open space for habitat protection and conservation uses. Special Condition No. 6 further requires the applicant to record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property, including this development prohibition on APN 119-090-43.

To further minimize and mitigate adverse impacts to the wetland ESHA to the greatest extent feasible, the Commission finds it is necessary to further condition the development in the following manner:

Even with the established open space area, the ESHA could be adversely affected by the proposed development from site runoff that could impact the water quality of the wetlands. As the parcel proposed for residential development does not currently contain any developed impervious surfaces, the majority of stormwater at the site infiltrates prior to leaving the site as surface runoff. However, the increase in impervious surface area from the proposed development would decrease the infiltrative function and capacity of the existing permeable land on site. The reduction of permeable surface area would lead to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides and pesticides; and bacteria and pathogens from animal waste. The discharge

of these pollutants to coastal wetlands can cause significant cumulative adverse impacts such as adverse changes to species composition, excess nutrients causing algae blooms, increased turbidity from sedimentation, and acute and sublethal toxicity in wetland organisms leading to adverse changes in reproduction and feeding behavior, thereby reducing the biological productivity and the quality of coastal wetlands.

The site will retain undeveloped areas of high infiltration capability that will minimize the amount of runoff potentially reaching the ESHA. However, to further ensure that drainage structures are not directed to the ESHA and to ensure the protection of the quality and biological productivity of the ESHA by minimizing the volume of stormwater runoff that could potentially drain to the ESHA, the Commission attaches Special Condition No. 4. The condition requires the applicant to submit an erosion and runoff control plan for the review and approval of the Executive Director. The condition requires the drainage plan to demonstrate that the runoff from the site is collected and directed away from the ESHA in a non-erosive manner into pervious areas on the site to achieve infiltration to the maximum extent practicable and also requires implementation of erosion control measures.

Furthermore, although a large portion of the area adjacent to the proposed building site and the ESHA itself is vegetated with existing non-native invasive plant species, the wetland ESHA could be adversely affected by the development if additional non-native, invasive plant species were introduced from landscaping at the site. Introduced invasive exotic plant species could spread into the ESHA and displace native wetland vegetation, thereby disrupting the value and function of the wetlands. The applicant is not proposing any landscaping as part of the proposed project. However, to ensure that the ESHA is not adversely impacted by any future landscaping of the site, the Commission attaches Special Condition No. 5 that requires only native and/or non-invasive plant species of local genetic stock be planted at the property governed by CDP No. A-1-MEN-05-035.

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. Therefore, to minimize this potential cumulative impact to environmentally sensitive wildlife species, the Commission attaches Special Condition No. 5 prohibiting the use of specified rodenticides on the property governed by CDP No. A-1-MEN-05-035.

As noted above, Special Condition No. 6 requires that the applicants record a deed restriction detailing the specific development authorized under the permit, identifying all



applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property. The condition will ensure that any future buyers of the property are made aware of the development restrictions on the site because the deed restriction will run with the land in perpetuity.

As conditioned to require (1) creation of a new 0.068-acre wetland adjacent to existing wetlands on the site; (2) enhancement of the existing wetlands by the removing invasive exotic vegetation, (3) prohibiting development in the existing wetlands, wetland mitigation area, and wetland buffer areas on APNs 119-090-42, 119-090-43, and 119-090-44, and (4) other specific mitigation measures to further protect the environmentally sensitive wetland habitat by requiring a CDP for future improvements, directing runoff away from the ESHA, prohibiting the introduction or further spreading of invasive exotic species, and prohibiting the use of specified rodenticides, the Commission finds that the project will include measures to mitigate all significant adverse impacts to the wetland ESHA to the greatest extent possible consistent with LUP Section 3.1-4 and CZC Section 20.496.025, and 20.535.100 while providing for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use.

Furthermore, this particular parcel configuration involving a land-locked parcel with intervening ESHA between the road and the building location is unique and unusual and creates conditions specific to this project. Approval of this project would not establish a precedent for the Commission or Mendocino County to approve development in ESHA for other projects.

**f. Development within ESHA Buffer Area**

**LCP Provisions**

LUP Policy 3.1-7 states in applicable part:

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

adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

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

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

*“ESHA- Development Criteria*

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

(1) *Width.*

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

(a) *Biological Significance of Adjacent Lands*

...

(b) *Sensitivity of Species to Disturbance*

...

(c) *Susceptibility of Parcel to Erosion*

...

(d) *Use of Natural Topographic Features to Locate Development*

- ...
  - (e) *Use of Existing Cultural Features to Locate Buffer Zones*
  - ...  - (f) *Lot Configuration and Location of Existing Development*
  - ...  - (g) *Type and Scale of Development Proposed*
  - ...
- (2) *Configuration*
- ...- (3) *Land Division. New Subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*
- (4) *Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:*
  - (a) *Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*
  - (b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*
  - (c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term “best site” shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*
  - (d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*
  - (e) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

- (f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*
- (g) *Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*
- (h) *Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.*
- (i) *Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*
- (j) *Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*
- (k) *If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.*

### Discussion

LUP Policy 3.1-7 and Chapter 20.496 of the CZC contain specific requirements for the establishment of a buffer area between development and an adjacent ESHA to protect ESHA from disturbances associated with proposed development. The width of the buffer area is required to be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of

that particular habitat area from possible significant disruption caused by the proposed development. The buffer area is required to be measured from the outside edge of the ESHA and shall not be less than fifty (50) feet in width. Development permitted within a buffer area is required to generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply within the standards set forth in CZC Section 20.496.020(A)(4)(a)-(k).

The proposed residence and garage have been sited to provide a 100-foot buffer from the edge of the existing wetlands (see Exhibit No. 3). However, the northernmost portion of the proposed driveway and underground utilities adjacent to the roadbed would be located within the ESHA buffer. LUP Policy 3.1-7 and CZC Section 20.496.020 require development permitted within a buffer area to generally be the same as those uses permitted in the adjacent ESHA, and shall be (1) sited and designed to prevent impacts which would significantly degrade such areas, (2) compatible with the continuance of the habitat, and (3) allowed only if no other feasible site is available on the parcel and mitigation is provided to replace any particular value of the buffer lost by the development.

The types of development allowed within a wetland, and therefore the types of development allowed within an ESHA buffer, are limited to uses that are dependent on the resource such as boating facilities, aquaculture, and nature study. Driveways for residential use are not a permitted form of development within an ESHA buffer and thus, the proposed project is not consistent with this requirement of LUP Policy 3.1-7 and CZC Section 20.496.020. However in this case, as discussed at length in findings 5(c)(i)-(v) above, the Commission has determined it will allow a reasonable residential development on combined APN 119-090-42 and APN 119-090-43 to avoid an unconstitutional taking of the applicant's property without payment of just compensation. Furthermore, as discussed in finding 5(e)(1) above, Commission staff considered several alternatives to the proposed project. Due to the configuration of the three subject parcels relative to the existing wetland habitat, there is no other feasible site available to construct an access driveway to the northernmost parcel in a manner that would avoid locating a portion of the driveway within the ESHA buffer. Therefore, the Commission turns to CZC Section 20.496.020(A)(4) that sets forth required standards for development permitted within an ESHA buffer area.

As discussed above in finding 5(e)(2) regarding wetland mitigation, the proposed driveway has been sited and designed to prevent significant adverse impacts to the wetland ESHA to the maximum extent feasible. The garage has been sited as far west on the parcel as possible to minimize the length of the driveway within the buffer area and has been designed to meet the minimum width and turn around radius necessary to meet County and CDF standards. Additionally, the proposed driveway has been designed to minimize significant adverse impacts to water quality and the existing drainage pattern. The driveway has been designed to be surfaced with 4" drain rock to minimize impervious surfaces. Culverts would be installed below the driveway to allow the

drainage to follow its natural course and allow the passage of water flow under the full length of the driveway to facilitate hydrologic continuity between the on-site wetland and wetlands on the adjacent parcel beyond the western property boundary during periods of stormwater runoff. These siting and design features are consistent with standards (c), (f) and (i) of CZC 20.496.020(A)(4) requiring that development within a buffer (1) be sited and designed to prevent impacts which would degrade adjacent habitat areas, (2) protect hydrological processes, and (3) minimize impervious surfaces.

LUP Policy 3.1-7(3) and CZC Section 20.496.020(4)(e) and (k) require mitigation measures to replace the protective values of the buffer area on the parcel which are lost as a result of development within an ESHA buffer. The buffer area provides value to the adjacent wetland ESHA by intercepting and infiltrating stormwater runoff before it reaches the ESHA, thereby protecting the water quality of the ESHA. As noted above, the driveway is proposed to be surfaced with drain rock rather than asphalt which would maintain its value for intercepting and infiltrating stormwater runoff before it reaches the ESHA to some extent. However, the portions of the proposed driveway located within the buffer area would decrease the value of the buffer associated with the protection of the water quality of the adjacent ESHA by reducing the amount of vegetated buffer area available to capture and filter stormwater runoff from the residential development.

Pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal wetlands can cause significant cumulative adverse impacts such as adverse changes to species composition, excess nutrients causing algae blooms, increased turbidity from sedimentation, and acute and sublethal toxicity in wetland organisms leading to adverse changes in reproduction and feeding behavior, thereby reducing the biological productivity and the quality of coastal wetlands.

Therefore, to ensure that drainage structures are not directed to the ESHA and to ensure the protection of the quality and biological productivity of the ESHA by minimizing the volume of stormwater runoff that could potentially drain to the ESHA, the Commission attaches Special Condition No. 4. The condition requires the applicant to submit an erosion and runoff control plan for the review and approval of the Executive Director. The condition requires the drainage plan to demonstrate that the runoff from the site is collected and directed away from the ESHA in a non-erosive manner into pervious areas on the site to achieve infiltration to the maximum extent practicable and requires implementation of erosion control measures including the use of straw bales and/or silt fencing, maintaining native vegetation to the maximum extent feasible, and replanting any disturbed areas following project construction. As conditioned, the proposed project would minimize the removal of vegetation, the amount of bare soil, and nutrient-laden

runoff potentially reaching the ESHA consistent with the requirements of CZC 20.496.020(A)(4)(f).

