

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
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# F 12a

## MEMORANDUM

Date: June 13, 2007

To: Commissioners and Interested Parties

From: Peter Douglas, Executive Director  
Robert S. Merrill, District Manager – North Coast District  
Tiffany S. Tauber, Coastal Planner – North Coast District

Subject: **Addendum to Commission Meeting for Friday, June 15, 2007**  
**North Coast District Item F12a, Application No. A-1-MEN-05-047 (Sacks)**

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### STAFF NOTE

This addendum makes changes to the written staff recommendation dated May 25, 2007 including (1) minor additions to Special Condition No. 3, and (2) replacing Exhibit No. 6 with a revised Exhibit No. 6. The changes would clarify existing and allowable development within the open space deed restricted area required pursuant to Special Condition No. 3 of the staff recommendation. Text to be deleted is shown in ~~strike through~~, text to be added appears in **bold double-underline**.

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### **I. Changes to Special Condition No. 3 of the Staff Recommendation**

Special Condition No. 3 shall be revised as follows:

### **3. Open Space Restriction**

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur ~~(1)~~ within the **riparian/wetland area and surrounding buffer area extending a maximum of 50 from the edge of the riparian/wetland area to property lines and to the portion of the house to be remodeled, all of which is depicted as open space** areas labeled “AREA A” and “AREA B” on Exhibit No. 6 attached

~~to this staff report, or (2) within 50 feet to the south the southern boundary of the area labeled "AREA A" on Exhibit No. 6 attached to this staff report 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. The following development approved under Coastal Development Permit No. A-1-MEN-05-047: (a) replacement in-kind of the existing culvert across the driveway, (b) installation of the replacement septic system, ~~and~~ (c) underground utility extensions, **and (d) replacement of the perimeter fencing.**
  2. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation and restoration of environmentally sensitive habitat, (b) removal of debris and unauthorized structures, (c) repair and maintenance of the replacement septic system, utility lines, ~~and culvert,~~ **fencing, and driveway.**
- B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT,** 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. 6 attached to this staff report.

**REASON FOR CHANGE:** As revised, Special Condition No. 3 clarifies the area to be restricted as open space and clarifies that (1) replacement of the existing perimeter fencing located within the open space area is allowable development pursuant to CDP No. A-1-MEN-05-047, and (2) repair and maintenance of existing development located within the open space area, including the fencing and driveway, is allowable development within the open space area if approved by the Coastal Commission as an amendment to this coastal development permit.

## **II. Revised Exhibit No. 6**

The revised Exhibit No. 6 attached to this addendum replaces Exhibit No. 6 contained in the staff recommendation dated May 25, 2007.

**REASON FOR CHANGE:** The exhibit has been revised to (1) more clearly show the area required to be restricted as open space on the proposed site plan, and (2) exclude the portion of the existing residence proposed to be remodeled from the area required to be restricted as open space.

NOTE: Proposed Utility Trench has been revised to be relocated entirely within existing driveway per letter from Applicants' Agent dated May 23, 2007. This revision is not reflected on this site plan.

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# F 12a

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|-----------------------|--------------------|
| Filed:                | September 26, 2005 |
| 49 <sup>th</sup> Day: | November 24, 2005  |
| Hearing Opened:       | October 14, 2005   |
| Staff:                | Tiffany S. Tauber  |
| Staff Report:         | May 25, 2007       |
| Hearing Date:         | June 15, 2007      |

**STAFF REPORT: APPEAL *De Novo***

|                             |   |
|-----------------------------|---|
| APPEAL NO.:                 | <b>A-1-MEN-05-047</b>   |
| APPLICANTS:                 | <b>RUDOLPH &amp; ANN SACKS</b>  |
| LOCAL GOVERNMENT:           | County of Mendocino   |
| DECISION:                   | Approval with Conditions  |
| PROJECT LOCATION:           | Approximately 1.5 miles south of Caspar, west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, Mendocino County (APN 118-190-38).  |
| PROJECT DESCRIPTION:        | (1) Remodel approximately 950 square feet of an existing residence, (2) demolish approximately 1,040 square feet of the existing residence, (3) construct an approximately 1,532-square-foot addition to the existing residence and a new 768-square-foot attached garage, (4) construct a 640-square-foot detached workshop, (5) replace an existing culvert, and (6) install a new septic disposal system, fencing, and LPG tank. |
| APPELLANTS:                 | Commissioners Meg Caldwell and Sara Wan   |
| SUBSTANTIVE FILE DOCUMENTS: | 1) Mendocino County CDP No. 103-04 and<br>2) Mendocino County Local Coastal Program   |

**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 would be consistent with the Mendocino County LCP and the public access policies of the Coastal Act.

The primary issue raised by the proposed project is the project's consistency with the environmentally sensitive habitat protection policies of the LCP.

The project site is a 1.07-acre bluff top lot located approximately 1.5 miles south of Caspar, west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, Mendocino County. The subject parcel is located in a residential neighborhood known as Seafair Subdivision. The parcel is currently developed with a one-story, 1,600-square-foot single-family residence with a 400-square-foot attached garage, septic system, and driveway. The site is not located in a designated highly scenic area.

The vegetation community at the site is composed of mostly coastal prairie species with an area of herbaceous wetland and riparian vegetation. The biological reports prepared for the project identified a 0.5-acre wetland that bisects the northern portion of the parcel and forms a small seasonal drainage that passes between the existing house on the subject site and the neighboring house to the east. The area is fed by subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction and supports wetland and riparian vegetation. This wetland/riparian area is considered an environmentally sensitive habitat area (ESHA) under the Mendocino County LCP.

For the purposes of *de novo* review by the Commission and to minimize adverse impacts to environmentally sensitive habitat, the applicants submitted revised project plans dated March 30, 2007 that make changes to the originally proposed residential development as approved by the County. The project revisions involve remodeling a portion of the existing residence, demolishing a portion of the existing residence, and constructing a new addition to the existing residence in a manner that would ensure that all new development meets the minimum buffer requirements from adjacent environmentally sensitive habitat areas. Specifically, rather than demolishing the entire existing residence and building a new residence in the same location, the proposed project as revised for purposes of *de novo* review by the Commission includes (1) remodeling approximately 950 square feet of an existing residence, (2) demolishing approximately 1,040 square feet of the existing residence, (3) constructing an approximately 1,532-square-foot addition to the existing residence and a new 768-square-foot attached garage, (4) constructing a 640-square-foot detached workshop, (5) replacing an existing culvert, and (6) installing a new septic disposal system, fencing, and LPG tank.

The portion of the existing residence to be remodeled was constructed in the 1960's prior to the Coastal Act and is located as close as 15 feet from the edge of the ESHA near the northwest corner of the site. This existing setback would not change as a result of the proposed project. However, all of the proposed additions to the existing residence would be located a minimum of 50 feet from the ESHA with the exception of the new replacement septic system, underground utility extensions, and culvert replacement. These facilities would be constructed within the buffer consistent with LUP Policy 3.1-7 and CZC Section 20.496.020(A)(1) of the certified LCP. No development would be located within the ESHA.

Staff recommends that the Commission impose several special conditions to ensure that the proposed project is consistent with the environmentally sensitive habitat area, water quality, geologic hazard, visual resource, and new development policies of the Mendocino County LCP.

Regarding the protection of ESHA and water quality, staff recommends that the Commission impose Special Condition Nos. 3, 4, and 5. To ensure (1) that the proposed 50-foot buffer is established, (2) the protection of the ESHA from significant degradation resulting from the development, and (3) the continuance of the habitat, the Commission attaches Special Condition No. 3, which requires the ESHA to be restricted as open space and prohibits specified development from occurring within the ESHA except for the replacement septic system, underground utility extensions, and replacement culvert. To minimize erosion and sedimentation impacts from the proposed construction of the residence, staff recommends Special Condition No. 4 that requires the applicants to submit for the review and approval of the Executive Director an Erosion and Runoff Control Plan with provisions for (1) installing hay bales to contain runoff from construction and demolition areas; (2) maintaining on-site vegetation to the maximum extent possible during construction, (3) replanting or seeding any disturbed areas with native vegetation following project completion, and (4) covering and containing all on-site stockpiles of construction debris to prevent polluted water runoff. Additionally, to ensure that runoff from the completed development is not directed toward the ESHA, Special Condition No. 4 also requires the erosion and runoff control plan to demonstrate that all runoff from the roof, and other impervious surfaces of the development would be collected and directed away from the ESHA into pervious areas on the site for infiltration. Special Condition No. 5 requires that only native and/or non-invasive plant species of native stock be planted at the site and prohibits the use of certain rodenticides.

Regarding potential geologic hazards, staff recommends that the Commission impose Special Condition Nos. 6, 7, and 8. These recommended conditions would require (1) conformance of the design and construction plans to the geotechnical report, (2) no future bluff or shoreline protective device, and (3) assumption of risk, waiver of liability and indemnity.

To ensure the project's conformance with provisions in the certified LCP regarding lighting restrictions, staff recommends Special Condition No. 9 that requires all exterior

lights to be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

To ensure that the proposed detached workshop is not used as a second residential unit, staff recommends Special Condition No. 1 that would prohibit use of the detached workshop as a residence with cooking and/or kitchen facilities and requires that the workshop not be rented or leased separate from the main residential structure.

Lastly, staff recommends Special Condition No. 2 that requires the applicants 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.

Therefore, as conditioned, staff recommends that the Commission find that the project is consistent with the certified Mendocino County LCP and the public access policies of the Coastal Act.

**The Motion to adopt the Staff Recommendation of Approval is found on page 5.**

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### **STAFF NOTES:**

#### **1. Standard of Review**

The Coastal Commission effectively certified the County of Mendocino's LCP in 1992. Pursuant to Section 30603(b) of the Coastal Act, after effective certification of an LCP, the standard of review for all coastal permits and permit amendments for development located between the first public road and the sea is the standards of the certified LCP and the public access and recreation policies of the Coastal Act.

#### **2. Procedure**

On October 14, 2005, the Coastal Commission found that the appeal of Mendocino County's conditional approval of a coastal development permit (CDP #103-04) for the subject development raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of 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 project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Testimony may be taken from all interested persons at the *de novo* hearing.

**3. Amended Project Description Submitted by Applicant for de novo Review**

For the purposes of *de novo* review by the Commission and to minimize adverse impacts to environmentally sensitive habitat, the applicants submitted revised project plans dated March 30, 2007 that make changes to the originally proposed residential development as approved by the County. The project revisions involve remodeling a portion of the existing residence, demolishing a portion of the existing residence, and constructing a new addition to the existing residence in a manner that would ensure that all new development meets the minimum buffer requirements from adjacent environmentally sensitive habitat areas. Specifically, rather than demolishing the entire existing residence and building a new residence in the same location, the proposed project as revised for purposes of *de novo* review by the Commission includes (1) remodeling approximately 950 square feet of an existing residence, (2) demolishing approximately 1,040 square feet of the existing residence, (3) constructing an approximately 1,532-square-foot addition to the existing residence and a new 768-square-foot attached garage, (4) constructing a 640-square-foot detached workshop, (5) replacing an existing culvert, and (6) installing a new septic disposal system, fencing, and LPG tank.

The amended project description and supporting information address issues raised by the appeal where applicable, and provide additional information concerning the amended project proposal 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 AND RESOLUTION**

**Motion:**

I move that the Commission approve Coastal Development Permit No. A-1-MEN-05-047 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 and the public access policies of the Coastal Act. 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.

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

**III. SPECIAL CONDITIONS:**

**1. Second Structure**

A. The following restrictions shall apply with respect to the detached workshop:

1. Any rental or lease of the detached workshop unit separate from rental of the main residential structure is prohibited; and
2. Use of the detached workshop as a residence with cooking or kitchen facilities is prohibited. The detached workshop shall not be converted into a residence or second unit.

**2. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** 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 a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, 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 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. 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 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.

**3. Open Space Restriction**

- A. No development, as defined in Section 30106 of the Coastal Act shall occur (1) within the areas labeled "AREA A" and "AREA B" on Exhibit No. 6 attached to this staff report, or (2) within 50 feet to the south the southern boundary of the

area labeled “AREA A” on Exhibit No. 6 attached to this staff report 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. The following development approved under Coastal Development Permit No. A-1-MEN-05-047: (a) replacement in-kind of the existing culvert across the driveway, (b) installation of the replacement septic system, and (c) underground utility extensions.
2. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation and restoration of environmentally sensitive habitat, (b) removal of debris and unauthorized structures, (c) repair and maintenance of the replacement septic system, utility lines, and culvert.

**B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT**, 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. 6 attached to this staff report.

**4. Erosion and Runoff Control Plan**

**A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-05-047**, the applicants shall submit an Erosion and Runoff Control Plan for review and approval of the Executive Director. The Erosion and Runoff Control Plan shall incorporate design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction. The final drainage and runoff control plan shall at a minimum include the following provisions:

1. A physical barrier consisting of straw bales placed end to end shall be installed and maintained in place throughout the construction period along the entire length of the southern boundary of “AREA A” as shown on Exhibit No. 6 to prevent workers and equipment from entering the environmentally sensitive habitat area.
2. Vegetation at the site shall be maintained to the maximum extent possible and any disturbed areas shall be replanted or seeded with native vegetation immediately following project completion.

3. All on-site debris stockpiles shall be covered and contained at all times.
  4. Runoff from the roof and other impervious surfaces of the development shall be collected and directed away from the environmentally sensitive habitat areas (ESHA) labeled "AREA A" and "AREA B" as shown on Exhibit No. 6 of the staff report 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 Erosion and Runoff Control 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 Coastal Commission approved 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 Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. 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.
- B. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

6. **Conformance of the Design and Construction Plans to the Geotechnical Investigation Report**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the recommendations contained in the Engineering Geologic Reconnaissance report dated January 11, 2005 prepared by BACE Geotechnical Consultants. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical reports approved by the California Coastal Commission for the project site.
- 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.

**7. No Future Bluff or Shoreline Protective Device**

- A. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-1-MEN-05-047, including, but not limited to, the residence with the attached garage, detached workshop, foundations, septic system, utilities, driveway, or appurtenant residential development in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or under Mendocino County LUP Policy No. 3.4-12, and Mendocino County Coastal Zoning Ordinance No. 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence with the attached garage, detached workshop, foundations, septic system, driveway, and other appurtenant residential development, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

**8. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicants acknowledge and agree: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**9. Lighting Restrictions**

All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

**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.

**IV. 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 September 30, 2005.

**2. Project History / Background**

On August 25, 2005, the Mendocino County Coastal Permit Administrator conditionally approved Coastal Development Permit #103-04 for (1) demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and

640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank. As approved, the development would have been sited approximately 10 feet from an environmentally sensitive habitat area (ESHA).