Additionally, the mitigation plan proposed by the applicant proposes mitigating for the 0.062 acres of wetland fill associated with the construction of the driveway by creating 0.068 acres of wetland, or a slightly greater than 1:1 mitigation ratio. The mitigation wetland would be created by excavating the upland grade at the northern edge of the existing wetland to the same elevation. As discussed in finding 5(e)(2) above, the Commission finds that although the proposed wetland creation would significantly improve wetland values at the site to a level greater than the values provided by the wetlands to be filled, the proposed development would still result in a loss of wetland habitat values until the time that the created wetlands are established and functioning at a level comparable to the existing wetlands. Therefore, the Commission finds that because of the net loss of wetland habitat values resulting from the project as proposed, the mitigation proposal does not provide adequate wetland mitigation and must be supplemented by providing greater mitigation that includes enhancing the value of the existing wetland. Thus, the Commission attaches Special Condition No. 1(A)(1) requiring the applicant to submit a revised wetland mitigation plan that includes provisions for the removal of non-native, invasive plant species within and adjacent to the existing wetland habitat. This requirement will also ensure the protective value and continuance of the wetland buffer area by minimizing the encroachment of invasive exotic plant species.

Moreover, although a large portion of the buffer area adjacent to the proposed building site and the ESHA itself is vegetated with existing non-native invasive plant species, the wetland ESHA could be adversely affected by the development if additional non-native, invasive plant species were introduced from landscaping at the site. Introduced invasive exotic plant species could spread into the ESHA and displace native wetland vegetation, thereby disrupting the value and function of the wetlands. The applicant is not proposing any landscaping as part of the proposed project. However, to ensure that the buffer and adjacent ESHA is not adversely impacted by any future landscaping of the site, the Commission attaches Special Condition No. 5 that requires only native and/or non-invasive plant species of local genetic stock be planted at the site.

Furthermore, as noted in the project description, the applicant has proposed to record a deed restriction on APN 119-090-43 as an additional mitigation measure to prohibit any future development on this parcel that is comprised primarily of existing freshwater wetland and the proposed mitigation wetland area to be created. Relinquishing development rights on this middle parcel would ensure the protection of the wetland ESHA from significant degradation resulting from future development and the continuance of the existing wetland and the mitigation site. In order to find the proposed project consistent with LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020, the Commission also finds it necessary to deed restrict the 100-foot wetland buffer area to both (1) ensure the continuance of the protective values of the buffer area,

and (2) to protect the wetland buffer from future development that may adversely affect the adjacent ESHA. Thus, Special Condition No. 3 restricts development in the existing wetlands, wetland mitigation area, and wetland buffer areas on APNs 119-090-42, 119-090-43, and 119-090-44 as shown on Exhibit No. 3 to the construction of the proposed driveway, installation of utilities, construction of the wetland mitigation area, removal of non-native, invasive vegetation and planting of native wetland plants. These restrictions will ensure that the minimum amount of sensitive wetland habitat is disturbed and that the use of the deed restricted area, including the portions of the wetland buffer that will not contain portions of the proposed driveway, is limited to natural open space for habitat protection and conservation uses. In addition, Special Condition No. 6 requires the applicant to record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property, including this development prohibition on APN 119-090-43. Therefore, as conditioned to ensure the continuance of the wetland habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity by (1) protecting the wetland buffer as permanent open space, and (2) minimizing the encroachment of invasive exotic plant species, the proposed project is consistent with LUP Policy 3.1-7(2) and the standards set forth in CZC Section 20.496.020(4)(a), (d), and (k).

In conclusion, the Commission finds that although the proposed driveway is not an allowable use within the wetland ESHA buffer, as discussed in detail above, development within the buffer cannot be avoided. As conditioned, the project would be consistent with LUP Policy 3.1-7 and CZC Section 20.496.020 requiring development permitted within a buffer area to be (1) sited and designed to prevent impacts which would significantly degrade such areas, (2) compatible with the continuance of the habitat, and (3) allowed only if no other feasible site is available on the parcel and mitigation is provided to replace any particular value of the buffer lost by the development.

## **6. Visual Resources**

### Summary of LCP Policies

LUP Policy 4.13-1 States:

*The Town of Mendocino shall be designated a special community and a significant coastal resource as defined in Coastal Act Section 30251. New development shall protect this special community which, because of its unique characteristics, is a popular visitor destination point for recreational uses.*

*Mendocino shall be recognized as a historic residential community with limited commercial services that are important to the daily life of the Mendocino Coast.*



*The controlling goal of the Town Plan shall be the preservation of the town's character. This special character is a composite of historic value, natural setting, attractive community appearance and an unusual blend of cultural, educational and commercial facilities.*

*The preservation of the town's character shall be achieved, while allowing for orderly growth. This shall be done by careful delineation of land uses, provision of community services and review and phasing of development proposals. Balance shall be sought between residential units, visitor accommodations and commercial uses. Provision of open space and siting of structures to retain public views of the sea shall be considered as part of all new development proposals. The objective shall be a Town Plan which retains as much as possible the present physical and social attributes of the Mendocino Community.*

*"Balance" between residential uses, commercial uses and visitor serving uses shall be maintained by regulating additional commercial uses through development limitations cited in the Mixed Use and Commercial Land Use Classifications; and, by limiting the number of visitor serving uses.*

*Visitor Serving Units listed on Table 4.13-1 (234) shall remain fixed, and a ratio of thirteen long term dwelling units to one Vacation Home Rental or one Single Unit Rental (Tables 4.13-2 and 4.13-3) shall remain fixed; until the plan is further reviewed and a plan amendment is approved and certified by the California Coastal Commission.*

*For example, an increase in long term residential dwelling units from the current count of 306 to 319, would allow an increase of one short term rental, whether Single Unit Rental or Vacation Home Rental.*

*Tables 4.13-2 (Single Unit Rentals) and 4.13-3 (Vacation Home Rentals) shall be flexible as to location and such changes of location shall not require a plan amendment.*

Mendocino Town Plan Policy 4.13-8 states:

*The Historical Preservation District Zoning Ordinance, as amended, shall be made a part of the implementing ordinances of the Mendocino Town Plan and the Mendocino Historical Review Board shall continue to exercise those charges as specified by the ordinance.*

Mendocino Town Plan Policy 4.13-9 states:

*Design review guidelines shall set criteria which will be utilized to ensure preservation, protection, enhancement, rehabilitation, reconstruction and*

*perpetuation of existing structures of historic significance in a manner consistent with the character of the Town.*

*New buildings, rehabilitations and renovations to existing structures will be consistent with the character of the town and they shall not degrade the setting of buildings of landmark stature (as described in the Inventory of Historic Building, Appendix, Historic Structures). Regulations shall be consistent with the historic ordinance and guidelines as accepted by the County Board of Supervisors. Such criteria shall include, but not be limited to architectural design, size, height, dormers, windows, structures, appurtenances, proportion and placement of improvements on the parcel, and landscaping, including planting or removal of vegetation, must be reviewed in the application process.*

Mendocino Town Plan Policy 4.13-11 states:

*Review of applications for all new development shall include consideration of requiring dedicated scenic easements to protect views from Highway 1, as well as public views to the sea and landmark structures as described in the Inventory of Historic Structures (Appendix).*

LUP Policy 4.13-13 States:

*In addition to any design review related to protection of the character of the town, all development shall conform to Section 30251 of the Coastal Act, and any specifically designated scenic and view areas as adopted on the map. Provisions of open space and siting of structures to retain public views shall be considered as part of all new development proposals. (Emphasis added).*

Coastal Act Section 30251 states:

*The scenic and visual qualities of 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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting. (Emphasis added).*

Sec. 20.760.010 of the Mendocino Town Zoning Code states:

*Designation of District.*

*In addition to the use regulations provided in this division there is hereby established the Mendocino Historical Preservation District which shall be an overlay district applying to the following unincorporated areas of the Town of Mendocino:*

- (A) That area bounded on the north by Slaughterhouse Gulch, on the south by the waters of Big River and Mendocino Bay, on the west by the Pacific Ocean and the east (north of Little Lake Road) by those parcels fronting on the west side of Gurley Street (south of Little Lake Road), following the present Sewer District/Town Plan boundaries as per drawing (Assessor's Parcel Book 119, Pages 10 and 11).*
- (B) Excepting that subdivision commonly known as Point of View Estates, and Assessor's Parcel Numbers 119-070-12, 119-080-12, 119-080-14, 119-080-15, 119-140-04, 119-140-05 and 119-140-29 (November 28, 1978, Reed vs. County of Mendocino #44860); all that real property situated in the County of Mendocino, State of California, described in Exhibit "A", which is incorporated herein by reference and is available for public inspection at the office of the Mendocino County Office of the Clerk of the Board of Supervisors, Courthouse, Ukiah. Such area shall be subject to the provisions of this Chapter. (Ord. No. 3915 (part), adopted 1995).*

Zoning Code Visual Resource Protection Provisions from Mendocino Town Zoning Code (Title 20-Division III)

Section 20.692.020 of the Mendocino Town Zoning Code states in applicable part:

*Special Considerations.*

*(E) Development outside the Historical Preservation District identified in [Section 20.760.010](#) shall be consistent with the standards of the Historical Preservation District in [Section 20.760.050](#). (Ord. No. 3915 (part), adopted 1995)*

Section 20.760.050 of the Mendocino Town Zoning Code (historic design standards) states:

*Standards.*

*It is the intent of this section to provide standards which shall be used by the Review Board when considering applications subject to the provisions of this Chapter:*