The permit approved by the County imposed several special conditions including Special Condition No. 5 requiring that four mitigation measures outlined in the County staff report be implemented to protect the ESHA on site. These measures include (1) correcting on-site drainage to allow water to flow through an existing culvert into the wetland, (2) placing temporary fencing along the edge of the wetland before and during construction activities, (3) minimizing mowing of wetland vegetation, and (4) installing permanent split rail fencing along the edge of the wetland habitat.

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 September 12, 2005. The County's approval of the project was appealed to the Coastal Commission in a timely manner on September 26, 2005, within 10-working days after receipt by the Commission of the Notice of Final Local Action by Commissioners Meg Caldwell and Sara Wan. The appeal cited inconsistencies between the approved development and provisions regulating development adjacent to environmentally sensitive habitat areas (ESHA), and the establishment of appropriate buffer areas. On October 14, 2005 the Commission found that a substantial issue had been raised with regard to the consistency of the project as approved by the County with the provisions of certified LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 regarding the protection of environmentally sensitive habitat and conformance with ESHA buffer requirements. The Commission continued the *de novo* portion of the appeal hearing. As described below, for the purposes of *de novo* review by the Commission, the applicants submitted revised project plans dated March 30, 2007 that made changes to the originally proposed residential development as approved by the County to minimize adverse impacts to environmentally sensitive habitat.

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

#### **Site Description**

The project site is a 1.07-acre bluff top lot located approximately 1.5 miles south of Caspar, approximately ½ mile west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, Mendocino County (APN 118-190-38). (See Exhibit Nos. 1-2.) The subject parcel is located in a residential neighborhood known as Seafair Subdivision. The parcel is currently developed with a one-story, 1,600-square-foot single-family residence with a 400-square-foot attached garage, septic system, and driveway. The existing residence was constructed prior to the Coastal Act. The site is not located in a designated highly scenic area.

The subject site is generally flat with a slight slope toward the northeast. The vegetation community at the site is composed of mostly wet coastal prairie species with an area of herbaceous wetland/riparian vegetation. A preliminary biological report was prepared by Alison Gardner following field visits at the site conducted in October and November of 2004. The preliminary report identified a seasonal drainage swale that drains the parcel to the east and extends across the northern portion of the subject parcel. The preliminary report indicated the presence of several wetland and riparian plant species including sedge, bullrush, water parsely, and willow.

A subsequent biological survey was prepared by William Maslach dated April 2005 to further delineate the swale and surrounding area and determined that the subject property contains a 0.5-acre wetland that bisects the project site and forms a small seasonal drainage that passes between the existing house on the subject site and the neighboring house to the east. The wetland is fed by subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction. The vegetation in the area is predominately native plants associated with saturated prairie soils and a slow moving seep. This wetland/riparian area is considered an environmentally sensitive habitat area (ESHA) under the Mendocino County LCP.

An 18-foot-long, 10-inch-diameter culvert exists under the existing gravel driveway. Some surface runoff drains through the pipe, but much is diverted by a small ditch that parallels the driveway toward the bluff edge. The existing culvert is clogged and is proposed to be replaced in-kind to facilitate drainage through the culvert and into the wet swale.

### Project Description

As approved by the County, the development would have consisted of (1) demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank. The entirely new residence approved by the County to replace the existing residence would have been sited approximately 10 feet from wetland/riparian ESHA.

For the purposes of *de novo* review by the Commission and to minimize adverse impacts to environmentally sensitive habitat, the applicants submitted revised project plans dated March 30, 2007 that make changes to the originally proposed residential development as approved by the County. The project revisions involve remodeling a portion of the existing residence on its existing foundation, demolishing a portion of the existing residence, and constructing a new addition to the existing residence in a manner that would ensure that all new development meets the minimum buffer requirements from adjacent environmentally sensitive habitat areas. Specifically, the proposed project as revised for purposes of *de novo* review by the Commission includes (1) remodeling

approximately 950 square feet of the existing residence, (2) demolishing approximately 1,040 square feet of the existing residence, (3) constructing an approximately 1,532-square-foot addition to the existing residence and a new 768-square-foot attached garage, (4) constructing a 640-square-foot detached workshop, and (5) installing a new septic disposal system, driveway improvements, fencing, and LPG tank. The proposed project also involves replacing an existing clogged 10" culvert located across the existing gravel driveway with a new 10" culvert to facilitate proper drainage. The applicants also propose to replace existing perimeter fencing with a new 6-foot-high wooden perimeter fence.

According to the applicants, part of the existing house is built on a concrete slab floor foundation at a grade that does not protect the house from water penetration and, as a result, the house suffers from mold/mildew infestation. This portion of the existing residence would be removed and a new addition would be constructed. The new addition would extend along the southeastern portion of the parcel and would be setback a minimum of 22 feet from the bluff edge. The proposed new septic system would be located in the southeast corner of the site. The portion of the existing residence proposed to remain would continue to be located within the 50-foot ESHA buffer and is approximately 15 feet from the ESHA at its closest point. However, all of the newly proposed development would be located a minimum of 50 feet from the ESHA with the exception of a portion of the new septic system, utility extensions, and culvert replacement that would be located partially within the ESHA buffer as discussed below. No new development would be located within the ESHA.

#### **4. Planning and Locating New Development**

##### **LCP Provisions**

LUP Policy 3.9-1 of the Mendocino County Land Use Plan states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

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

The subject property is zoned Rural Residential, 5-acre minimum (RR-5). Coastal Zoning Code Chapter 20.376 establishes the prescriptive standards for development within Rural Residential (RR) zoning districts. Single-family residences are the principally permitted use in the RR zoning district. Setbacks for the subject parcel are twenty feet to the front and rear yards, and six feet on the side yards, pursuant to CZC Sections 20.376.030 and 20.376.035, respectively. CZC Section 20.376.045 sets a



maximum building height limit of 28 feet above natural grade for non-highly scenic areas. CZC Section 20.376.065 sets a maximum of 20% structural coverage on RR lots of less than two acres in size.

### Discussion

The site is currently developed with an approximately 1,600-square-foot single-family residence and 400-square-foot attached garage that were constructed in the 1960's before the Coastal Act established coastal development permit requirements affecting this site. The proposed remodeled single-family residence is located within an existing developed neighborhood of similarly sized lots in the Seafair Subdivision and would be consistent with the rural residential zoning for the site. As discussed above, the development as proposed would consist of a 22-foot-high, one-story, approximately 2,482-square-foot, single-family residence with an attached 768-square-foot garage, a 640-square-foot detached workshop, a new septic system, and utilities. The development has been sited and designed to meet setback, lot coverage, and height limits for the RR zoning district.

The proposed detached workshop is permissible as an accessory use pursuant to Section 20.456.015, which allows for accessory structures associated with a principal permitted use. In this case, a workshop is recognized as an accessory use associated with the existing residential use of the property, and is therefore permissible, provided it is not utilized as a secondary residence, as CZC Section 20.458.010 expressly prohibits the creation of second residential units. The certified LCP does not allow more than one residential unit on most residential parcels in Mendocino County because of a concern that the increase in density could potentially result in cumulative adverse impacts on highway capacity, groundwater resources, and scenic values, inconsistent with LUP Policies 3.9-1 and 3.8-1. To prevent such significant cumulative adverse impacts, Special Condition No. 1 prohibits use of the detached workshop as a residence with cooking and/or kitchen facilities and requires that the workshop not be rented or leased separate from the main residential structure. Special Condition No. 2 requires that a deed restriction be recorded informing future buyers of the property of the special conditions of the permit, including the limitation on use of the workshop. Such notice to future buyers will better ensure that in the future, the development is not used as a second unit inconsistent with the requirements of the certified LCP.

The proposed development would be served by an existing on-site well. A new septic system would be installed to replace an existing failed septic system. The proposed septic system has been designed by Carl Rittiman, certified professional soil scientist, to accommodate the high groundwater at the site and has been sited in the southeast corner in the most well drained portion of the parcel. The design incorporates a new septic tank, an aerobic treatment unit, and an automatic pumping system that delivers the treated effluent on a timed basis to an at-grade disposal field. According to Mr. Rittiman, the at-grade disposal field is constructed on the surface of the ground and must be aligned on contour to ensure even distribution of the treated effluent to the native soil. The use of the aerobic treatment unit, timed dosing and the at-grade disposal field will ensure that

the sewage effluent will be highly treated and delivered to the native soil in such a way that it can be assimilated into the environment safely. The Mendocino County Division of Environmental Health (DEH) has approved the proposed septic system.

Development of the site as a single-family residence is envisioned under the certified LCP. The cumulative impacts on traffic capacity of development approved pursuant to the certified LCP on lots meeting minimum parcel size standards established for the property under the certified LCP were addressed at the time the LCP was certified. The proposed project involves remodeling an existing two-bedroom residence to result in a slightly larger and reconfigured two-bedroom residence. Thus, there would be no net increase in residential density on the property from the proposed development that would result in significant adverse individual or cumulative impacts on the traffic capacity of Highway One. Therefore, as conditioned, the proposed development is located in an area able to accommodate the proposed development, consistent with the applicable provisions of LUP Policy 3.9-1.

As discussed below, the proposed development has been conditioned to include mitigation measures, which will minimize all adverse environmental impacts. Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.8-1, 3.9-1, and with Zoning Code Section 20.376, as the development is consistent with the requirements of the RR zoning district, will be located in a developed area with adequate services, and the project will not result in significant adverse individual or cumulative impacts on highway capacity, environmentally sensitive habitat, geologic hazards, scenic values, or other coastal resources.

## **5. Environmentally Sensitive Habitat Areas**

### **LCP Policies**

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

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

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

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

LUP Policy 3.1-7 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 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. 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]*

LUP Policy 3.1-10 states:

*Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for:*

- Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;*
- pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible; ... [emphasis added]*

Coastal Zoning Code Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states:

*(A) **Buffer Areas.** 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 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 and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (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 fifty (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.*

*Standards for determining the appropriate width of the buffer area are as follows:*

*(a) **Biological Significance of Adjacent Lands.** Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

*Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.*

*(b) **Sensitivity of Species to Disturbance.** The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

*(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*

*(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*

*(iii) An assessment of the impact and activity levels of the proposed development on the resource.*

***(c) Susceptibility of Parcel to Erosion.*** *The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

***(d) Use of Natural Topographic Features to Locate Development.*** *Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*

***(e) Use of Existing Cultural Features to Locate Buffer Zones.*** *Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*

***(f) Lot Configuration and Location of Existing Development.*** *Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*

***(g) Type and Scale of Development Proposed.*** *The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...*

**(2) Configuration.** *The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*

**(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. [emphasis added]*

Discussion

A. Development to be Located a Minimum of 50 Feet from Environmentally Sensitive Habitat (ESHA)

As described above, the vegetation community at the site is composed of mostly coastal prairie species with an area of herbaceous wetland and riparian vegetation. A preliminary biological report was prepared by Alison Gardner following field visits at the site conducted in October and November of 2004. The preliminary report identified a seasonal drainage swale that drains the parcel to the east across the northern portion of the subject parcel. The preliminary report indicated the presence of several wetland and riparian plant species including sedge, bullrush, water parsely, and willow. A subsequent biological survey that further delineated the subject site described the swale and the surrounding area as a 0.5-acre wetland that bisects the northern portion of the parcel and forms a small seasonal drainage that passes between the existing house on the subject site and the neighboring house to the east. The area is fed by subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction. The existing vegetation is predominately native plants associated with saturated prairie soils and a slow moving seep.

As cited above, Coastal Zoning Code Section 20.496.010 states that environmentally sensitive habitat areas (ESHA) include wetlands and riparian areas. Therefore, as ESHA, wetlands and riparian areas are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) 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 policies state that in that event, the buffer shall not be less than 50 feet in width. Coastal Zoning Code Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the 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, and (g) the type and scale of the development proposed.

The portion of the existing residence to be remodeled was constructed in the 1960's prior to the Coastal Act and is located as close as 15 feet from the edge of the ESHA near the northwest corner of the site. This existing setback would not change as a result of the proposed project. However, all of the proposed additions to the existing residence would be located a minimum of 50 feet from the ESHA with the exception of the new replacement septic system, underground utility extensions, and culvert replacement. These facilities would be constructed within the buffer consistent with LUP Policy 3.1-7

and CZC Section 20.496.020(A)(1) as discussed in Finding 5(B) below. The applicant's biologist prepared an analysis that substantiates that a 50-foot buffer is adequate to protect the ESHA from the impacts of the proposed above ground development based on the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) of the MCCZC as discussed below.

Regarding the biological significance of adjacent lands, the applicant's biologist indicates that the wetland/riparian area originates from saturated soils and subsurface flow from the eastern edge of the parcel. According to the biological report, the ESHA on the project site is comprised of two topographic components. The first, and most biologically significant, is the portion mapped as "Area A" on the site map (Exhibit No. 6). This is the wet swale that has all three indicators of a wetland and supports riparian and wetland vegetation. The second component is the upper area to the north of the wet swale mapped as "Area B". This area has saturated soils and soil indicative of wetlands, but does not support a preponderance of hydrophytic vegetation. The ESHA does not support fish or fish habitat. Birds may forage in the area, but the ESHA does not support migrating birds. Additionally, according to the biologist, the wet swale is poor breeding habitat for amphibians because water depth is very shallow, but it may provide resting or foraging habitat.

The site is currently developed with a single-family residence and the proposed project would remodel/reconfigure the existing residential use. The proposed development would not encroach any closer to the ESHA than the portion of the existing residence that is proposed to be retained and remodeled and all new above-ground development would be located outside of the required 50-foot minimum buffer area. Therefore, regarding the sensitivity of wetland and riparian species to disturbance, species disturbance would not be any greater than what has existed on site, as the proposed project would not result in a change in the type or intensity of use of the site. The various species (primarily plants) are likely well-adapted to human disturbance because of the past use of the site. Although mowing has occurred on the site, hydrophytic vegetation persists.

Regarding the susceptibility of the parcel to erosion, the project site is flat and is not susceptible to significant erosion. Additionally, the proposed development does not involve any substantial grading. However, the applicants' biologist notes that much of the site is saturated and unnatural drainage patterns could result if development were allowed to impede existing drainage. An existing culvert is located across the driveway that facilitates runoff from the eastern portion of the parcel toward the wet swale. The existing culvert is clogged and is not functioning properly. The applicants propose to replace this culvert in-kind to ensure maintenance of the hydrologic conditions that support the ESHA consistent with the biologist's recommendations.