- (A) *Size, forms, materials, textures, and colors shall be in general accord with the appearance of structures built in Mendocino prior to 1900. To this end they shall be in general accord with the designs as exemplified, but not limited to, those depicted in the photographs contained in Exhibit "B", a book of photographs which is incorporated herein by reference and is available for public inspection through the Clerk of the Mendocino Historical Review Board. This section shall not be interpreted as requiring construction to be with the forms, materials, textures, colors or design as used in Mendocino prior to 1900, but only that the construction be compatible with and not in disharmony with the architectural standards herein expressed.*
- (1) *All activities subject to this Chapter shall relate to the area in which it is located through texture, size, proportion, height, form, style, siting, materials, and relationship to surrounding structures. Contemporary design is not expressly prohibited.*
  - (2) *The excessive use of glass is discouraged.*
  - (3) *The architecture, size, materials, details, proportion, height, texture, color, facade treatment and fenestration of the work proposed insofar as the same affects the appearance of the subject property and other property within the district.*
  - (4) *Fences should be of wood, iron, or plant materials. Retaining walls should be of dry stone, stone masonry or wood.*
  - (5) *Sidewalks of brick, flagstone, or board are allowed. Driveways of grass, gravel or turf stone are allowed. Major coverage of front yard setbacks is prohibited.*
  - (6) *Lighting: If sign lighting is required, it shall be indirected, restricted to business hours only, and shall not create a glare or reflection onto adjacent properties or public streets. Neon lighted signs are prohibited. Indoor lighted signs visible to the public from outside the building are subject to the approval of the Mendocino Historical Review Board.*
  - (7) *Utility poles and street lighting: Street lighting shall be limited to only that necessary for safety to light streets and pedestrian walkways.*
  - (8) *Signs:*
    - (a) *Signs should be made of wood.*
    - (b) *Only one (1) sign will be allowed per business when one (1) sign will suffice.*
    - (c) *Use of a "directory" type sign is recommended for buildings containing more than one (1) business and using a common entrance.*
    - (d) *Size, design, and location of sign shall be in harmony with the building and surrounding buildings.*
    - (e) *Signs shall not block public views or lines of sight. Signs flush to building are preferable; signs perpendicular to building are permitted under special circumstances.*

- (f) Signs advertising businesses outside of the Historic District or advertising local businesses not located on the same property are prohibited.
  - (9) Exterior painting: In the use of paint color schemes involving more than one (1) color, the "accent" color shall be limited to those parts of the structure, defined herein:
    - (a) Basic color: applied to exterior siding.
    - (b) Trim color: applied to soffits, fascias and trim.
    - (c) Accent color: applied to window frames, emullients, muntins and doors.
  - (10) Dumpsters shall be effectively screened from public view.
  - (11) Landscaping: Any construction related to landscaping in excess of six (6) feet in height shall be compatible with and not in disharmony with the existing structure(s) on the property or other structures in the District.
- (B) In order to further amplify and illustrate the descriptions or definitions of Mendocino architecture prior to 1900, and to furnish more complete details, architectural elements and composition thereof, the Review Board may from time to time submit additional illustrations, photographs and definitions, which, when approved by resolution of the Board of Supervisors of Mendocino County, shall be additional standards applicable in the Historical Preservation District.
- (C) To determine whether activities subject to this chapter will be in conformance with the standards set forth above, the Review Board shall evaluate the following elements of each application proposal:
- (1) Height. The height of any new development and of any alteration or new construction to a landmark structure shall be compatible with the style and character of the structure and with surrounding structures in the same Historical Zone.
  - (2) Proportions of Windows and Doors. The proportions and relationships between doors and windows of any new development and of any proposed alteration or new construction to a landmark structure shall be compatible with the architectural style and character of the structure and with surrounding structures in the same Historical zone.
  - (3) Relationship of Building Masses and Open Spaces. All new development shall provide open space areas and the relationship of the siting of any development to the open space between it and adjoining structures shall be compatible. All development shall be compatible with public views to the sea and to landmark and historically important structures.
  - (4) Roof Shape. The design of the roof of any new development and of any proposed alteration or new construction to a landmark structure shall be compatible with the architectural style and character of the structure and surrounding structures in the same Historic Zone.
  - (5) Landscaping. Landscaping shall be compatible with the architectural character and appearance of adjacent landmark and historically

*important structures and surrounding structures, landscapes and public views in the same Historic Zone. Landscaping shall be used to effectively screen on-site parking areas where appropriate.*

- (6) Scale. The scale of any new development or alteration or new construction to an existing structure shall be compatible with the architectural style and character of existing and surrounding structures in the same Historic Zone.*
- (7) Directional Expression. Facades shall blend with other structures with regard to directional expression and structures shall be compatible with the dominant vertical expression of surrounding structures. The directional expression of a landmark and/or historically important structure after alteration, construction or partial demolition shall be compatible with its original architectural style and character.*
- (8) Architectural Details. Where any alteration, demolition or new construction is proposed for a landmark or historically important structure, architectural details, including materials, color, textures, fenestration and ornamentation shall be treated so as to make the structure compatible with its original architectural style and character, and to preserve and enhance the architectural style and character of the structure. (Ord. No. 3915 (part), adopted 1995)*

### Discussion

LUP Policies 4.13-1 and 4.13-13 require that development in Mendocino preserve the special character of the community, and that development be consistent with Coastal Act Section 30251, which requires that new development be visually compatible with the surrounding area.

The subject property is not located in a designated highly scenic area and does not provide public views to or along the ocean, as it is located east and substantially inland of Highway One. The proposed development has been sited and designed in a manner that would be visually compatible with the surrounding development. The proposed residence and detached garage are within the height limits established for the Rural Residential zoning district. The proposed 2,400-square-foot, two-story residence is also consistent with the size and bulk of other surrounding residential development and would not be out of scale with its surroundings. Additionally, the proposed gravel driveway is consistent with Mendocino Town Zoning Code Section 20.760.050(A)(5) which sets forth design standards and specifically allows gravel driveways.

The buildings would be clad in Hardiboard fiber cement panels painted dark brown with matching trim. The roof would be constructed of dark brown asphalt composition shingles and the window frames would be a forest green color. These proposed exterior colors are dark earthtones that would blend well with the surrounding natural landscape and forested site. The Commission finds that if the applicant or future owner(s) choose to

change the materials or colors of the residence to brighter, non-earth tone colors or materials, the development may no longer be visually compatible with the character of the surrounding area and may become increasingly visible from public vantage points. To ensure that the exterior building materials and colors used in the construction of the development are compatible with natural-appearing earth tone colors that blend with their surroundings as proposed, the Commission attaches Special Condition No. 7(A), which requires that all exterior siding and roofing be composed of the colors proposed in the application or darker earth tone colors only. The condition requires that the current owner or any future owner not repaint or stain the house or other approved structures with products that will lighten the color of the house or other approved structures without a permit amendment. In addition, all exterior materials, including roofs and windows, are required to be non-reflective to minimize glare. Additionally, Special Condition No. 7(B) requires that exterior lights be shielded and positioned in a manner that will not allow glare beyond the limits of the parcel. These requirements would ensure that the proposed residence in this location would be visually compatible with the character of the surrounding area.

The proposed project also involves the creation of approximately 0.068 acres of wetland habitat adjacent to the existing wetland on APN 119-090-43. Creation of this wetland mitigation area would involve excavating the area to an elevation consistent with the adjacent wetland. However, the proposed excavation for the creation of the new wetland area would not extend toward the higher elevation areas on the eastern portion of the property in a manner that would constitute landform alteration. Additionally, the site of the proposed residence on the northern parcel is essentially flat and would not involve significant grading or alteration of topographic features consistent with the provisions of LUP 3.5-1 that require that permitted development minimize the alteration of natural landforms.

Therefore, the Commission finds that as conditioned, the proposed project is consistent with Mendocino Town Plan Policy 4.13-13 which incorporates Coastal Act Section 30251 and Town Zoning Code Section 20.760.050, as the development would (1) not adversely affect coastal views from public areas, (2) be visually compatible with the character of surrounding areas, (3) minimize alteration of natural landforms, and (4) be consistent with the design standards for new development within the Town.

## **7. Other Agency Approvals**

The project requires review and approval by the U.S. Army Corps of Engineers (Corps) and a Section 1603 Streambed Alteration Agreement from the Department of Fish & Game (DFG). Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project

or approves a permit. To ensure that the project ultimately approved by the Corps and DFG is the same as the project authorized herein, the Commission attaches Special Condition Nos. 8 and 9 that require the applicant to submit to the Executive Director evidence of these agencies' approval of the project within 90 days of Commission approval. The conditions require that any project changes resulting from these other agency approvals not be incorporated into the project until the applicant obtains any necessary amendments to this coastal development permit.

## **8. Violation**

Although construction of portions of the driveway has taken place at the project site prior to submission of the subject permit application, consideration of the application by the Commission has been based solely upon the policies of the Mendocino County LCP. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal development permit.

## **9. California Environmental Quality Act**

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 requirement 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 the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies 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 proposed project with the certified Mendocino County LCP, the proposed project has been conditioned to be found consistent with the certified Mendocino County LCP and Section 30010 of the Coastal Act. All feasible mitigation measures, which will minimize all significant adverse environmental impacts have been required. 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 proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.