Regarding the use of natural or cultural features to locate the buffer area, the biologist indicates that there are no hills or other pronounced topographic features, or other cultural features (e.g., roads, dikes, etc.) at the site that would affect the consideration of an appropriate buffer area.



Lastly, regarding the lot configuration, location of existing development, and the type and scale of the development proposed, the biological analysis notes that adjacent development in the subdivision occurs as close as approximately 10 to 20 feet from riparian ESHA found on adjacent parcels. As a result of the lot configuration, the geologic setback requirement, and the location of the existing development relative to the location of the ESHA at the site, it would not be possible to locate the development 100 feet from the ESHA, which spans the entire width of the parcel. As noted above, the proposed development would not be located any closer than the portion of the existing residence to be remodeled and all new additional construction would be located a minimum of 50 feet from the ESHA with the exception of a portion of the septic system, underground utility extensions, and culvert replacement as discussed below. Additionally, the type and scale of the development proposed is consistent with that of the surrounding residential development and would not introduce a new use of the site.

Of the several factors raised by the applicants' biologist as reasons why a reduced 50-foot buffer would be adequate, the Commission finds that the most significant are those regarding (1) the low biological significance of the lands adjacent to the ESHA, (2) the low potential for species disturbance, and (3) the low susceptibility of the parcel to erosion.

The biological report demonstrates that the ESHA is not suitable to support a diversity of wildlife that would require substantial areas of transitional habitat adjacent to the ESHA itself. The ESHA supports primarily wetland and riparian plant species that, unlike certain wildlife species, do not depend on the functional relationships of adjacent lands that a larger buffer area is usually intended to protect such as breeding, nesting, feeding, or resting activities. Therefore, in this case, there is less need for a wide buffer to help sustain the species that inhabit the ESHA. In addition, the fact that the development site is relatively flat indicates that erosion and sedimentation from construction, and from the completed development, are less likely to affect the ESHA than erosion and sedimentation would if the building site had a steeper slope with greater potential for erosion, particularly with implementation of the additional erosion and sedimentation controls required by Special Condition No. 4 described below. Additionally, because the proposed project does not involve a change in the type or intensity of use of the site, the project would not result in greater species disturbance than that which currently exists.

Therefore, the Commission finds that primarily based on the buffer width criteria of subsections (a), (b), (c) and (g) of Coastal Zoning Code Section 20.496.020 regarding the biological significance of adjacent lands, sensitivity of species to disturbance, the susceptibility of the parcel to erosion, and the type and scale of the development proposed, respectively, the proposed 50-foot buffer width in conjunction with implementation of Special Condition Nos. 4 and 5 requiring certain erosion and sedimentation controls and prohibitions on the planting of additional invasive exotic species as described below is adequate to protect the environmentally sensitive habitat at the project site from possible significant disruption caused by the proposed development.

To ensure (1) that the proposed 50-foot buffer is established, (2) the protection of the ESHA from significant degradation resulting from the development, and (3) the continuance of the habitat as required by LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020, the Commission attaches Special Condition No. 3, which requires the ESHA to be restricted as open space and prohibits specified development from occurring within the ESHA labeled as “Area A” and “Area B” and within a 50-foot buffer area as measured from the southern edge of the area labeled “Area A” as shown on the attached Exhibit No. 6, except for the replacement septic system, underground utility extensions, and replacement culvert, which may be installed within the buffer. In addition, Special Condition No. 2 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 the ESHA and ESHA buffer.

Even with the established buffer area, the ESHA could be adversely affected by the proposed development from site runoff that could impact the water quality of the ESHA. The subject site is developed with an existing residence and gravel driveway and the 50-foot buffer would maintain a pervious area necessary for stormwater infiltration. However, the increase in impervious surface area from the slightly larger development would lead to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. 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 ESHA can cause cumulative adverse impacts such as: eutrophication and anoxic conditions resulting in the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in aquatic organisms leading to adverse changes in reproduction and feeding behavior. Such impacts reduce the quality and biological productivity of environmentally sensitive habitat areas.

The established open space and buffer area required by Special Condition No. 3 described above will remain 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 prior to the

issuance of the coastal development permit. 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 as discussed further in the water quality finding below. Additionally, the biological report recommends that a temporary fence be installed between the ESHA and the proposed development during construction. Special Condition No. 4(A)(1) requires the temporary placement of a construction barrier along the entire length of the southern boundary of “Area A” as shown on Exhibit No. 6 to protect the ESHA from encroachment and intrusion by workers and equipment during construction.

Furthermore, the ESHA could be adversely affected by the development if 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 riparian and wetland vegetation, thereby disrupting the value and function of the adjacent ESHA. The applicant has not proposed a specific landscaping plan 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 native stock be planted at the site.

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 significant adverse cumulative impact to environmentally sensitive wildlife species, the Commission attaches Special Condition No. 5(B) prohibiting the use of specified rodenticides on the property governed by CDP No. A-1-MEN-05-047.

The Commission notes that Section 30610(a) of the Coastal Act and Chapter 20.532 of the County’s Coastal Zoning Code exempt certain additions to existing single- family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicants might propose in the future are normally exempt from the need for a permit or permit amendment. However, in this case because the project site is located within 50 feet of the edge of a coastal bluff, future improvements to the approved project are not exempt from permit requirements pursuant to Section 30610(a) and Section 13250(b)(1) of the Commission’s regulations.

In particular, Section 30610(a) requires the Commission to specify by regulation those classes of development, which involve a risk of adverse environmental effects and

require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect. Moreover, Section 13250(b)(1) indicates that improvements to a single-family structure located within 50 feet of the edge of a coastal bluff involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the subject site is a bluff top lot and the proposed development would be located 22 feet from the bluff edge. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, future improvements to the approved development would not be exempt from coastal development permit requirements and the County and the Commission will have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in adverse impacts to environmentally sensitive habitat.

With the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent environmentally sensitive habitat area, the project as conditioned will not significantly degrade adjacent ESHA and will be compatible with the continuance of wetland/riparian habitat area.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 concerning establishment of buffers between development and existing ESHA because (1) the proposed project would establish an ESHA buffer width based on the standards set forth in Coastal Zoning Ordinance Section 20.496.020(A)(1)(a) through (g) for reducing the minimum buffer below 100 feet, (2) all development except for the new replacement septic system, underground utility extensions, and replacement culvert would be located a minimum of 50 feet from the ESHA, and (3) all impacts of the development on the adjacent ESHA would be mitigated to levels of less than significant.

**B. Development Within the ESHA Buffer Area**

As discussed above, the proposed demolition of a portion of the existing residence and construction of a new addition to the existing residence would be located outside of the 50-foot ESHA buffer. However, other portions of the proposed development would be located within the required minimum 50-foot buffer. These portions of the development include the proposed new replacement septic system, underground utility extensions, and replacement culvert.

LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 (A)(1) regarding the reduction of an ESHA buffer width does allow for development to be permitted within a buffer area if the development is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if it is (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.

As noted previously, the environmentally sensitive habitat area is composed of mostly herbaceous wetland and riparian plant species. A preliminary biological report prepared for the project identified the ESHA as a seasonal drainage swale that supports various species of sedges, rush, water parsley, and willow. The report concludes that “*With this number of riparian-associated species, it is clearly a riparian environment, hence an ESHA.*” A subsequent biological survey further delineated the ESHA and characterized the habitat area as a 0.5-acre wetland. As cited above, both wetlands and riparian areas are considered ESHA under CZC Section 20.496.010. Because the area is fed by subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction that supports several riparian species, it is reasonable to characterize the habitat as a riparian area. LUP Policy 3.1-10 and CZC Section 20.496.035 set forth the types of development allowable within a riparian area, and thus those types of development potentially allowable in a riparian buffer. The allowable uses include utility lines when no less environmentally damaging alternative route is feasible.

A portion of the septic system would be sited within the 50-foot ESHA buffer in the southeast corner of the parcel. The existing residence is currently served by an existing septic system. However, the Mendocino County Department of Environmental Health (DEH) has indicated that the existing system, which is poorly sited under the existing driveway, has failed and needs to be replaced. The proposed replacement septic system was designed by Carl Rittiman, certified professional soil scientist, following soil investigation and sampling at the site. Commission staff inquired as to whether an alternative location or system design or configuration was feasible to avoid having to locate the replacement septic system partially within the ESHA buffer. However, because of the high groundwater table throughout the majority of the site, no other feasible locations exist. Mr. Rittiman indicated that the system has been located in the driest, most favorable area of this otherwise largely wet parcel. According to Mr. Rittiman, the system cannot be designed to be located completely outside of the buffer area due to the need for an at-grade leachbed to be aligned on contour. The bed is designed so that the native soil will not become hydraulically overloaded when the system is used. According to Mr. Rittiman, making the leachfield shorter and wider to stay out of the buffer area would lead to hydraulic overloading of the native soils in normal winter conditions such that the system would not function properly.

The proposed installation of a new septic system, as utility lines, is allowed within a riparian ESHA buffer under CZC Section 20.496.035, when no less environmentally damaging alternative is feasible. The installation of the proposed septic system partially within the ESHA buffer would not impair the value of the buffer area, as the septic system would be designed at-grade and does not involve a mound that would alter drainage or runoff patterns. Additionally, the septic system would not increase disturbance of the adjacent ESHA from noise or light intrusion. Furthermore, as the existing septic system is located entirely within the 50-foot ESHA buffer, replacing the

existing failed septic system with a new system located partially outside of the ESHA buffer and designed to include an aerobic treatment unit as proposed, would reduce the potential for contaminated effluent from reaching the ESHA and would provide greater protection than exists under the current septic system arrangement and ensures the continuance of the adjacent ESHA.

The applicants also propose to provide underground utility service extensions for the development by extending utility lines along the existing gravel driveway within the proposed 50-foot ESHA buffer. As noted above, placement of utility lines within a riparian buffer area is expressly allowed by LUP Policy 3.1-10 and CZC Section 20.496.035 when no less damaging route is feasible. The use of the existing driveway would be the most feasible least damaging alternative for placement of the utility line extensions. The driveway is an existing development and would continue to be used to serve the new residential development. Therefore, burying the utilities below the driveway would avoid disruption of new ground and vegetation for placing the utility lines in another location. Because the ESHA and the 50-foot ESHA buffer span the entire width of the parcel, it is impossible to locate utility extensions from the transformer box located at the northeast corner of the parcel near Mar Vista Drive to the development site without crossing the ESHA buffer area. The placement of utility lines underground as proposed would minimize disruption to birds using the wetland/riparian ESHA from overhead lines hung from poles, and would also avoid disruption to vegetation from avoiding the need to trim trees for utility line safety. For these reasons, the installation of the underground utility lines meets the standards under LUP Policy 3.1-7 and CZC Section 20.496.035 for allowing development within a riparian ESHA buffer while providing for the continuance of the habitat.

For all of the reasons described above, the Commission finds that the proposed development of utility lines, including a portion of the replacement septic system and utility extensions within the ESHA buffer (1) cannot be avoided, (2) is the least environmentally damaging feasible alternative, and (3) would not result in the loss of any particular value of the buffer. Therefore, the Commission finds that as conditioned, the proposed project would be consistent with LUP Policies 3.1-7 and 3.1-10 and CZC Sections 20.496.020 and 20.496.035 requiring development permitted within a buffer area to be (1) for a use otherwise allowable within the ESHA, (2) sited and designed to prevent impacts which would significantly degrade such areas, (3) compatible with the continuance of the habitat, and (4) allowed only if no other feasible site is available on the parcel.

## **6. Water Quality**

### LCP Provisions

CZC Section 20.492.020 incorporates sedimentation standards and states in part:

- (A) *Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.*
- (B) *To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*
- (C) *Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.*
- (D) *Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection [emphasis added.]*

#### Discussion

Storm water runoff from new development can adversely affect the biological productivity of environmentally sensitive habitat areas from sedimentation and polluted runoff. LUP Policy 3.1-25 requires, in applicable part, the protection of areas of biological significance, such as environmentally sensitive habitat areas. Section 20.492.020 of the Mendocino County Coastal Zoning Code sets forth sedimentation standards to minimize sedimentation of environmentally sensitive areas and off-site areas. Specifically, Section 20.492.020(A) requires the installation of silt trapping devices to remove sediment from runoff that may drain to environmentally sensitive habitat areas. Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.

As discussed above, the proposed development is located adjacent to environmentally sensitive wetland/ riparian habitat. Runoff originating from the development site that is allowed to drain toward the environmentally sensitive habitat area could contain sediment and other pollutants entrained in runoff that would contribute to the degradation of the habitat. Sedimentation impacts from runoff would be of greatest concern during and immediately after construction. Consistent with CZC Section 20.492.020(B), the Commission attaches Special Condition No. 4 to minimize erosion and sedimentation impacts from the proposed construction of the residence. Special Condition No. 4 requires the applicants to submit for the review and approval of the Executive Director an Erosion and Runoff Control Plan with provisions for (1) installing hay bales to contain runoff from construction and demolition areas; (2) maintaining on-site vegetation to the maximum extent possible during construction, (3) replanting or seeding any disturbed areas with native vegetation following project completion, and (4) covering and

containing all on-site stockpiles of construction debris to prevent polluted water runoff. Additionally, to ensure that runoff from the completed development is not directed toward the ESHA, Special Condition No. 4 also requires the erosion and runoff control plan to demonstrate that all runoff from the roof, and other impervious surfaces of the development would be collected and directed away from the ESHA into pervious areas on the site for infiltration.

The Commission finds that as conditioned, the proposed development is consistent with Section 20.492.020 because erosion and sedimentation would be controlled and minimized by the implementation of erosion control measures during and following construction.

## **7. Geologic Hazards**

### LCP Policies

LUP Policy 3.4-1 states the following in applicable part:

*“The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami run-up, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps, the County shall require a geologic investigation and report, prior to development to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site...”*

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) state that:

*The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula: [emphasis added]*

*Setback (meters) = Structure life (years) x Retreat rate (meters/year)*

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation. All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist’s report.*



LUP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1) state that:

Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses. [emphasis added]

Section 20.500.015(A) of the Coastal Zoning Code states in applicable part:

- (1) *Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*
- (2) *Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and bluff top lots and areas delineated on the hazards maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

Section 20.500.010 of the Coastal Zoning Code states that development shall:

- (1) *Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) *Assure structural integrity and stability; and*
- (3) *Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 20.500.020(B) of the Coastal Zoning Code states in applicable part:

- (1) *New structures shall be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (seventy-five (75) years).* *New development shall be set back from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

*Setback (meters) = structure life (75 years) x retreat rate (meters/year)*

*Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.*

- ...
- (3) *Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.* [emphasis added]

### Discussion

As described above, the proposed project involves remodeling a portion of, and constructing a new addition to, an existing single-family residence with an attached garage, septic system, and driveway and constructing a new detached workshop on a bluff top parcel. LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) require new development to be set back a sufficient distance from the edge of the bluff to ensure its safety from bluff erosion and cliff retreat during the economic life span of 75 years. Additionally, these provisions require that the setback be a sufficient distance so as to eliminate the need for shoreline protection devices.

A geotechnical investigation and report was prepared for the site by BACE Geotechnical (BACE) dated January 11, 2005. The BACE report describes the subject property as a near level elevated marine terrace bordered by a steep ocean bluff that descends into a small northwest trending cove. The bluff is approximately 40 feet high and has an average slope gradient of one-fifth horizontal to one vertical (1/5H:1V). The existing residence is located approximately 29 feet from the edge of the bluff at its closest point at the southwest corner.

Based on the results of site reconnaissance, aerial photograph review, and subsurface investigation, the geologic report estimates an average bluff retreat rate of 1.5 to 1.75 inches per year. Based on an average retreat rate of 1.75 inches per year times a factor of safety of two, BACE recommends a 22-foot bluff setback for the proposed new development. All new proposed development has been sited a minimum of 22 feet from the bluff edge consistent with the geologist's review and recommendation.

The geologic report further recommends that concentrated surface runoff be directed away from the bluff edge to minimize erosion and that surface runoff and concentrated runoff from pipes, such as roof drains, be directed away from the residence toward the west and northeast sides of the property. The geologic report further indicates that due to the uncertain thickness and composition of weak surficial terrace soils, further review of final foundation designs is recommended.

To ensure that the proposed amended residence is developed consistent with the geologic recommendations, the Commission attaches Special Condition No. 6, which requires that the final construction plans for the development adhere to the setback and design recommendations specified in the geotechnical report, and that development is constructed consistent with these recommendations. The condition requires all final design and construction plans for the development be consistent with the recommendations contained in the geotechnical report dated January 11, 2005, prepared

by BACE Geotechnical Consultants. Therefore, the Commission finds that as conditioned, the proposed development would be set back a sufficient distance from the bluff edge to provide for a 75-year design life of the development consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

Based upon the geologic report prepared by BACE, the Commission finds that the risks of geologic hazard would be minimized if the residence is set back 22 feet or more from the bluff edge, and if the design and construction recommendations discussed above are implemented. Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore, cannot always absolutely predict bluff erosion rates.

The BACE Geotechnical Investigation report states that their geological and engineering services and review of the proposed development was performed in accordance with the usual and current standards of the profession, as they relate to this and similar localities and specifically states, *“No other warranty, expressed or implied, is provided as to the conclusions and professional advice presented in the report.”* This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat.

Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding, and that the proposed new development will be subject to geologic hazard and could potentially some day require a bluff or shoreline protective device.

LUP Policy 3.4-7 and Section 20.500.010 of the Mendocino County Coastal Zoning Ordinance state that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with LUP Policy 3.4-7 and Zoning Code Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it. Therefore, the Commission attaches Special Condition No. 7, which indicates that by acceptance of the permit, the applicants agree that no bluff or shoreline

protective devices shall ever be constructed to protect the development approved by this permit.

In addition, as noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the house, or other development approved by the Commission. Furthermore, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 7(C) further requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the house should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission also attaches Special Condition No. 2, which requires the applicants to record a deed restriction to impose the special conditions of the permit as covenants, conditions and restrictions on the use and enjoyment of the property. This special condition is required, in part, to ensure that the development is consistent with the LCP and to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development.

Additionally, the Commission attaches Special Condition No. 8, which requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the project despite these risks, the applicants must assume the risks. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, the requirement of Special Condition No. 2 that a deed restriction be recorded will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

Lastly, the Commission notes that Section 30610(a) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single-family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicants might propose in the future are normally exempt from the need for a permit or permit amendment. However, in this case because the project site is located within 50 feet of the edge of a coastal bluff, future improvements to the approved

project are not exempt from permit requirements pursuant to Section 30610(a) and Section 13250(b)(1) of the Commission's regulations.

In particular, Section 30610(a) requires the Commission to specify by regulation those classes of development, which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect. Moreover, Section 13250(b)(1) indicates that improvements to a single-family structure located within 50 feet of the edge of a coastal bluff involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the subject site is a bluff top lot and the proposed development would be located 22 feet from the bluff edge. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, future improvements to the approved development would not be exempt from coastal development permit requirements and the County and the Commission will have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in a geologic hazard.

The Commission thus finds that as conditioned, the proposed development is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-1, 3.4-7, 3.4-12, and Coastal Zoning Code Sections 20.500.010, 20.015.015, and 20.500.020, since the development as conditioned would not contribute significantly to the creation of any geologic hazards, would not have adverse impacts on the stability of the coastal bluff or on erosion, would not require the construction of shoreline protective works, and the Commission would be able to review any future additions to ensure that development would not be located where it might result in the creation of a geologic hazard. Only as conditioned is the proposed development consistent with the LCP policies regarding geologic hazards.

## **8. Visual Resources**

### **LCP Provisions**

LUP Policy 3.5-1 states in applicable 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. New development in highly scenic*

*areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.*

LUP Policy 3.5-15 states:

*Installation of satellite receiving dishes shall require a coastal permit. In highly scenic areas, dishes shall be located so as to minimize visual impacts. Security lighting and floodlighting for occasional and/or emergency use shall be permitted in all areas. Minor additions to existing nightlighting for safety purposes shall be exempt from a coastal permit. In any event no lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible. [emphasis added]*

CZC Section 20.504.035, Exterior Lighting Regulations, states as follows:

*(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.*

*(1) No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser.*

*(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.*

*(3) Security lighting and flood lighting for occasional and/or emergency use shall be permitted in all areas.*

*(4) Minor additions to existing night lighting for safety purposes shall be exempt from a coastal development permit.*

*(5) No lights shall be installed so that they distract motorists. (Ord. No. 3785 (part), adopted 1991) . [emphasis added]*

#### Discussion

The proposed development involves remodeling a portion of, and constructing a new addition to, an existing single-family residence and construction of a detached workshop. The property is not located within a designated highly scenic area as enumerated by the LCP or as depicted on LUP maps.

The subject site is located near the end of a cul-de-sac on Mar Vista Drive in a developed residential subdivision. Although the site is a bluff top lot with views of the ocean, the

existing residence already blocks a portion of the view afforded from Mar Vista Drive and the proposed remodel and addition would not significantly adversely block any additional portion of the view across the site. Additionally, the proposed residence and detached workshop would be similar in size and height to other residential structures in the neighborhood and would be consistent with the character of the surrounding residential development. The proposed project would not involve substantial alteration of natural landforms.

As cited above, LUP Policy 3.5-15 and CZC Section 20.504.035 set forth standards for exterior lighting. To minimize potential glare from any exterior lighting, Special Condition No. 9 requires that all exterior lights be the minimum necessary for the safe ingress and egress of structures and be low-wattage, non-reflective, shielded, and be cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with LUP Policies 3.5-1 and 3.5-15 and CZC Section 20.504.035 as the development would (1) not significantly adversely affect views to and along the ocean, (2) minimize the alteration of natural land forms, (3) be visually compatible with the character of the surrounding area, and (4) include exterior lighting that would be designed to minimize glare beyond the boundaries of the parcel.

## **9. Public Access**

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

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

As described above, the subject parcel is located west of Highway One and sits atop a coastal bluff approximately 40 feet above the ocean. There is no physical access from the subject parcel to the shoreline due to the very steep bluff. There are no trails or other public roads that provide shoreline access within the vicinity of the project and therefore, the proposed development would not interfere with existing public access. Furthermore, the proposed project involves changes to an existing single-family residence that would not increase residential density, would not create any new demand for public access or otherwise create any additional burdens on public access. Public access to the coast is available nearby at Russian Gulch State Park to the south and Caspar Headlands State Beach to the north.

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

#### **10. California Environmental Quality Act (CEQA)**

Mendocino County is the lead agency for purposes of CEQA review. The County determined that the proposed project is categorically exempt (Class 3) from CEQA requirements.

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

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

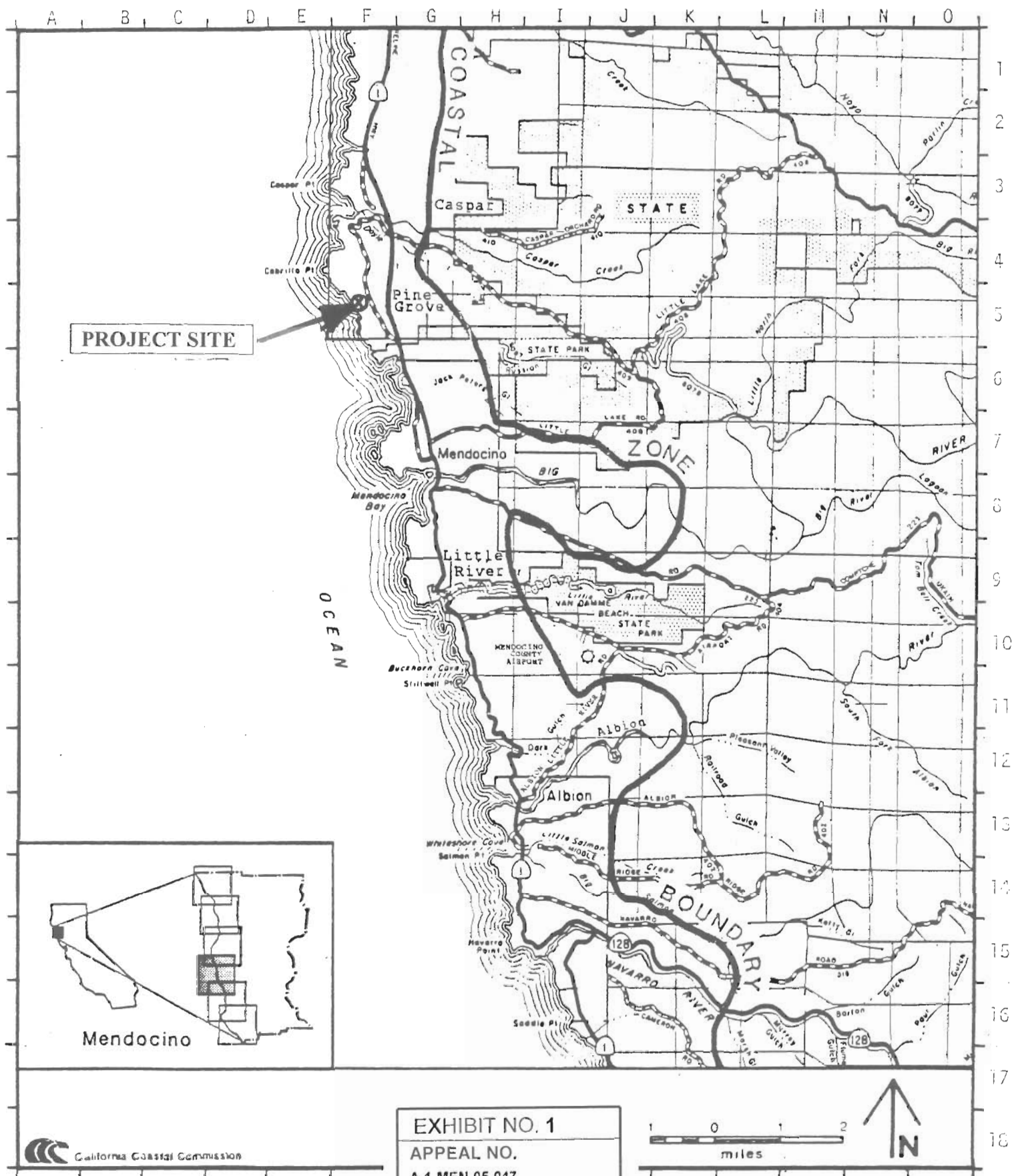


**EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Existing Site Plan
4. Proposed Site Plan (as revised for de novo review)
5. Proposed Floor Plan & Elevations (as revised for de novo review)
6. ESHA Map
7. County-Approved Site Plan
8. Appeal
9. Notice of Final Local Action
10. Excerpts of Wetland Survey

**ATTACHMENT A:**  
**Standard Conditions**

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable amount of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



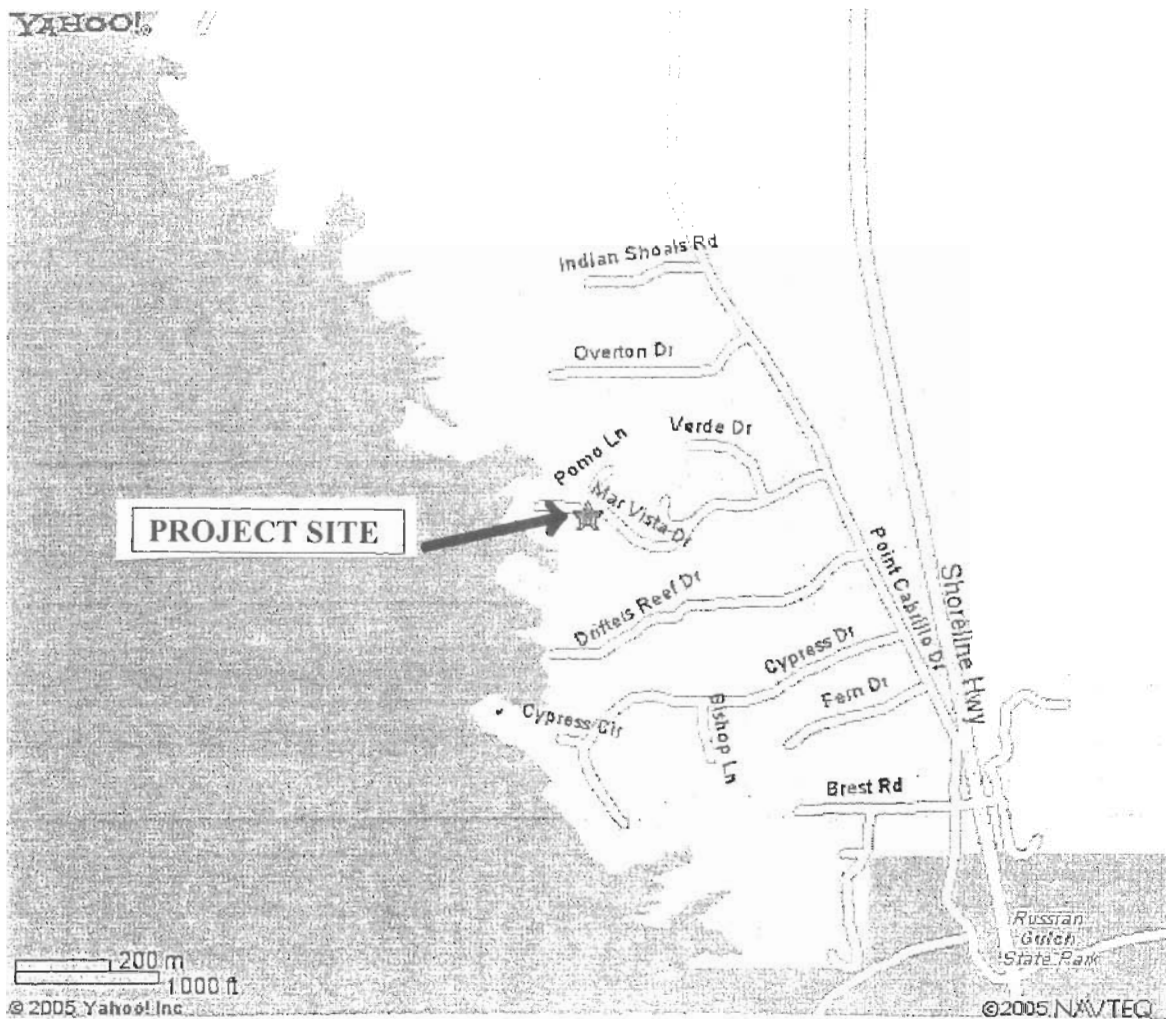


EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-05-047

SACKS

VICINITY MAP



# EXHIBIT NO. 4

APPEAL NO.