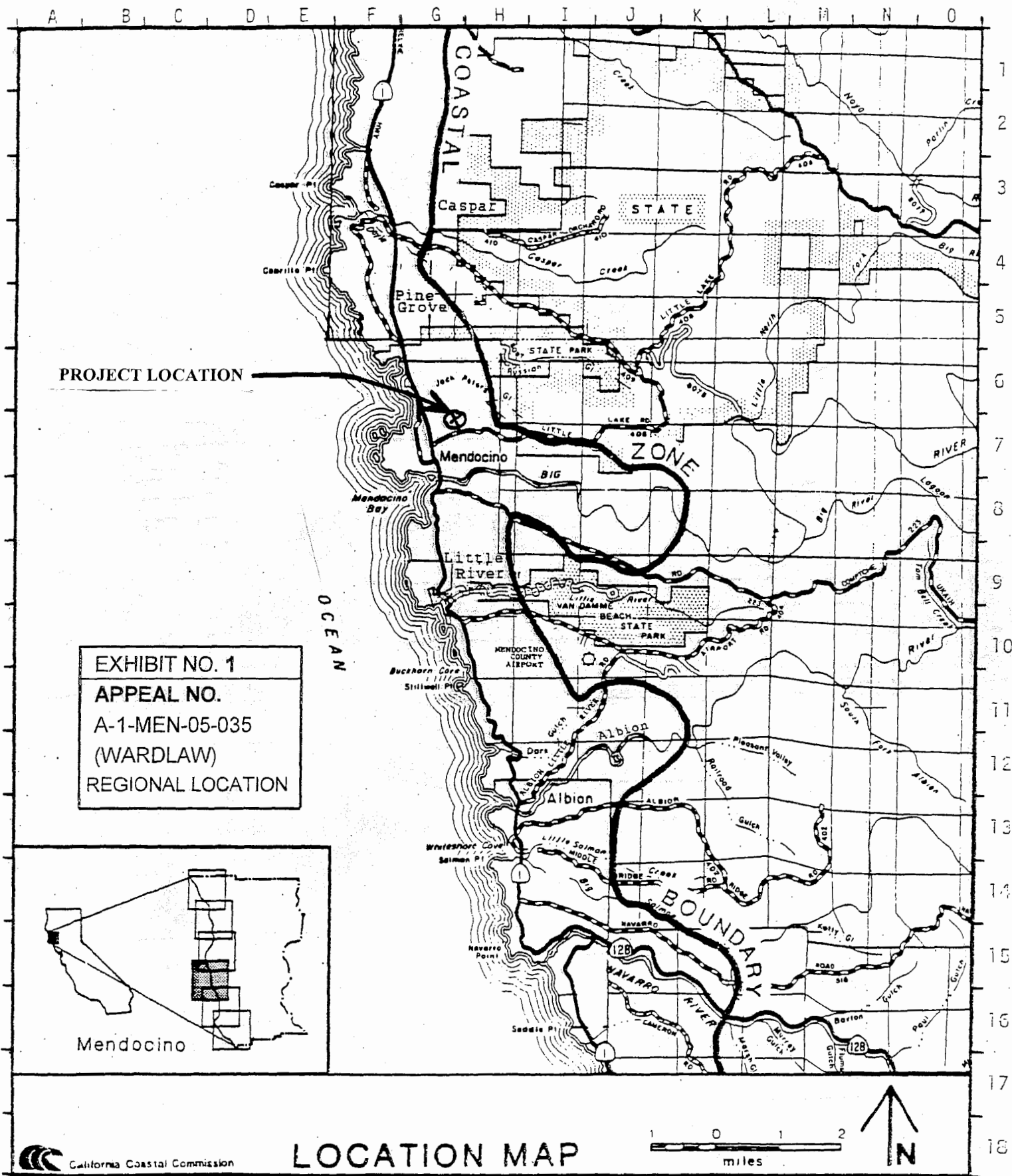
**EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Subject Property Map
4. Site Plan
5. Wetland Mitigation Schematic Section
6. Proposed House Plans
7. Notice of Final Local Action
8. Appeal

**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. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. 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.
4. 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.



PROJECT LOCATION

EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-05-035

(WARDLAW)