A-1-MEN-05-047

SACKS

PROPOSED SITE PLAN (AS  
REVISED FOR DE NOVO  
REVIEW)

## PROPOSED SITE PLAN WITH EXIST. HOUSE & DECK

SCALE: 1" = 20'

NORTH

NOTE: Proposed Utility Trench has been revised to be relocated entirely within existing driveway per letter from Applicants' Agent dated May 23, 2007. This revision is not reflected on this site plan.



**SACKS PROJECT**

**CKS PROJE**  
45321 MAR VISTA DRIVE  
MENDOCINO, CA 95460  
APR: 118 - 190 - 28

### EXTERIOR ELEVATIONS

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

ARCHITECT

NY WIREMAN  
BANKERS TRUST COMPANY  
252 BOX 397  
ALBION, CA 95410  
767-937-2807



## REVISIONS

NORTH "ELEVATION"

Exhib. 1:  $V_{\text{eff}} = 11.20$

### MAST ELEVATION

2017-12-13 11:11:11



3 of 4

A3.2  
of 8

SHEET

CHECKED BY: DM

DATE: MAR 28, 2004

SCALE: AS SHOWN

DATE

SACKS PROJECT

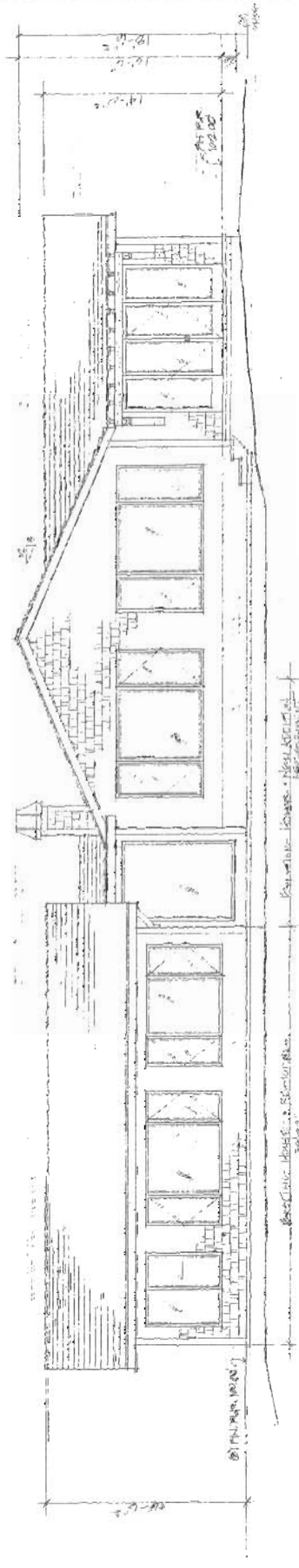
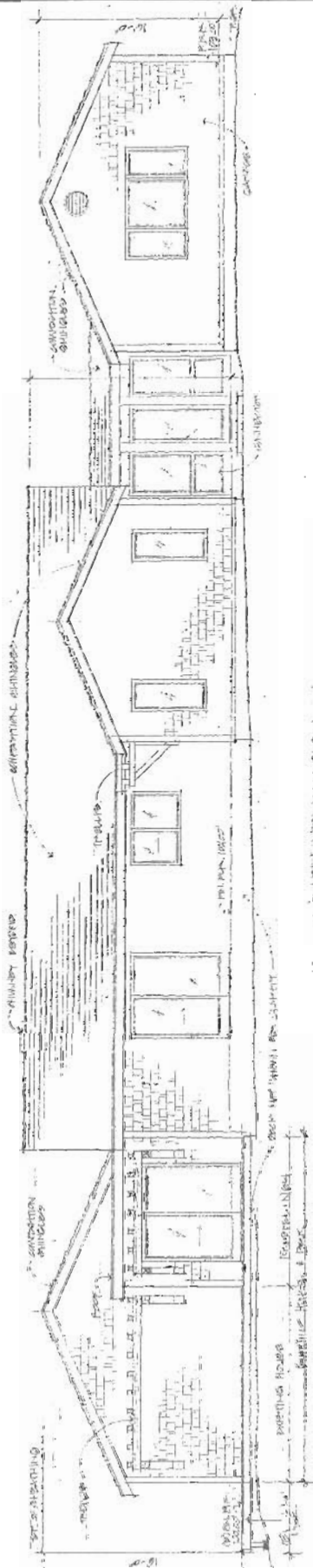
14301 MAR VISTA DRIVE  
MENLO PARK, CA 94025  
APR 118-179-28

EXTERIOR ELEVATIONS

DATE

ARCHITECT  
DANNA WILDMANN  
P.O. BOX 395  
ALBION, CA 94401  
708.952.2807

REVISIONS





### Figure 1. Wetland Survey Map

Area "A" and Area "B" are wetlands and considered ESHA's. Area "A" is the wet swale and Area "B" is the adjacent area that does not have a dominance of wetland vegetation, although it is still considered a wetland.



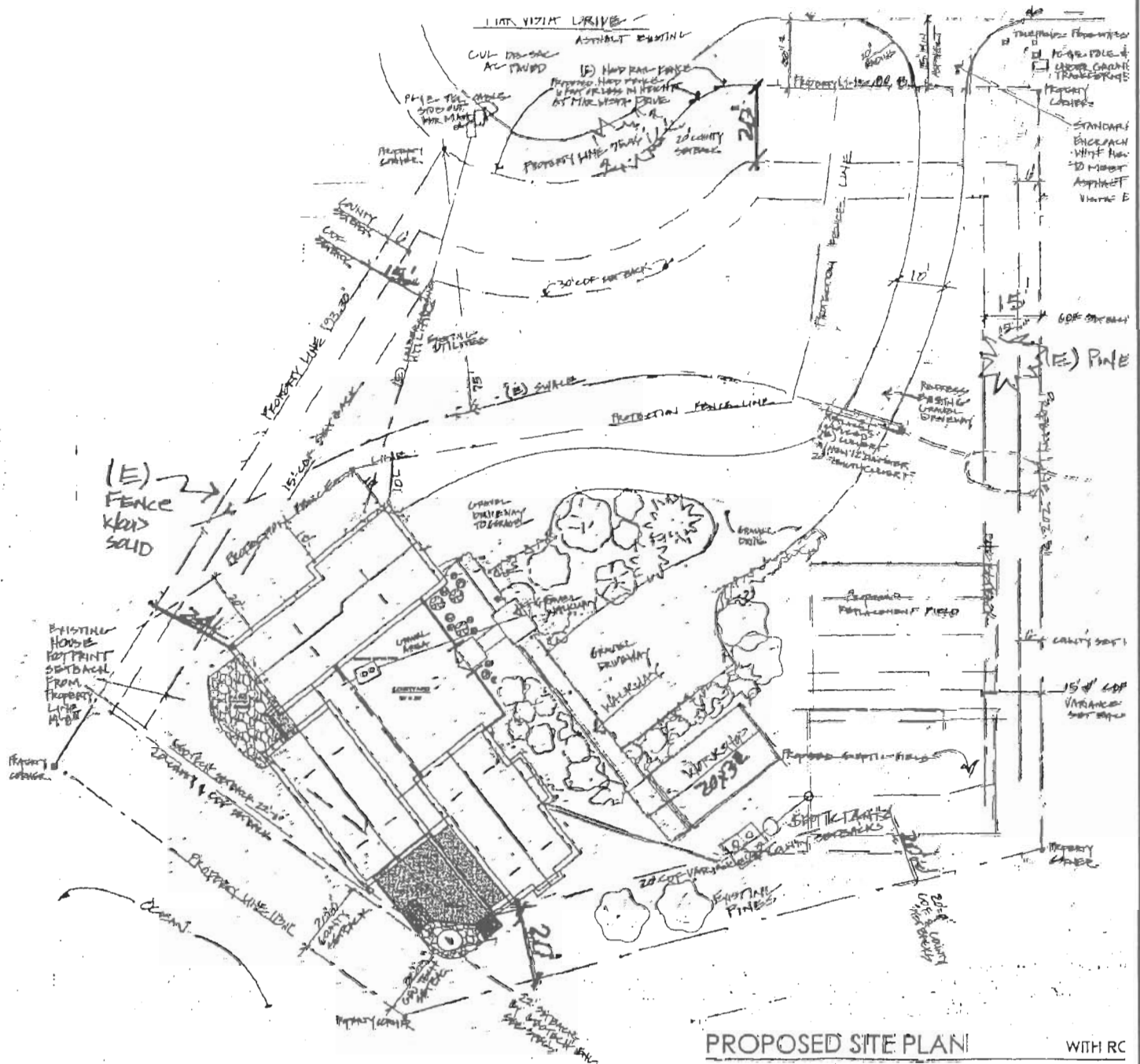
EXHIBIT NO. 6

APPEAL NO.

A-1-MEN-05-047

SACKS

ESHA MAP



PROPOSED SITE PLAN WITH RC

EXHIBIT NO. 7

APPEAL NO. \_\_\_\_\_

A-1-MEN-05-047

SACKS

COUNTY-APPROVED SITE  
PLAN

NO SCALE

## Proposed Site Plan

## 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:

Mailing Address: SEE ATTACHMENT 1

City:

Zip Code:

Phone:

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

(1) Demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (5) improvements to an existing driveway, (6) construction of new fencing, and (7) installation of an LPG tank. Development is sited 10 feet from an existing wetland.

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

Approximately 1.5 miles south of Caspar, approximately 1/2 mile west of Highway 1 on the south side of Mar Vista Drive at 45321 Mar Vista Drive, Mendocino County (APN 118-190-38).

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

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

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

**TO BE COMPLETED BY COMMISSION:**

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

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

DISTRICT: \_\_\_\_\_

**EXHIBIT NO. 8****APPEAL NO.**

A-1-MEN-05-047

SACKS

APPEAL (1 of 16)

**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: August 25, 2005

7. Local government's file number (if any): CDP #103-04

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

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

a. Name and mailing address of permit applicant:

Rudolph & Ann Sacks  
406 Botolph Lane, Suite 1  
Santa Fe, NM 87505

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)

Diana Wiedemann, Architect  
PO Box 395  
Albion, CA 95410

(2)

William Maslach  
32915 Nameless Lane  
Fort Bragg, CA 95437

(3)

(4)

2 of 16

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: /s/ Signature on File L  
Appellant or agent

Date: September 26, 2005

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

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

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

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

SECTION V. Certification

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

Signed: J Signature on File  
Appellant or Agent ✓ km

Date: September 26, 2005

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)

**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

5 of 16

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

**SECTION V. Certification**

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

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

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

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

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

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

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### Attachment 1

1. Commissioner Meg Caldwell, Chair  
Director, Environmental and Natural Resources Law & Policy Program  
Stanford Law School, 559 Nathan Abbott Way,  
Owen House Room 6,  
Stanford, CA 94305-8610  
email: [megcoastal@law.stanford.edu](mailto:megcoastal@law.stanford.edu)  
(650) 723-4057
  
2. Commissioner Sara Wan  
22350 Carbon Mesa Rd.  
Malibu, CA 90265  
(310) 456-6605

## ATTACHMENT 2

### 1. 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 because it is located (1) within 100 feet of a wetland, (2) between the sea and the first public road paralleling the sea, and (3) within three hundred feet of the top of a seaward face of a coastal bluff.

### 2. Reasons for Appeal

The County of Mendocino approved Coastal Development Permit # 103-04 for (1) demolition of an existing 1,583-square-foot single-family residence and 400-square-foot attached garage, and (2) construction of a new 2,469-square-foot residence, 588-square-foot attached garage, and 640-square-foot detached workshop, (3) installation of a new septic disposal system, (4) improvements to an existing driveway, (5) construction of new fencing, and (6) installation of an LPG tank. The development would be sited approximately 10 feet from a wetland. The Mendocino County LCP includes wetlands as Environmentally Sensitive Habitat Areas (ESHAs). The approval of this development is inconsistent with the certified LCP Policies, including, but not limited to, LCP policies concerning the protection of Environmentally Sensitive Habitat Areas (ESHAs), including, but not limited to, the ESHA policies concerning wetlands and ESHA buffers that state buffer areas shall not be less than 50-100 feet in width.

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### 3. LCP PROVISIONS

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

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

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

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

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.

LUP Policy 3.1-7 states: (emphasis added)

*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. 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.*

Coastal Zoning Code Section 20.496-020 "Environmentally Sensitive Habitat and other Resource Areas—Development Criteria" states (emphasis added):

*(A) **Buffer Areas.** 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 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 and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (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 fifty (50) feet in width. New land division shall not be allowed*

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*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.*

*Standards for determining the appropriate width of the buffer area are as follows:*

*(a) **Biological Significance of Adjacent Lands.** Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

*Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.*

*(b) **Sensitivity of Species to Disturbance.** The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

*(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*

*(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*

*(iii) An assessment of the impact and activity levels of the proposed development on the resource.*

*(c) **Susceptibility of Parcel to Erosion.** The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

*(d) **Use of Natural Topographic Features to Locate Development.** Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills*

*away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*

*(e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*

*(f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*

*(g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...*

*(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*

*(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.*

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(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 wherever 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. (Ord. No. 3785 (part), adopted 1991)*

#### 4. DISCUSSION

The project as approved by the County is inconsistent with provisions of the certified Mendocino County LCP, including, but not limited to, LCP provisions regulating development near Environmentally Sensitive Habitat Areas (ESHA), and the establishment of appropriate buffer areas.

##### A. Development Near Environmentally Sensitive Habitat Areas (ESHA)

The approved project allows development within 10 feet of a wetland located at the northern portion of the property. A wetland analysis was prepared and submitted to the County as part of the application. The analysis identifies an approximately 0.5-acre wetland that is fed from subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction. The wetland vegetation is predominately native plants associated with

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saturated prairie soils and a slow-moving seep. The wetland report supported a buffer of 10 feet from the closest point of the driveway and approximately 15 feet from the western edge of the new residence. The report further recommends mitigation measures to protect the wetland habitat including installing temporary fencing during construction, redirection of water to follow the natural wetland swale, and enhancement of wetland and other native vegetation. The buffer width is 40 feet less than the minimum 50-foot buffer area allowed only in prescribed circumstances as described in the County's LCP ESHA policies. The County used the 10-foot buffer in its approval of the project, even though the approved development did not meet the prescribed circumstances.

As noted above, Coastal Zoning Code Section 20.496.010 states that environmentally sensitive habitat areas (ESHA) include wetlands. Therefore, as ESHA, wetlands are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020.

According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) 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 policies state that in that event, the buffer shall not be less than 50 feet in width. Coastal Zoning Code Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of that section, including (a) the 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, and (g) the type and scale of the development proposed.

The County's approval is inconsistent with the LCP because (1) the policies do not allow for an ESHA buffer to be reduced to less than 50 feet, and (2) residential use is not an allowable use within a wetland buffer.

As noted above, a buffer width of 100 feet is required unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. Coastal Zoning Code Section 20.496.020 requires that a determination to reduce a buffer to a minimum of 50 feet must be based on seven particular criteria. The County's staff report indicates that DFG reviewed the project and the proposed mitigation measures and concurred with a reduced ESHA buffer. In approving the reduced wetland buffer width, the County relied on Section 20.496.020 (A)(1)(f) which states that where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted and additional mitigation measures shall be provided for a buffer width less than 100 feet. The County notes that because the project is infill development situated in an existing largely built out subdivision, the setback is similar to what other structures observe to ESHAs in the vicinity, and consultation and mitigation recommended by DFG and the applicant's biologist has been required, the 10-foot-wide buffer is consistent with the LCP. However, subsection (f) of Coastal Zoning Code Section

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20.496.020(A)(1) that the County relied on to approve the development is just one of the seven criteria in the LCP that must be applied in determining whether a potential reduction of the ESHA buffer is warranted. As discussed previously, even if the criteria for reducing the buffer are met, Coastal Zoning Code Section 20.496.020 (A)(1) and LUP Policy 3.1-7 state that a buffer shall not be less than 50 feet in width.

In its approval, the County discusses why, with mitigation measures, a buffer width less than 100 feet may be appropriate, but fails to analyze how less than the minimum required 50-foot buffer is allowable. The County did not acknowledge that at 10 feet from the wetland, the residential development would be considered to be located within the wetland buffer area.

LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 (A)(1) regarding the reduction of an ESHA (wetland) buffer width does provide for development to be permitted within a buffer area if the development is the same as those uses permitted in the adjacent environmentally sensitive habitat area and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. LUP Policy 3.1-4 sets forth the types of development allowable within a wetland, and thus those types of development potentially allowable in a wetland buffer, and includes those uses prescribed by Coastal Act Section 30233 such as port and energy facilities, boating facilities, incidental public service purposes, etc. Residential development is clearly not an allowable use within a wetland as enumerated by LUP Policy 3.1-4 and thus, is not an allowable use in a wetland buffer. Therefore, even if the County had approved the proposed single-family residence within the wetland buffer, the approved development would not be consistent with LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 regarding ESHA buffer areas.

Therefore, for all of the above reasons, the project as approved by the County is inconsistent with LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020.



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

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www.co.mendocino.ca.us/planning

September 7, 2005

RECEIVED

SEP 12 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 #103-04  
**OWNER:** Rudolph & Ann Sacks  
**AGENT:** Diana Wiedemann, Architect  
**REQUEST:** Demolish existing residence and attached garage. Construct a new 2,469± square foot single story single-family residence with an attached 588± square foot garage with a maximum average height of 18 feet above natural grade. Construct a 640± square foot single story detached workshop with a maximum average height of 18 feet above natural grade. Additional improvements include, install a new septic disposal system, improve existing driveway, construct a new fencing and install an LPG tank.  
**LOCATION:** In the coastal zone, on a blufftop parcel, approximately 1.5 miles S of Caspar, approximately ½ mile W of Highway One, on the S side of Mar Vista Drive (private), at 45321 Mar Vista Drive (APN 118-190-38).  
**PROJECT COORDINATOR:** Rick Miller

**HEARING DATE:** August 25, 2005

**APPROVING AUTHORITY:** Coastal Permit Administrator

**ACTION:** Approved with Conditions.

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

The project was not appealed at the local level.

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

**EXHIBIT NO. 9**

**APPEAL NO.**

A-1-MEN-05-047

SACKS

NOTICE OF FINAL LOCAL  
ACTION (1 of 12)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 103-04 HEARING DATE: 8-25-05

OWNER: Sacks

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt

☐ Negative Declaration

☐ EIR

FINDINGS:

☒ Per staff report

☐ Modifications and/or additions

ACTION:

☒ Approved

☐ Denied

☐ Continued

CONDITIONS:

☒ Per staff report

☐ Modifications and/or additions

Signature on File

Signed: Coastal Permit Administrator

STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 103-04  
August 25, 2005  
CPA-1

RECEIVED

OWNER:

AUG 19 2005  
CALIFORNIA  
COASTAL COMMISSION

Rudolph & Ann Sacks  
406 Botolph Lane Suite 1  
Santa Fe, NM 87505

AGENT:

Diana Wiedemann, Architect  
PO Box 395  
Albion, CA 95410

REQUEST:

Demolish existing residence and attached garage. Construct a new 2,469± square foot single story single-family residence with an attached 588± square foot garage with a maximum average height of 18 feet above natural grade. Construct a 640± square foot single story detached workshop with a maximum average height of 18 feet above natural grade. Additional improvements include, install a new septic disposal system, improve existing driveway, construct a new fencing and install an LPG tank.

LOCATION:

In the coastal zone, on a blufftop parcel, approximately 1.5 miles S of Caspar, approximately ½ mile W of Highway One, on the S side of Mar Vista Drive (private), at 45321 Mar Vista Drive (APN 118-190-38).

APPEALABLE AREA:

Yes (blufftop parcel & west of 1<sup>st</sup> public road & within 100 feet of an environmentally sensitive habitat area).

PERMIT TYPE:

Standard

TOTAL ACREAGE:

One ± acres

ZONING:

RR: L - 5 [RR: L -1]

GENERAL PLAN:

RR-5 [RR-1]

EXISTING USES:

Single family residence

SUPERVISORIAL DISTRICT:

4

ENVIRONMENTAL DETERMINATION: Categorically Exempt Class 3

**PROJECT DESCRIPTION:** The owners intend to demolish an existing 1,583± square foot residence and 400± square foot attached garage from an approximately one acre blufftop parcel approximately 1½ miles south of the village of Caspar on a private road in the Seafair Subdivision. A new 2,469± square foot single story single-family residence with an attached 588± square foot garage with a maximum average height of 18 feet above natural grade would be constructed in its place. A 640± square foot single story detached workshop with a maximum average height of 18 feet above natural grade would also be constructed. The detached workshop would contain a convenience bathroom with a sink and toilet and a covered entry porch. The two-bedroom residence includes an approximately 1,300 square foot courtyard with protected gardening areas, an approximately 500 square foot

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stone or brick patio and an approximately 600 square foot deck with a hot tub. Additional improvements include the installation of a new septic disposal system on the east side of the proposed workshop, improvement of an existing gravel driveway for circulation into the proposed attached garage, construction of new perimeter fencing with a maximum height not to exceed six feet along the north and east property boundaries and installation of an LPG tank on the east side of the detached workshop.

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

**Land Use:** The proposed residential project is compatible with the Rural Residential zoning district. The proposed development complies with the maximum building height, setback requirements of the Rural Residential zoning district, and corridor preservation setbacks.

**Public Access:** The project site is located west of Highway 1, but is not designated as containing a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the site.

**Hazards:** The site is located in a State Responsibility Area and the Department of Forestry and Fire Protection (CDF) addresses potential hazards associated with fire protection on the subject property. The property is located in an area assigned a Moderate Fire Hazard rating and has received a preliminary fire clearance (CDF #595-04). The conditions of approval include: address, driveway, and providing and maintaining defensible space standards. CDF has approved the proposed building setbacks on the condition that fire resistive siding is used in construction.

Due to the subject property's location adjacent to the Pacific Ocean, a geotechnical investigation and subsequent report was prepared for the parcel by BACE Geotechnical, dated January 11, 2005. The BACE report describes that the subject property is situated near the southwest edge of a near-level, elevated marine terrace bordered by steep ocean bluffs. The southwest side of the property consists of an ocean bluff that descends into to a small northwest-trending cove. The ocean bluff is approximately 40 feet high and has an average slope gradient that is about one-fifth horizontal to one vertical (1/5H:1V). BACE measured the bluff edge to be approximately 29 feet to the closest point of the existing residence at the southwest corner.

There was no evidence of recent rock falls observed on the property bluffs. No landsliding was observed on the bluff and no landslides were shown within the property or in the published references that BACE reviewed. Additionally, there was no evidence of active faulting observed at the site and none of the published references that were reviewed show faults on or trending towards the property. However, the San Andreas Fault system passes offshore of the Mendocino coast about 4.5 miles west of the property.

BACE concluded that the site was suitable for the proposed residential development. The main geologic constraints that need to be considered for the development were bluff stability/retreat rate and strong seismic shaking from potential future earthquakes.

Coastal Element Policy 3.4-7 states:

*The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:*

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$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*

*All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report.*

Blufftop edge setback requirements for new structures pursuant to Coastal Element Policy 3.4-7 are codified by Section 20.500.020(B)(1) of the MCCZC. In regard to the required blufftop setback, the BACE report stated:

*Based upon the results of our reconnaissance and aerial photograph study, we have determined that the bluff is eroding at an average rate of 1.5 to 1.75 inches per year. For establishment of bluff setback criteria for the proposed new residence, an average retreat rate of 1.75 inches per year was assumed. Over a 75-year period (considered to be the economic lifespan of a house by the California Coastal Commission) times a factor of safety of two, a bluff setback of 22 feet will be appropriate.*

The southern corner of the proposed residence would be situated at the required 22-foot setback and would be the closest portion of the development to the blufftop edge.

BACE stated that ongoing erosion of the bluff edges is somewhat maintainable. Wherever possible, concentrated surface runoff should be directed away from bluff areas subject to erosion, especially the area of past shallow sloughing discussed above. Surface runoff and concentrated runoff from pipes, such as roof drains, should be directed away from the proposed new residence toward the west and northeast sides of the property.

Due to the uncertain thickness and composition of weak surficial terrace soils, a geotechnical investigation, including subsurface exploration, laboratory testing, and engineering analysis is recommended in order to determine foundation design criteria. Based on the results of our subsurface investigation, conventional (deepened) footing foundations or drilled pier foundations may be appropriate. Either foundation design can be used for the planned residence with the recommended setback, provided that BACE reviews the project plans and observes the foundation excavations during construction.

Based on the conclusions of the geotechnical report and the LCP policies for blufftop development staff has included Special Condition Number 1 to ensure that all the recommendations from the geological report are incorporated into the final building plans and construction activities.

The California Coastal Commission and Mendocino County require the recordation of a deed restriction on blufftop parcels prohibiting the construction of seawalls with the requirement that the structures be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development which might fall onto a beach. Special Condition Number 2 is added to address this issue.

**Visual Resources:** The project site is not located within a designated "highly scenic" area, therefore, it is not subject to the policies within the Coastal Element relating to visual resources except for the following policy which applies to all parcels within the Coastal Zone:

Policy 3.5-1 States:

*"...The scenic and visual qualities of Mendocino County coastal areas shall be considered and projected 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 single story residence and single story workshop would have an average height of 18 feet above natural grade. The structures would be clad with wood siding stained gray and gray color asphalt composition roof shingles. The trim boards would be painted white and the windows would be white. The proposed structures are very consistent with the character of the surrounding development and natural landscape. No public views to or along the ocean would be negatively impacted by the proposed project. Therefore, the proposed development is consistent with Policy 3.5-1 of the Coastal Element.

The application indicates the use of downcast and shielded exterior lighting fixtures mounted on the walls at the garage, workshop and house. Also, path lighting would be installed on the pathways. Special Condition Number 3 has been added to ensure that all exterior lighting is consistent with the requirements of Section 20.504.035 of the MCCZC.

**Natural Resources:** William Maslach has surveyed the one-acre subject parcel for environmentally sensitive habitat areas (ESHAs). Alison Gardner conducted preliminary botanical surveying identifying some wetland type habitat and recommended a botanist/biologist with more wetland identification experience survey the property. Therefore, staff relied on the three subsequent reports from Mr. Maslach to analyze the project from a natural resources standpoint. William Maslach determined the subject site did contain an approximately 0.5 acre wetland on the northern (undeveloped area with the exception of the existing driveway) portion of the parcel. Mr. Maslach explains that the source of the water is from a subsurface and surface flow in and around a visible swale that cuts through the parcel in an east to west direction. The existing wetland vegetation is predominately native plants associated with saturated prairie soils and a slow-moving seep. In summary, William Maslach has recommended mitigation measures to protect the wetland habitat including installing temporary fencing during construction, redirection of water to follow the natural wetland swale, and enhancement of wetland and other native vegetation.