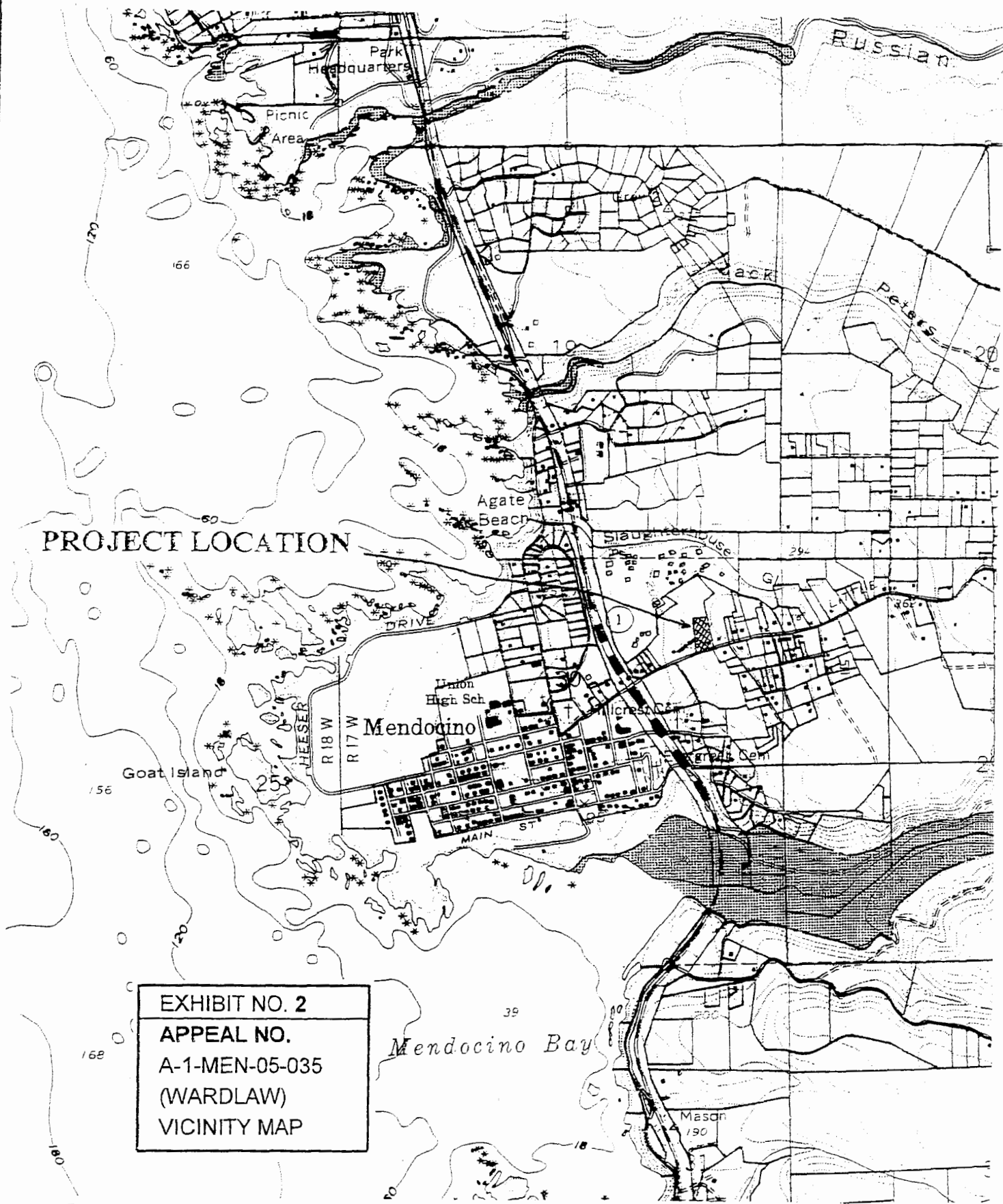
VICINITY MAP

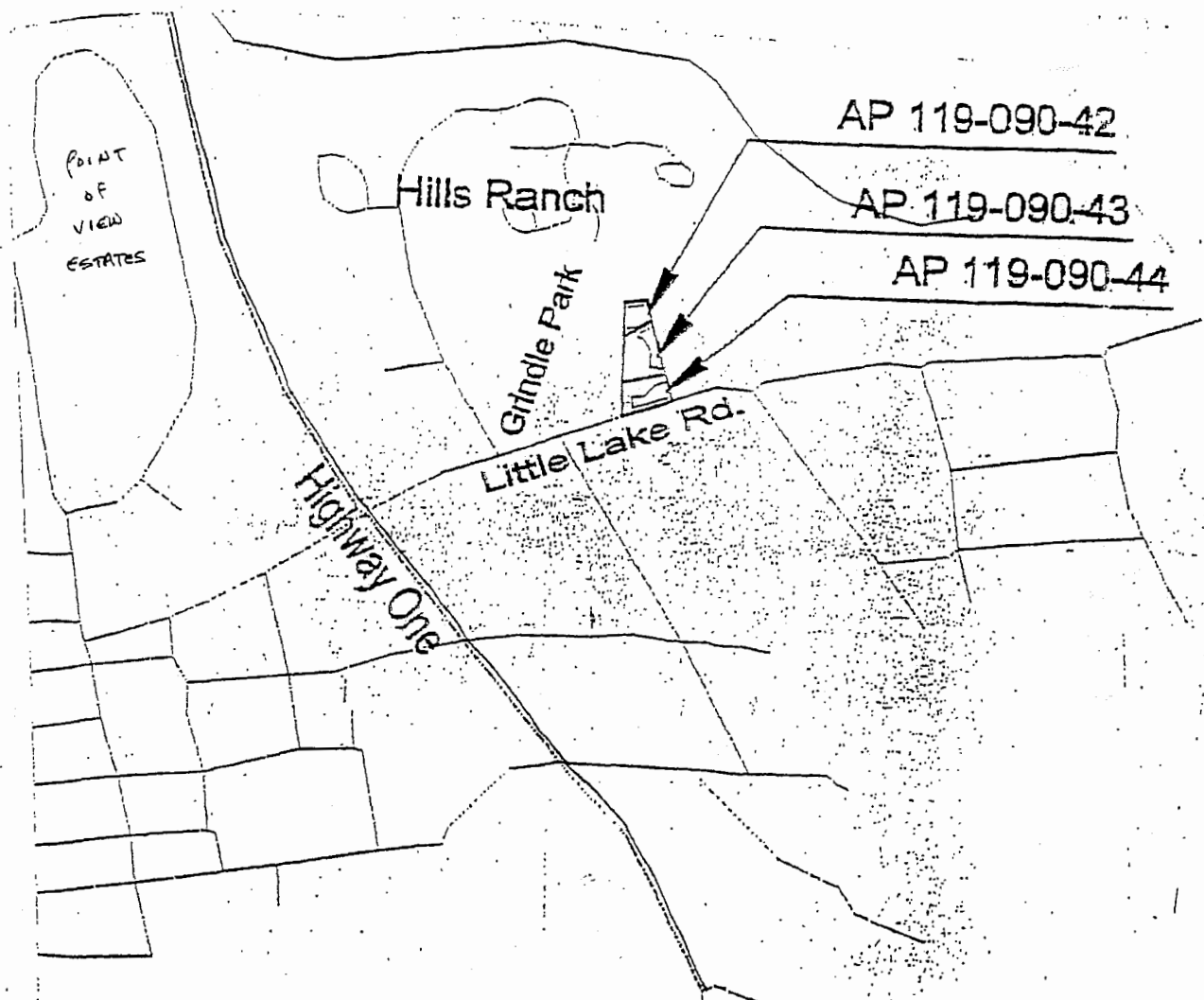
Mendocino Bay

NORTH

Location Map

NO SCALE



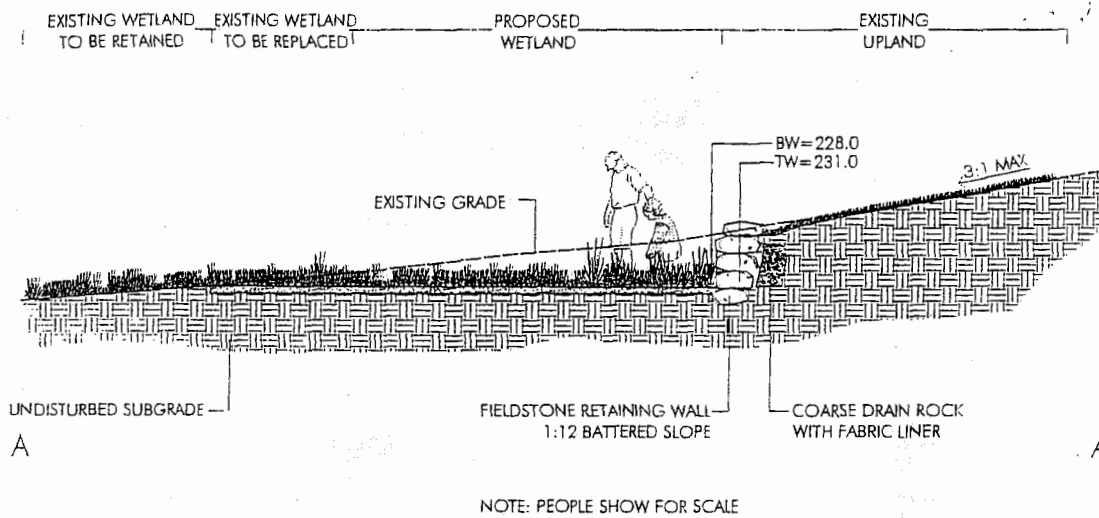


44650 Little Lake Road, Mendocino  
Original lot number AP 119-090-08

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







SCHEMATIC SECTION  
A-A'

0 1 FOOT

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

Wardlaw Research Associates, Inc.  
2169-43 East Francisco Blvd.  
San Rafael, CA 94901  
Contact: Doug Bolcher  
Phone: 415-454-5855

WARDLAW RESIDENCE WETLAND MITIGATION

LOCATION: MENDOCINO, CALIFORNIA

COUNTY: MENDOCINO

APPLICATION BY:

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



Wardlaw Research Associates

EXHIBIT NO. 5

APPEAL NO.

A-1-MEN-05-035

(WARDLAW)

WETLAND MITIGATION  
SCHEMATIC

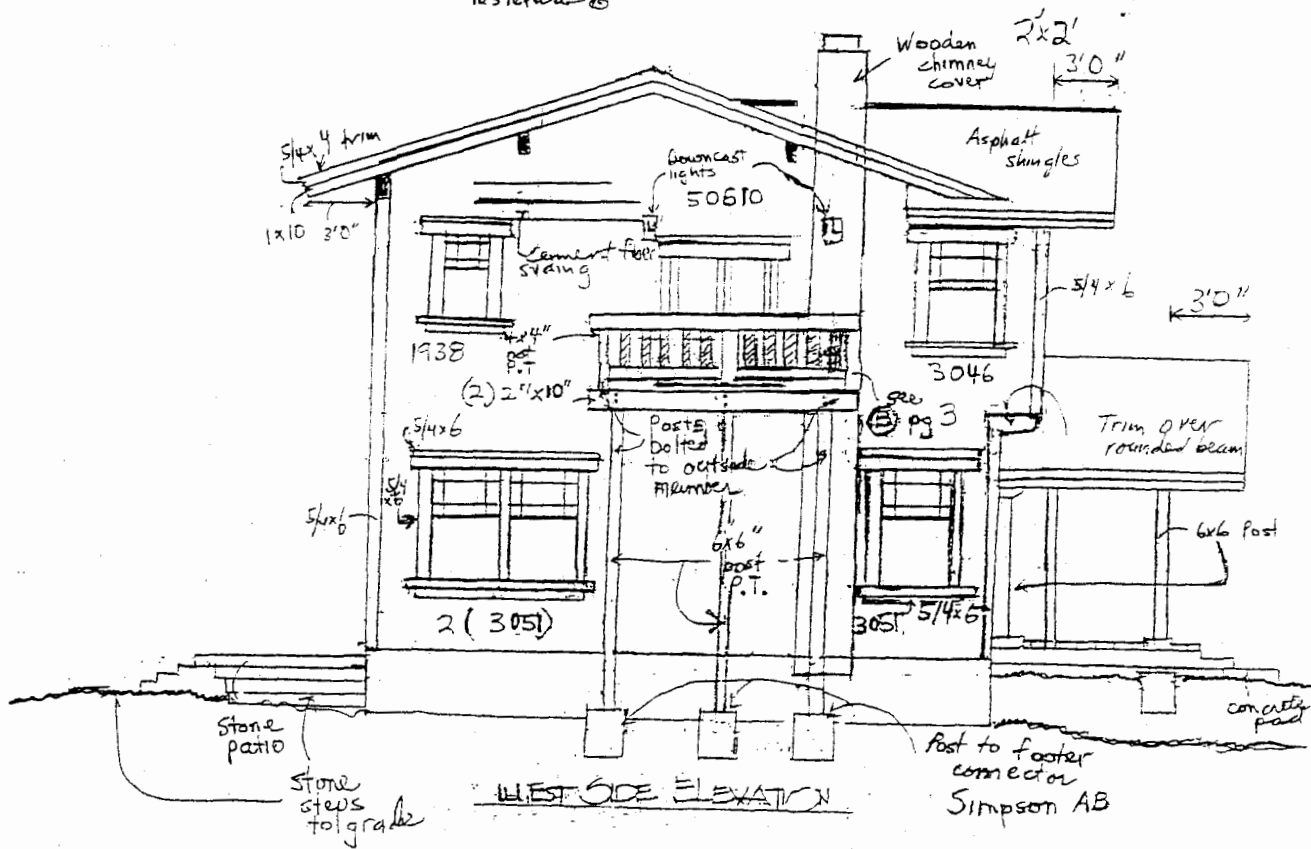
WRA Wetland Mitigation Plan Schematic Section

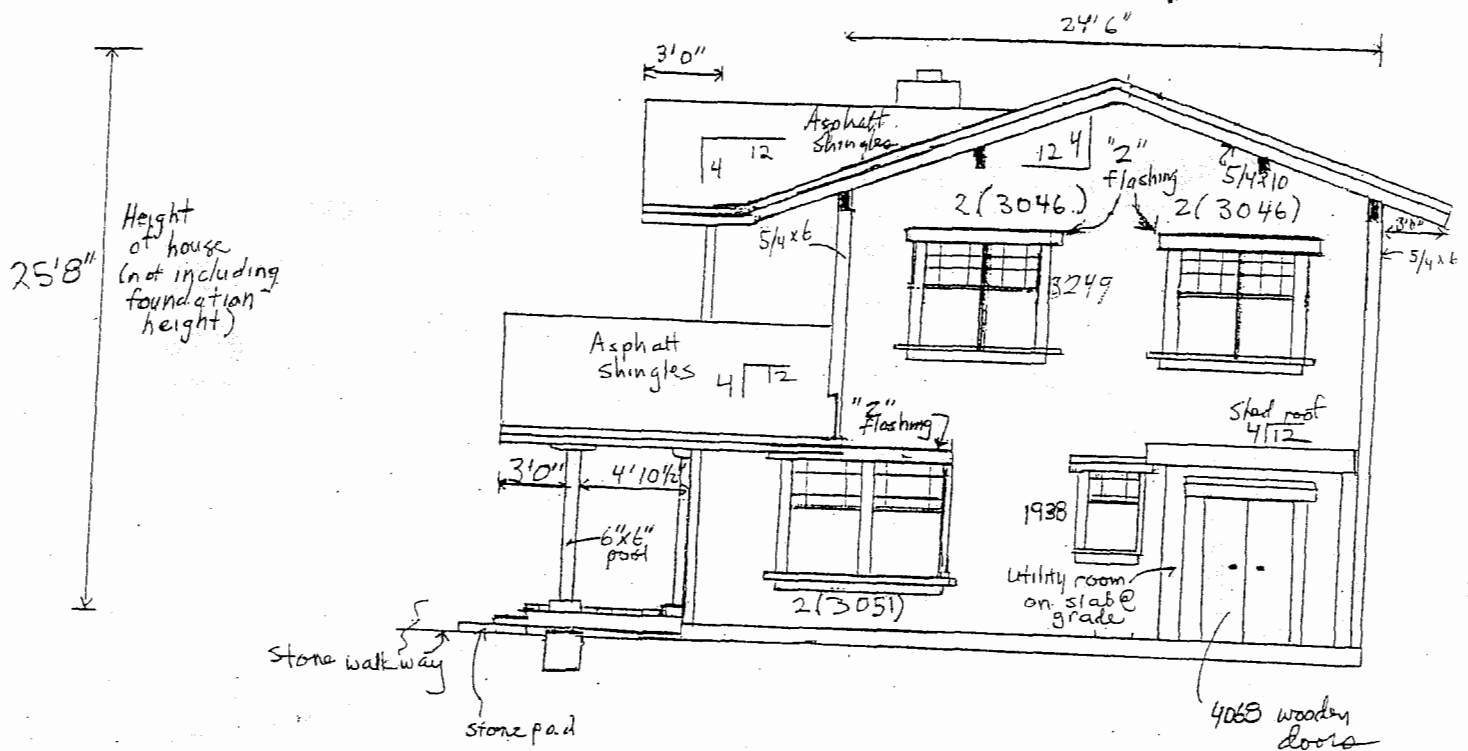




Note Use

5/4 x 6" iped for  
deck floor. Attach w/  
SS. screws Consider concealed  
fasteners





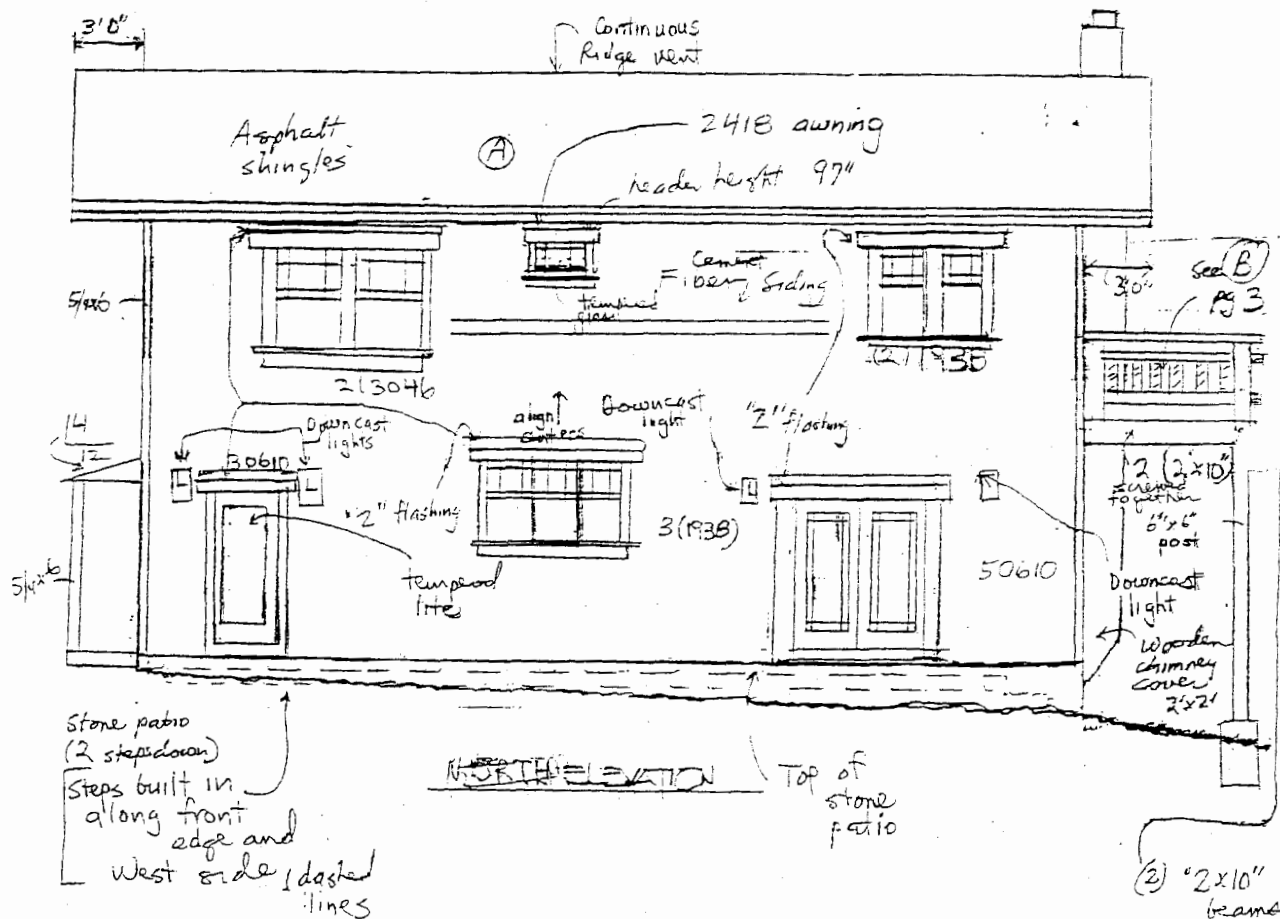
Wardlaw Residence  
Gordon Wardlaw

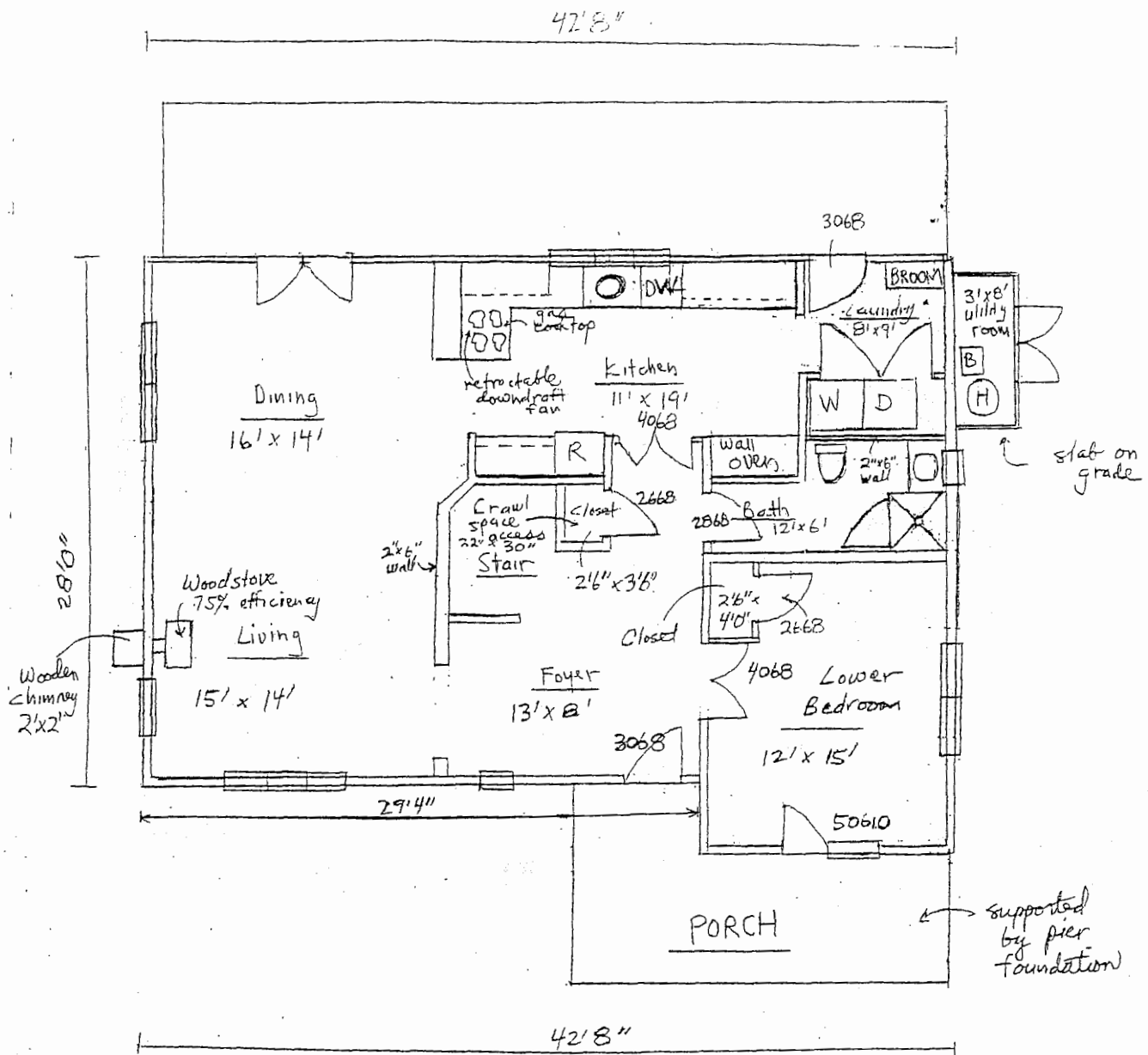
Page 6

East Elevation

348

Residence Elevation



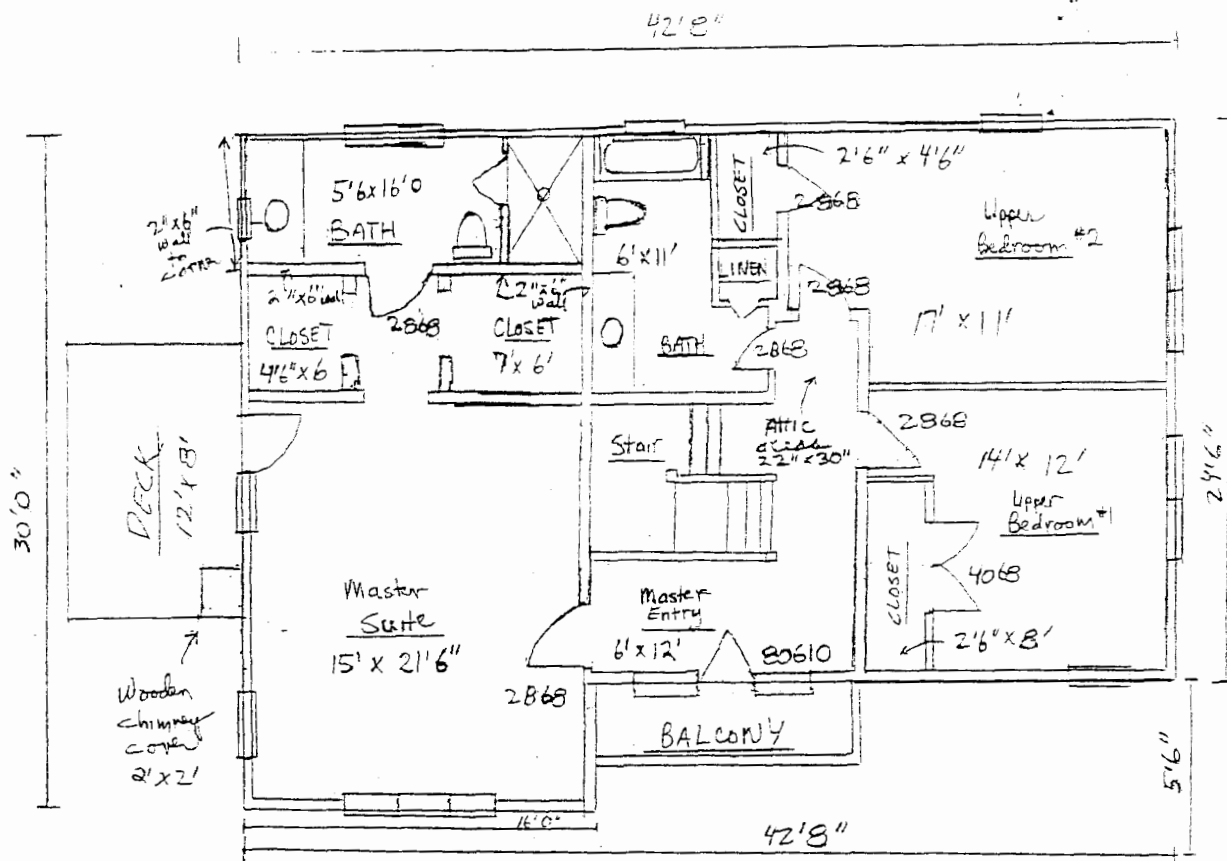


Vardlaw Residence page 7

Floor Plan  
1st floor

548

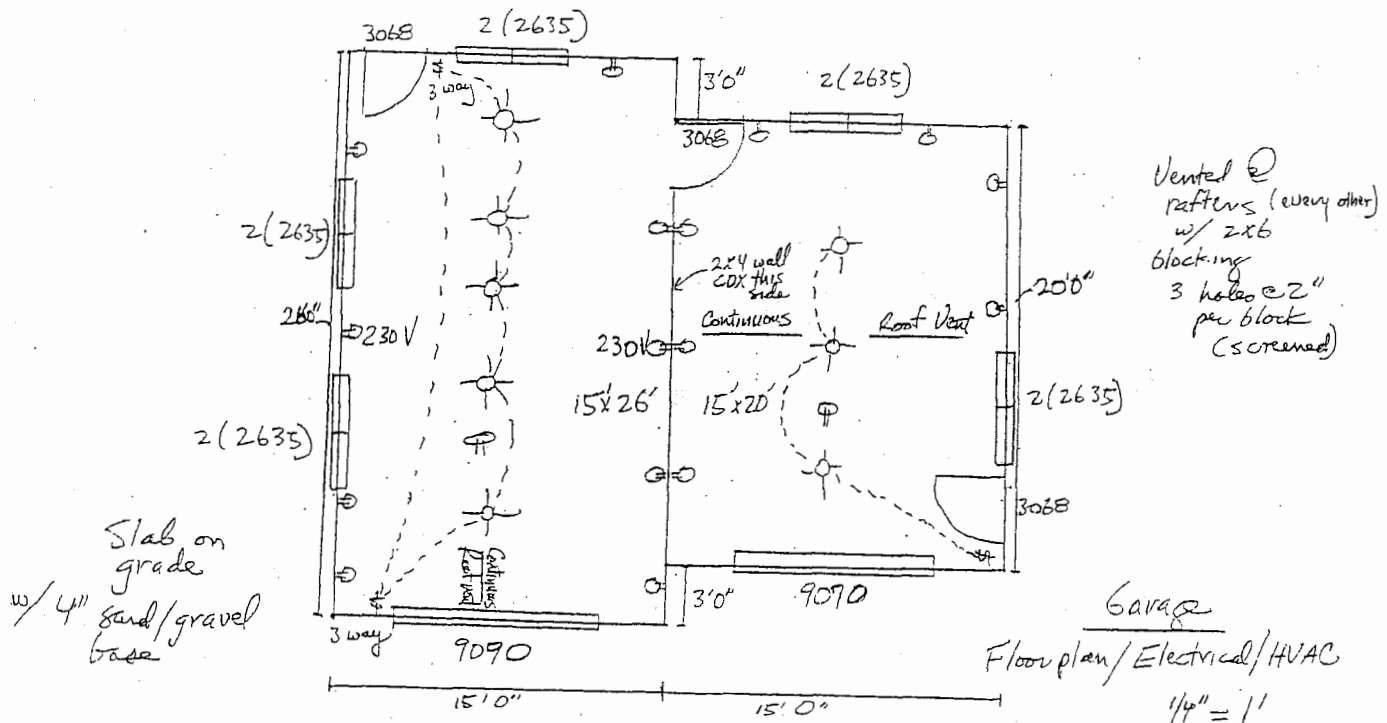
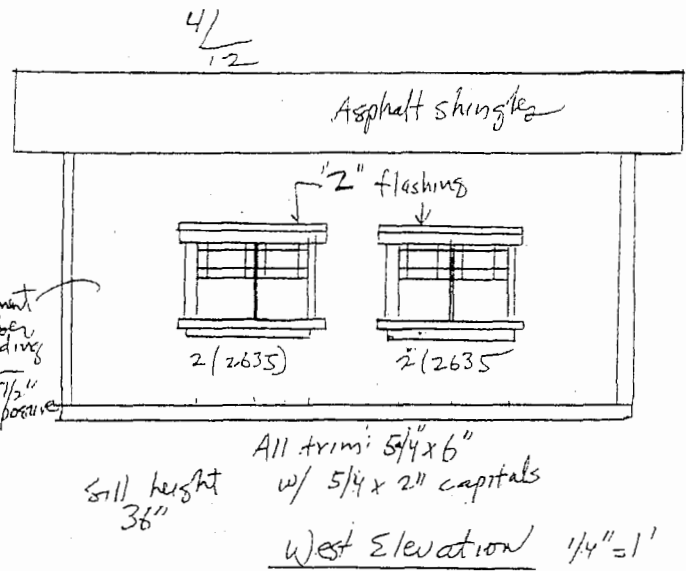
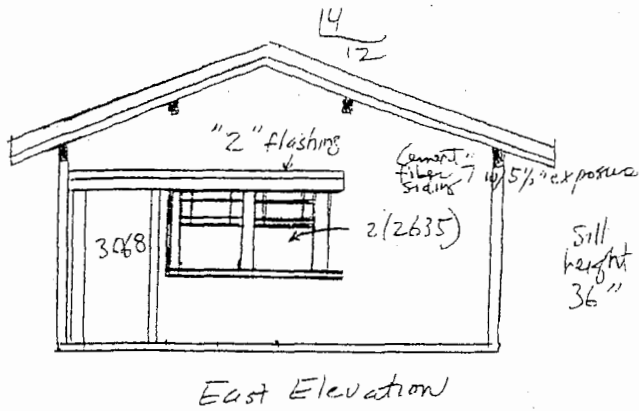
Residence Floor Plan



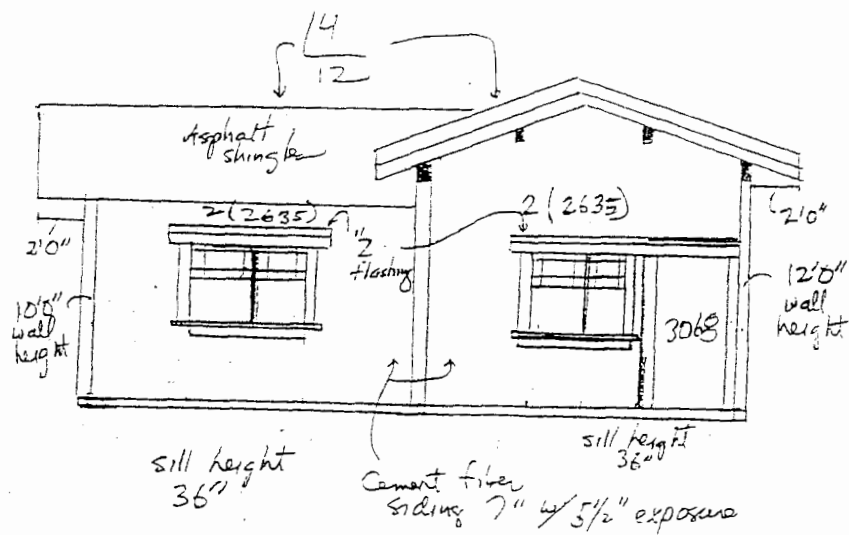
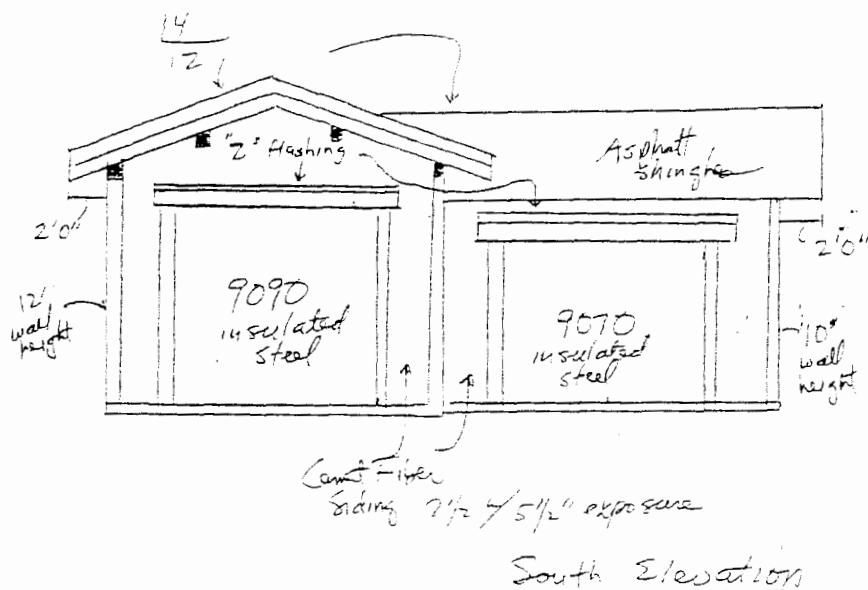
Floor Plan 2nd story

Loop 8

Residence Floor Plan



7 of 8



Wardlaw Garage  
pg 10

North Elevation

8 of 8



RECEIVED

JUL 07 2005

July 5, 2005

NOTICE OF FINAL ACTION

CALIFORNIA  
COASTAL COMMISSION

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

**CASE#:** CDP #111-02  
**OWNER:** Gordon Wardlaw  
**AGENT:** Jane Veres/Bud Kamb Real Estate Services  
**REQUEST:** Construct an approximately 2,418 square foot two story single-family residence with a maximum height of 28 feet above grade. Construct an approximately 690 square foot detached garage with a maximum height of 16 feet above grade. Construct a 16-foot wide approximately 380-foot long driveway access to the proposed house site (APN 119-090-42) from Little Lake Road across APNs 119-090-43 & -44. Proposed driveway would cross a wetland to access an undeveloped 0.3-acre parcel to be developed with the proposed residence. Electrical, telephone and sewer services would be extended underground along the proposed driveway. The project includes a 1:1 ratio wetland mitigation plan.  
**LOCATION:** In the coastal zone, in the Town of Mendocino, approximately ¼ mile east of Highway One, on the north side of Little Lake Road (CR 408) at 44658, 44654 & 44650 Little Lake Road (APNs 119-090-42, -43, -44).  
**PROJECT COORDINATOR:** Rick Miller

**HEARING DATE:** June 23, 2005

**APPROVING AUTHORITY:** Coastal Permit Administrator

**ACTION:** Approved with Conditions.

See staff report for the findings and conditions in support of this decision.