Chapter 20.496 and Section 20.532.060, et. seq. of the MCCZC contain specific requirements for protection of ESHAs and development within the buffer area of an ESHA. A sufficient buffer area is required to be established and maintained to protect ESHA's from disturbances related to proposed development. Section 20.496.020 (A) (1) of the MCCZC requires that:

*The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (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 fifty (50) feet in width.*

**Plants:** In addition to the wetland habitat associated with the swale bisecting the property, two California Native Plant Society (CNPS) List 4 plant species were identified on the parcel (approximately eleven individual *Veratrum fimbriatum*, corn-lily and approximately twenty five *Lotus formosissimus*, coastal lotus). Although

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CNPS List 4 plants are not considered significant under CEQA or an ESHA by the County LCP, Mr. Maslach recommends that the populations be protected with mitigation measures. The coastal lotus is located in the existing gravel driveway and would be directly impacted when the driveway is improved. The corn lilies are located in the wetland area and would not be impacted by the project. The botanist recommends that the coastal lotuses be transplanted to an area adjacent to the wet swale because they cannot be protected in their current location. CNPS often considers transplantation to be the last resort in avoiding impacts to listed plants so he recommends that the applicant submit a brief summary prepared by a qualified biologist addressing the status of the transplantation after one year. The report would indicate the factors that have led to the success or failure of the mitigation measures. According to Mr. Maslach the information is essential for the statistics on the viability of transplanting this species. The corn lilies are located within the wetland and would not be impacted by the project. Protection of the wetland will be discussed in more detail below but Mr. Maslach recommends that the individual corn lilies be flagged so that they are not accidentally mowed. He said they would be easily incorporated into the landscape by encouraging their growth in the wet swale. Corn lily flowers are white and their vegetation can grow several feet tall. The wetland swale and associated habitat would be protected during construction with temporary fencing to ensure that grading activities and/or construction material storage does not occur in the wet swale. Special Condition Number 4 is included to address the two populations of CNPS Class 4 plants.

Wetland: Due to the location of existing development, the size/shape of the parcel, the location of the coastal bluff edge, septic disposal system, water well and vehicular access to the site from Mar Vista Drive the normally required 100 foot ESHA buffer is not currently met nor will the proposed project afford a 100 foot ESHA buffer. Mr. Maslach provided a comprehensive buffer analysis per Sec. 20.496.020 (A) through (4)(k) of the MCCZC and recommends mitigation measures that would reduce the potential impacts of the project. Further, representatives from the California Department of Fish and Game (CDFG) have reviewed the project and proposed mitigation measures as required by the LCP and have concurred with a reduced ESHA buffer. Staff has also consulted with the North Coast Regional Water Quality Control Board (NCWRQCB) about the project and protection of the ESHA. The proposed project would meet the same ESHA buffer as the existing condition on-site provides. A buffer of ten feet would be provided to the closest point of the driveway and approximately 15 feet to the western edge of the new residence. Mr. Maslach's buffer analysis noted that the proposed buffer distance would not be less than what already occur on the site. He also noted that the proposed development would occur on the driest part of the property and would avoid any direct impacts to the resource area. He said that the hydrologic integrity of the site would be maintained by not creating an impervious surface on the driveway because the driveway would be surfaced with gravel. Finally, by eliminating the man made swale that currently diverts water flows away from the wetland swale more subsurface and surface water would enter into the protected ESHA.

\* The proposed ten foot wide ESHA buffer could be allowed per Section 20.496.020 (A) (1) (f) of the MCCZC. Section 20.496.020 (A) (1) (f) of the MCCZC deals with lot configuration and the location of existing development:

Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required. (emphasis added)

The existing development on the subject parcel is located 10 feet from the ESHA associated with the wet swale. In reliance on Section 20.496.020 (A) (1) (f) MCCZC, William Maslach prepared an addendum analysis of lot

configuration and location of adjacent development to the subject property to document the reduced ESHA buffer. Three examples of structures at approximately 10' to 20' from an ESHA occur on two adjacent lots in the Seafair Subdivision. The project site is at the end of a cul-de-sac in a largely built out subdivision. The wet swale on the subject parcel passes between the existing residence to be removed and the neighboring house to the west. Both buildings enjoy a 15' to 20' setback from the resource. Additionally, a small perennial stream with alder riparian habitat passes by two adjacent houses to the north. The structures on parcels 118-190-24 & 118-190-22 adjacent to the riparian alder habitat are approximately 10' to 15' to the creek and/or riparian habitat. An exhibit has been included to demonstrate the proximity of existing development in the subdivision to ESHAs.

William Maslach has recommended three mitigation measures to be implemented during and after construction to address potential impacts to the wetland and staff has recommended a fourth mitigation measure for the permanent protection of the wet swale and associated habitat. Mitigation measure one would correct the drainage to allow the natural flow of water into the wet swale. Currently, an 18-foot long, 10" diameter black plastic culvert exists under the driveway. Some water drains through the pipe but much is diverted by a ditch that parallels the driveway towards the house. The ditch would be filled or regarded to allow water to flow through the culvert and into the wet swale. The additional water in the wet swale will likely increase the abundance of wetland vegetation occurring in the swale over time. The owners would also replace the culvert with a larger diameter culvert further increasing water flow into the swale. Mitigation measure two would involve the placement of either temporary orange plastic fencing or black silt fencing. The site plan also shows the location of temporary fencing to be erected along the edge of the wetland before and during construction activates to ensure that grading and/or construction material storage does not accidentally enter the ESHA. Mitigation measure three would enhance the wetland vegetation associated with the wet swale. Native vegetation in the swale would be encouraged to grow by not routinely mowing it. Some areas adjacent to the swale may need to be periodically mowed to reduce the risk of fire hazard, but the vegetation in the wet swale, especially in the bottom, would be encouraged to grow. Again, individual corn lilies would be flagged so they are not mowed. Finally, staff with the assistance of John Short from the NCWRQCB recommends a fourth mitigation measure be incorporated providing that a permanent split rail type fence be erected along the edge of the wetland habitat to ensure the area is not disturbed by future development or vehicles. Special Condition Number 5 is added to address the protection of the ESHA.

The project agent, Diana Wiedemann Architect, prepared a letter outlining the ESHA considerations made during the planning phase of the project dated June 10, 2005. She summarized her statements as follows:

*"This project shall not endanger an existing sensitive habitat known as a seasonal wetland and shall work towards greater protection and enhancement of existing conditions. By using the same gravel driveway area and sliding the proposed house to the southern most portion of the lot, by installing a permanent split rail fence along the edge of the protection zone described by the environmental survey and not encroaching into the 10 to 15 foot setback of the existing house and driveway, by repairing the run off condition of water with a new culvert and rerouting the seasonal run off into the swale area, by not continuously mowing the vegetation and encouraging native plants to grow this proposed project is not only contextual to the existing conditions of the neighborhood but will enhance the existing condition of a wetland area."*

Relying on a combination of factors including that this project is in fill development situated in an existing, largely built out subdivision, the referenced setback is similar to what other structures observe to ESHAs in the vicinity, consultation and mitigation recommended by DFG personnel, NCRWQCB and Mr. Maslach's conclusions, staff concurs that the proposed buffer and mitigation measures are sufficient to protect the resource as required by the MCCZC. Special Conditions Number 4 and 5 will ensure that human intrusion and disturbance

STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 103-04  
August 25, 2005  
CPA-7

of the habitat area is avoided, there should be no loss of habitat on the site and the native vegetation in the ESHA will be enhanced over time due to the permanent fence and the increased water flow into the wet swale.

**Archaeological/Cultural Resources:** The site is currently developed with a residence and other improvements. The immediate area where the proposed guest cottage would be sited is unlikely to contain archaeological or cultural materials. Standard Condition #8 advises the applicant of the County's "discovery clause" which establishes procedures to follow in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

**Groundwater Resources:** The site is located within an area mapped as a Critical Water Resources area. An existing well would provide domestic water and a new on-site septic disposal system would be installed to support the project. The septic system has been reviewed and approved by the Division of Environmental Health and is designed to accommodate a two-bedroom house. No impact to groundwater resources has been identified.

**Transportation/Circulation:** The project site is presently developed and the proposed project would not increase the intensity of use at the site. The project is accessed from Mar Vista Drive, a privately maintained road. No impacts to Highway 1, local roads and circulation systems would occur.

**Zoning Requirements:** The project complies with the zoning requirements for the Rural Residential District set forth in Section 20.376.005, et. seq., and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

**PROJECT FINDINGS AND CONDITIONS:** Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve the proposed project, and adopt the following findings and conditions.

**FINDINGS:**

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

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7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

**STANDARD CONDITIONS:**

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. That such permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which such permit was granted have been violated.
  - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described

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boundaries are different than that which is legally required by this permit, this permit shall become null and void.

8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

**SPECIAL CONDITIONS:**

1. All recommendations from the geological report prepared by BACE Geotechnical dated January 11, 2005, shall be incorporated into the design and construction of the project, including the minimum required blufftop setback of 22 feet. Prior to issuance of the building permit for the proposed residence, the owner shall submit written documentation that BACE Geotechnical has reviewed the final drainage/grading and building foundation plans for conformance with their recommendations.
2. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator that shall provide that:
  - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and landowner assumes the risk from such hazards;
  - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
  - c) The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
  - d) The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
  - e) The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

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STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 103-04  
August 25, 2005  
CPA-10

- f) The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
3. Prior to issuance of the building permit for the residence or workshop, the applicant shall submit an exterior lighting plan which is in compliance with Section 20.504.035 of the MCCZC. The lighting fixtures shall be completely shielded and positioned in a manner that will not allow light glare to exceed the boundaries of the subject parcel. The number of exterior lighting fixtures shall be kept to the minimum required for safety.
4. The approximately 25 coastal lotus plants located in the existing driveway shall be transplanted into the wetland swale area by hand prior to any construction activities. The owner shall submit a report prepared by a qualified biologist/botanist addressing the status of the plants one year after the transplantation occurs. The report should indicate the factors that have lead to the success or failure of the transplantation efforts. The approximately 11 corn lilies shall be flagged and maintained in the wet swale area and encouraged to grow in perpetuity.
5. The four mitigation measures outlined in the staff report to protect the wetland ESHA shall be considered mandatory parts of the project. Prior to the commencement of construction activities, the temporary protective fencing shall be erected per site plan. Prior to final building inspection, the permanent fence shall be completed. The wetland area (ESHA) delineated on the site plan shall be protected from development in perpetuity as conditioned by this permit and the LCP.
6. A copy of this permit must be provided to the Contractor and all subcontractors conducting the work, and must be in their possession at the work site.

Staff Report Prepared By:

8-12-2005

Date

Signature on File

Rick Miller  
Coastal Planner

Attachments: Exhibit A- Location Map  
Exhibit B- Existing Site Plan  
Exhibit C- Proposed Site Plan  
Exhibit D- Proposed Residence Floor Plan  
Exhibit E- Residence Elevations  
Exhibit F- Residence Elevations  
Exhibit G- Residence Elevations @ Courtyard  
Exhibit H- Workshop Plans  
Exhibit I- Wetland Survey Map/CNPS List 4 Plants  
Exhibit J- Adjacent Development to ESHAs

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: \$795 (Appeals to the County Board of Supervisors)

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## SUMMARY

A wetland of approximately 0.5 acres was located on the Project Site. The source of the water is from subsurface and surface flow in and around a swale. A 20'x30' workshop, additions to an existing house, a septic and replacement septic fields are proposed for development on the Project Site. All facilities are between 10' and 80' from a wetland as defined by the California Coastal Act. Mitigation measures include installing a temporary fence during construction, redirection of water to follow the natural watercourse, and enhancement of wetland and other native vegetation. Existing wetland vegetation is predominately native plants associated with saturated prairie soils and slow-moving seep.

## **PROJECT SITE DESCRIPTION**

The Study Area is one parcel located on the west side of Highway 1 and adjacent to the Pacific Ocean in Mendocino, California (APN 118-190-38). It is located in the northwest ¼ of Section 13, Township 17 North, Range 18 West. A point in the approximate center of the parcels is located at Easting 429696, Northing 4354631 by the UTM NAD83 Zone 10 coordinate system.

The Project Site is approximately 1.2 acres and elevation ranges from approximately 0-60 feet above sea level. Most of the Study Area is flat except for the steep draws and bluff faces above the beach. The vegetation community on the flat headland is mostly wet coastal prairie with an area of herbaceous wetland vegetation, mostly of native plants, bisecting the Project Site (See Figure 2).

## **SOIL**

Prior to conducting field studies, the Mendocino County Soil Survey, Western Part (Natural Resource Conservation Service, 2001) was examined to obtain the soil classification for the Project Site. The soil is defined as Cabrillo-Heeser Complex with 0% to 5% slopes (Soil ID 117) and it is not on the list of hydric soils.

The Cabrillo soil type is described as a very deep, somewhat poorly drained soil occurring on marine terraces and coastal fan terraces. Permeability is moderately slow. The Heeser soil type consists of very deep, somewhat excessively drained soils that formed in eolian (wind-carried) sands. These soils are on marine terraces (Natural Resource Conservation Service, 2001).

## **HYDROLOGY**

The site is bisected by a seasonal wetland, which is described as a saturated coastal terrace swale with very slow-moving water. Some soils adjacent to the swale were saturated, and test pits filled with water to approximately 8" below grade.

## **VEGETATION**

The vegetation community of the Project Site is predominately coastal prairie vegetation adapted to periodic saturation of the soil. Bishop pines occasionally occur on the Project Site and surrounding area. Some bishop pines have been previously removed from the swale area on the Project Site and, historically, the surrounding area most likely had a greater abundance of bishop pines. The coastal prairie is predominantly comprised of a mix of exotic and native grasses and forbs.

**EXHIBIT NO. 10****APPEAL NO.**

A-1-MEN-05-047

SACKS

EXCERPTS OF WETLAND  
SURVEY (1 of 10)

## METHODS

A wetland delineation survey was conducted on February 26, 2005 at 45321 Mar Vista Drive, (APN 118-190-38, approximately 1.2 acres) Mendocino, California to describe the location and extent of waters, including wetlands, which may be considered environmentally sensitive habitat areas (ESHAs) under Chapter 20.496 of the Coastal Element of the General Plan of Mendocino County (1991). This delineation survey may also be used to describe wetlands that may be considered jurisdictional by the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act.

The study area was surveyed for wetland and riparian features. The survey for the occurrence of wetlands was based on the Statewide Interpretive Guideline (California Coastal Commission 1981), which states "Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens." The California Coastal Commission determined that the presence of wetland hydrology is necessary for a wetland determination while also stating that they base wetland definitions on one of three parameters as per the California Department of Fish and Game.

The wetland delineation of the Study Area is based on a combination of these two determinations. The California Department of Fish & Game determination of a wetland is a more conservative definition, but is useful in establishing a functional wetland.

## VEGETATION

The indicator status assigned to a species designates the probability of that species occurring in a wetland. A species with an indicator of OBL, FACW, or FAC (excluding FAC-) is considered to be typically adapted for life in a wetland (hydrophytic vegetation). A species indicator of FAC-, FACU and NL determines an upland species. The wetland occurrence probability and abbreviations utilized in the lists are presented below.