The project was not appealed at the local level.

The project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

EXHIBIT NO. 7

APPEAL NO.

A-1-MEN-05-035

(WARDLAW)

NOTICE OF FINAL  
ACTION (1 of 25)



COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 111-02 HEARING DATE: 6/23/05

OWNER: Wardlaw

ENVIRONMENTAL CONSIDERATIONS:

☐ Categorically Exempt

☒ Negative Declaration

☐ EIR

FINDINGS:

☒ Per staff report

☐ Modifications and/or additions

ACTION:

☒ Approved

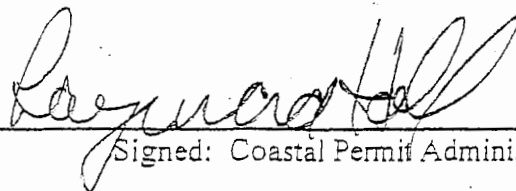
☐ Denied

☐ Continued \_\_\_\_\_

CONDITIONS:

☒ Per staff report but modified condition #6

☐ Modifications and/or additions



Signed: Coastal Permit Administrator

6a. Prior to issuance of the Coastal Development Permit, the applicant shall provide evidence that a BLA application has been submitted to PBS to merge the two currently undeveloped parcels into a single lot (APN's 119-090-42 & 43). Prior to the final inspection of the building permit for the structure authorized under CDP#11-02, the applicant shall submit written verification that (1) the boundary line adjustment has been completed & that the deeds have been recorded & (2) a deed restriction, in a form & content acceptable to the CPA has been recorded. The deed restriction shall identify the five year wetland mitigation plan & shall state that no development shall occur in the WRA delineated wetland & the associated 100 foot ESTHA buffer in perpetuity with two exceptions:

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

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

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

In the event of BLA...

STAFF REPORT FOR STANDARD COASTAL DEVELOPMENT PERMIT

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

OWNER/APPLICANT:

Gordon Wardlaw  
2233 Fairfax Road  
Upper Arlington, OH 43221

AGENT:

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

RECEIVED

JUN 18 2005

CALIFORNIA  
COASTAL COMMISSION

REQUEST:

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

LOCATION:

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

APPEALABLE AREA:

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

TOTAL ACREAGE:

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

GENERAL PLAN:

RR-2

ZONING:

Mendocino Rural Residential (MRR-2)

EXISTING USES:

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

ADJACENT ZONING:

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

SURROUNDING LAND USES:

North & West: Undeveloped  
South & West: Residential

SURROUNDING LOT SIZES:

North & West: 9.78 ± acres  
South: 4.5 ± acres  
East: 5.0 ± acres

5 of 25

SUPERVISORY DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Negative Declaration

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

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

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

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

6 of 25

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

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

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

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

#### ENVIRONMENTAL REVIEW:

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

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

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

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

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

7 of 25

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

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

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

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

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

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

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

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

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

8 of 25

Policy 3.1-7 of the Mendocino County Coastal Element states, in applicable part:

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

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

The WRA mitigation plan report explains that:

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

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

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

9 of 25



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

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

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

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

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

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

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

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

10 of 25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 of 25

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

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

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

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

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

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

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

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

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

13 of 25

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

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

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

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

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

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

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

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

#### **RECOMMENDED MOTION:**

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

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

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

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

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

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

**RECOMMENDED CONDITIONS:**

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

15 of 25



2. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted, and after any fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Department of Planning and Building Services. Failure of the applicant to make use of this permit within 2 years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.

- \*\* 3. Prior to issuance of the building permit, written verification shall be provided to the Planning Division that the MCCSD application has been submitted and fees have been paid.

- \*\* 4. All the requirements, recommendations and protective measures established by the Wetland Mitigation Plan prepared by WRA shall be incorporated into the project. Prior to issuance of the building permit or the commencement of construction activities, the protective ESHA construction fencing shall be in place. A copy of this permit and the WRA wetland mitigation plan must be provided to the Contractor and all subcontractors conducting the work, and must be in their possession at the work site.

- \*\* 5. The annual monitoring reports for the required compensatory wetland mitigation shall be provided to the Coastal Permit Administrator by July 15 during each calendar year for a total of five years. Reports shall include photo documentation of the mitigation area. After five years have passed, the mitigation will be evaluated for successful attainment of the final success criteria, as outlined in the Wetland Mitigation Plan, prepared by Wetlands Research Associates, Inc., and a decision will be made whether additional mitigation measures are necessary to ensure that no net loss of wetland habitat occurs. A professional consultant shall prepare reports with in-depth experience in wetland ecosystem creation and function, as well as wetland mitigation monitoring techniques.

The owner shall compensate the Coastal Permit Administrator who reviews the report at the prevailing hourly rate for the time it takes to review the report, correspond with WRQCB and/or DFG (if necessary) and document in the file that the report was prepared, reviewed and accepted.

- \*\* 6a. Prior to the issuance of the coastal development permit, the applicant shall provide evidence that a boundary line adjustment application has been submitted to the County Planning Division to merge the two undeveloped parcels into a single lot (APNs 119-090-42 & -43). No development shall occur within the WRA delineated wetland or the 100-foot ESHA buffer in perpetuity with two exceptions. First, the 16 foot wide driveway (which includes the underground utility trenches) can be maintained without any expansion of the driveway prism. Two, any work or development associated with implementing wetland mitigation as described in the WRA mitigation plan or as amended would be allowed to occur in the wetland and associated 100-foot ESHA buffer.

- \*\* 6b. Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which identifies that a five year wetland mitigation plan providing for the 1:1 wetland replacement plan was a requirement for authorization to conduct the project. The deed restriction shall state that no development shall occur on the middle parcel (APN 119-090-43) in perpetuity with two exceptions. Exception one is that the 16 foot wide driveway (which includes the underground utility trenches) can be maintained without any expansion of the driveway prism. Exception two would be to allow any work or development associated with implementing the wetland plan as described in the WRA mitigation plan or as amended. Additionally, the deed restriction shall indicate that due to the presence of the wetlands on the three subject parcels any future development within the 100-foot ESHA wetland buffer (as depicted on the Wetland Mitigation

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

- \*\* 7. Prior to the issuance of the building permit or the commencement of construction activities, and pursuant to encroachment permit procedures administered by the Mendocino County Department of Transportation; the applicant shall construct appropriate improvements to protect the County road during the construction phase of the project. Prior to final occupancy, the applicant shall complete, to the satisfaction of the Department of Transportation, a standard private driveway approach onto Little Lake Road (CR408), to a minimum width of sixteen (16) feet, area to be improved fifteen (15) feet from the edge of the County road, to be surfaced with comparable surfacing on the County road. A copy of the encroachment permit shall be submitted to the Planning Division along with the building permit for the residence.
- \*\* 8. The applicant shall comply with those recommendations in the California Department of Forestry Conditions of Approval (CDF# 607-02) or other alternatives acceptable to the Department of Forestry. Prior to the final inspection of the building permit, written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.
- \*\* 9. Prior to issuance of the building permit the applicant shall submit for the review and approval by the Coastal Permit Administrator, lighting details and specifications to indicate that all exterior lighting shall be downcast and shielded and shall be installed in a manner that the light source is not directly visible. The lights shall not allow light glare beyond the boundaries of the project site.
- All exterior building materials and finishes shall match those specified in the coastal development permit application. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
- \*\* 10. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.
- \*\* 11. It shall be the responsibility of the applicant to ensure that contractors engaged to perform work on the site are aware of the conditions of this permit and that all work performed is in compliance with applicable conditions.
12. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
13. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Coastal Permit Administrator.
14. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

17 of 25



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

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

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

6/3/2005

DATE

*Rick Miller*

Rick Miller  
Planner III

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

#### Negative Declaration

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

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

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

18 of 25

## SUMMARY OF COMMENTS:

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

DRAFT  
NOTICE OF PROPOSED  
NEGATIVE DECLARATION

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

Applicant: Gordon Wardlaw

Case #: 111-02

Agent: Jane Veres, Bud Kamb Real Estate Services

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

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

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

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

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

Mimi Nelli

Project Coordinator

6/3/2005

Date

20 of 25

## INITIAL STUDY ENVIRONMENTAL CHECKLIST

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

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

levels.

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

23 of 25

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

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

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

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

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

25 of 25



## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

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



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Coastal Commissioners Bonnie Neeley and Sara Wan

Mailing Address: SEE ATTACHMENT 1

City:

Zip Code:

Phone:

RECEIVED

JUL 21 2005

CALIFORNIA  
COASTAL COMMISSIONSECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

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

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

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

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

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

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

TO BE COMPLETED BY COMMISSION:

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

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

## EXHIBIT NO. 8

## APPEAL NO.

A-1-MEN-05-035

(WARDLAW)

APPEAL (1 of 13)

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

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

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

6. Date of local government's decision: June 23, 2005

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

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Gordon Wardlaw  
44650 Little Lake Road  
Mendocino, CA 95460

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

(2)

(3)

(4)

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

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

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

See Attachment 2

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

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

SECTION V. Certification

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

Signed: Bonnie W. Kelly  
Appellant or Agent

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

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

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

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

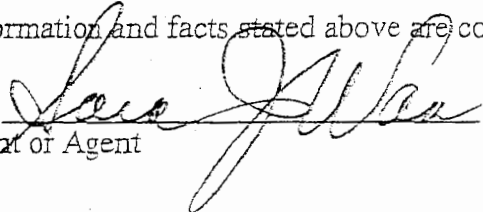
APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

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SECTION V. Certification

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

Signed:   
Appellant or Agent

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

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

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

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

## ATTACHMENT 2

### Appealable Project

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

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

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

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

### Reasons for Appeal

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

I. LCP PROVISIONS

Mendocino County LUP Policy 3.1-4 states:

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

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

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

Coastal Act Section 30233 states:

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

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

Coastal Act Section 30607 states:

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



Section 20.719.005 of the Mendocino Town Zoning Code States:

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

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

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

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

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

9 of 13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Development in Wetlands

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

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

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

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

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

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

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

B. Least Environmentally Damaging Feasible Alternative

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

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

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

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

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

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

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