**Table 1. Explanation of Wetland Plant Indicator Status.**

| INDICATOR STATUS | DESCRIPTION  | OCCURRENCE IN WETLANDS |
|------------------|--|------------------------|
| OBL              | obligate wetland plants  | >99%                   |
| FACW             | facultative wetland plants   | 67-99%                 |
| FAC              | facultative plants   | 34-66%                 |
| FACU             | facultative upland plants  | 1-33%                  |
| UPL              | obligate upland plants   | <1%                    |
| NI               | no indicator (insufficient information) for the region (rated neutral) | -                      |
| NL               | not listed (rated upland)  | -                      |
| plus sign (+)    | frequency toward higher end of a category                              | -                      |
| minus sign (-)   | frequency toward lower end of a category                               | -                      |
| asterisk (*)     | indicates tentative assignment based on limited information            | -                      |

The dominant vegetation at each potential wetland was noted and evaluated for prevalence of hydrophytes. Indicator status follows Reed (1988).

## HYDROLOGY

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Wetland hydrology is a term which encompasses hydrologic characteristics of areas that are periodically inundated or saturated within 12 inches of the surface at some time during the growing season. The presence of direct evidence (primary indicators), such as visible inundation or saturation, surface sediment deposits, and drift lines and indirect evidence (secondary indicators), such as oxidized root channels, algal mats and water-stained leaves were noted in potential wetland areas. Pits were dug to 16" to determine the presence or absence of subsurface hydrology.

#### SOIL

Soil color was determined using a Munsell Soil color chart (GretagMacbeth 2000). Soils formed under wetland conditions generally have a characteristic low chroma matrix color of 0, 1, or 2. Soils with a chroma of 0 or 1 are usually considered hydric; soils with a chroma of 2 are required to contain other hydric features such as mottles and redoximorphic characteristics, which were evaluated in the soil pits.

#### RESULTS

Approximately 0.5 acres of the Project Site met the Mendocino County LCP definition of a wetland (See Figure 1.) and is considered an ESHA under the same LCP. The results of the survey follow.

This site contained a wetland based on the criteria for hydrologic, vegetation, and soil parameters for a wetland and a wetland based on the criteria for hydrologic and vegetation parameters. An examination of the surrounding topography and vegetation revealed that the source of water for the wetland is from subsurface flow that likely originates on the parcel to the east and subsurface flow that originates on the eastern portion of the Project Site.

#### BUFFER ZONE ANALYSIS

An analysis of the proposed projects utilizing the ESHA development criteria in Mendocino LCP Ordinance 20.496.020(A) through (4)(k) is presented in Table 2. This explains the reasons for development within the buffer and concludes there will be no significant impact to the ESHA.

**Potential Impact 1:** The proposed development of the workshop, additions to the existing house, septic and replacement septic fields within the 100-foot buffer from the ESHA (wetland) may adversely affect the wetland. To reduce the impacts to a level of insignificance, the following mitigation measures will be implemented during and after construction.

***Mitigation Measure 1a: Correct the drainage to allow for natural flow of water into the wet swale.***

An 18-foot long, 10" diameter black plastic culvert exists under the driveway (Figure 1). Some water drains through the pipe, but much is diverted by a ditch that parallels the driveway to the house.

The ditch will be filled or regraded to allow water to flow through the culvert and into the wet swale. This measure will likely benefit the integrity of the existing house as it will keep water away from it. The additional water into the wet swale will likely increase the abundance of wetland vegetation occurring in the swale.

If the culvert is replaced, the installation of an additional culvert of the same size may be beneficial to the flow of water. This measure is not necessary but may be implemented.

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## SUMMARY

The owner of the Project Site is proposing development that would occur within 100' of a wet swale, which is considered an ESHA. The reduction of the buffer distance may be considered when the proximity of adjacent existing development from an ESHA is less than 100' in a subdivision that is largely built-out. Three examples of structures at approximately 10'-20' from an ESHA occur on two adjacent lots from the Project Site, which occurs in a subdivision.

## INTRODUCTION

The purpose of this analysis was to document the distance of existing structures to ESHA's (Environmentally Sensitive Habitat Areas) that are nearby the Project Site (APN 118-190-38) located at 45321 Mar Vista Drive, Mendocino, California. The owner of the Project Site wishes to make modifications to the existing structures that would result in development within an ESHA buffer.

Standards for determining the appropriate width of buffers are outlined in the Mendocino County Coastal Zoning Code, Section 20.496.020. Section (f) (Lot Configuration and Location of Existing Development) states that where there are uniform distances from an ESHA in a subdivision, at least the minimum buffer shall be maintained. It also states that if this distance is less than 100 feet, mitigation measures shall be implemented to compensate for the reduction in buffer distance.

## DESCRIPTION OF EXISTING DEVELOPMENT

The Project Site is at the end of a cul-de-sac in a subdivision. A wet swale bisects the Project Site and forms a small seasonal drainage that passes between the house on the Project Site and the neighboring house. Additionally, a small perennial stream with alder riparian habitat passes by two adjacent houses to the north.

Figure 1 on the following page illustrates the location of the Project Site in relation to the wet swale and alder riparian habitat. The wet swale is approximately 15'-20' from the house on the Project Site and from the house on the parcel (118-190-24) to the northwest (Figure 2).

Figure 1 also illustrates the location of structures on parcels 118-190-24 and 118-190-22 adjacent to riparian alder habitat that are approximately 10'-15' to the creek and/or riparian habitat. Figure 3 illustrates the structure that is close to the small creek.

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***Mitigation Measure 1b: Install temporary fencing to ensure grading and/or material storage does not occur in the wet swale.***

Temporary fencing, such as orange plastic fencing or black silt cloth, will be placed on the edge of the wetland between the wetland and the house during construction.

***Mitigation Measure 1c: Enhancement of wetland vegetation.***


Native vegetation in the wet swale will be encouraged to grow by not routinely mowing it. Some areas adjacent to the wet swale may need to be mowed to reduce the risk of fire hazard, but the vegetation in the wet swale, especially in the bottom, will be encouraged to grow. The corn lilies (*Veratrum fimbriatum*) are on the CNPS List 4 and will be flagged so they are not mowed. They can easily be incorporated into the landscape by encouraging their growth in the wet swale. Flowers are white and vegetation is low growing (several feet tall).

Table 2 Development Criteria Matrix Based on the Mendocino County Local Coastal Program Section 20.496.020

| Sec. 20.496.020 ESHA - Development Criteria  |  |  |   |  |
|--|--|--|---|--|
| (A) Buffer Areas. 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 degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.   | A 10 to 15-foot buffer will be maintained around the ESHA; however, to provide sufficient protection for the ESHA (wet swale), a temporary fence will be placed between the proposed construction and the wetland.   | (1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (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 fifty (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. | A 10 to 15-foot minimum buffer adjacent to the wet swale is proposed with mitigations. The California Department of Fish & Game and Mendocino County Planning may consult regarding the reduction in buffer width. Standards for reduction of buffer width follow.                                  |  |
| Standards for determining the appropriate width of the buffer area are as follows:<br><br>(1a) Biological Significance of Adjacent Lands. Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).<br>Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development. | The wetland originates from saturated soils and subsurface flow at the eastern edge of the parcel east of the culvert under the road. The parcel to the east of the Project Site apparently has some saturated soils but surface ponding is not apparent. Additionally, the vegetation does not support a dominance of wetland vegetation as does the eastern portion of the Project Site.<br>The wetland on the Project Site is comprised of two topographic components. The first, and most biologically significant, is the portion of the wetland mapped as "A" in Figure 1. This is the wet swale that has all three indicators of a wetland: hydrology, vegetation, and soil. The second component is the upper area to the north of the wet swale mapped as "B" in Figure 1. This area has saturated soils and soil indicative of wetlands, but does not support a preponderance of hydrophytic (wetland-adapted) vegetation. | (1b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise.   | The buffer distance will not be less than what already occurs on the Project Site. Presently, the existing house is approximately 10'-15' from the wet swale (ESHA).<br>The California Department of Fish & Game and Mendocino County Planning may consult regarding the reduction in buffer width. |  |

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| Sec. 20.496.020 ESHA - Development Criteria.   |   |
|--|---|
| (1b-i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species.  | The wetland does not support fish or fish habitat. Birds may forage in the wetland, but it is not a significant wetland (approximately 0.5 acre) for migrating birds. The wetland is poor breeding habitat for amphibians because water depth is very shallow, but it may provide resting or foraging habitat (USFWS, 1997).  |
| (1b-ii) An assessment of the short-term and long-term adaptability of various species to human disturbance.  | The various species (primarily plants) are likely well-adapted to human disturbance because of the history of the site. Mowing has occurred on the Project Site and there is still a dominance of wetland vegetation in the wet swale. Mowing adjacent to the wet swale is preferred to mowing in the wet swale.  |
| (1b-iii) An assessment of the impact and activity levels of the proposed development on the resource.  | Disturbance in the wet swale will be reduced as a mitigation measure for the buffer width reduction. Activity during construction can easily be kept out of the wet swale, and this will be ensured by the temporary placement of a silt fence.   |
| (1c) Susceptibility of Parcel to Erosion. The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.  | The wet swale is susceptible to the placement of dirt fill if the driveway is graded. This potential will be eliminated by the placement of the silt fence. The Project Site is flat and not susceptible to erosion. However, much of the site, as illustrated in Figure 1, is saturated and unnatural drainage patterns can form from building or driving in the wetland. All development and associated activities will occur outside the wetland. Correction of the natural flow of water away from a ditch and into the wet swale will occur as a mitigation measure. |
| (1d) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.   | A bluff face occurs on the Project Site, but there are no hills or other pronounced topographic features. The existing house and proposed development are located on the driest areas on the Project Site.  |
| (1e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.  | The proposed construction occurs adjacent to the existing house and on the opposite side of the road from the ESHA.   |
| (1f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required. | Adjacent development in the subdivision occurs approximately the same distance (10'-20') from an ESHA. See Appendix B.  |

| Sec. 20.496.020 ESHA - Development Criteria.  |  |
|---|--|
| (1g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area.   | The proposed development is an addition to an existing house, construction of a workshop, and placement of septic and replacement septic fields. These developments are similar to other developments in the subdivision.  |
| (2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).   | The buffer was measured from the landward edge of the wetland. Wetland delineation methods followed those established in the Mendocino County Local Coastal Program and California Coastal Act.  |
| (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.   | No subdivisions or boundary line adjustments are proposed.   |
| (4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:   |  |
| (4a) 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.  | The proposed development will not impact the functional capacity of the wetland. The development will not impede the flow of water into the wetland and will improve the flow into the wetland through the implementation of mitigation measures necessary for development within the ESHA buffer.           |
| (4b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.   | The parcel is bounded by the Pacific Ocean to the west, private property to the south, east, and Mar Vista Drive to the north. Development occurs on the direct site of Project Site, avoiding direct impacts to the ESHA.  |
| (4c) 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. | Impacts to adjacent habitat areas are minimized by concentrating development next to existing structures and away from the ESHA.   |
| (4d) 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.   | The existing driveway in within 10'-20' from the wet swale. The hydrologic integrity of the site will be maintained by not creating an impervious surface on the driveway.   |

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| Sec. 20.496.020 ESHA -- Development Criteria  |   |
|---|---|
| (4e) 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.   | The locations of the proposed septic and replacement septic field and workshop are on the most environmentally feasible locations on the Project Site. No wetland vegetation will be lost to the development; however, native vegetation will be encouraged by not mowing in the wet swale.   |
| (4f) 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.   | The driveway will be graveled, thus reducing the amount of impervious surface on the Project Site. Vegetation will be mowed on the land above the wet swale, but vegetation in the wet swale will be retained.  |
| (4g) 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.  | No riparian or wetland vegetation will be lost during construction. ✓   |
| (4h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.  | The wetland on the Project Site is a saturated swale and does not have periods of high flow.  |
| (4i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.  | The construction will not significantly increase runoff to the site or interfere with hydrological processes. All areas of proposed development, including those within the buffer will not negatively affect the biological diversity of the native terrestrial vegetation. Most of the vegetation in this area is exotic perennial grasses. |
| (4j) 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 wherever 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. | Some surface flow is currently diverted towards the existing house by a ditch paralleling the driveway. This ditch will be filled and regraded to allow water to follow the natural course through the wet swale. ✓   |
| (4k) 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. (Ord. No. 3785 (part), adopted 1991)   | Mitigation measures will be implemented for the proposed developments within the 50-foot buffer from an ESHA. These measures will improve the habitat quality of the wetland on the Project Site. Hydrologic patterns and vegetation will be restored in the wet swale.   |

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## SUMMARY

The owner of the Project Site is proposing development that would occur within 100' of a wet swale, which is considered an ESHA. The reduction of the buffer distance may be considered when the proximity of adjacent existing development from an ESHA is less than 100' in a subdivision that is largely built-out. Three examples of structures at approximately 10'-20' from an ESHA occur on two adjacent lots from the Project Site, which occurs in a subdivision.

## INTRODUCTION

The purpose of this analysis was to document the distance of existing structures to ESHA's (Environmentally Sensitive Habitat Areas) that are nearby the Project Site (APN 118-190-38) located at 45321 Mar Vista Drive, Mendocino, California. The owner of the Project Site wishes to make modifications to the existing structures that would result in development within an ESHA buffer.

Standards for determining the appropriate width of buffers are outlined in the Mendocino County Coastal Zoning Code, Section 20.496.020. Section (f) (Lot Configuration and Location of Existing Development) states that where there are uniform distances from an ESHA in a subdivision, at least the minimum buffer shall be maintained. It also states that if this distance is less than 100 feet, mitigation measures shall be implemented to compensate for the reduction in buffer distance.

## DESCRIPTION OF EXISTING DEVELOPMENT

The Project Site is at the end of a cul-de-sac in a subdivision. A wet swale bisects the Project Site and forms a small seasonal drainage that passes between the house on the Project Site and the neighboring house. Additionally, a small perennial stream with alder riparian habitat passes by two adjacent houses to the north.

Figure 1 on the following page illustrates the location of the Project Site in relation to the wet swale and alder riparian habitat. The wet swale is approximately 15'-20' from the house on the Project Site and from the house on the parcel (118-190-24) to the northwest (Figure 2).

Figure 1 also illustrates the location of structures on parcels 118-190-24 and 118-190-22 adjacent to riparian alder habitat that are approximately 10'-15' to the creek and/or riparian habitat. Figure 3 illustrates the structure that is close to the small creek.

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