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Filed:	May 24, 2007
49th Day:	June 12, 2007
Staff:	Robert S. Merrill
Staff Report:	June 29, 2007
Hearing Date:	July 12, 2007

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

APPEAL NO.:	**A-1-MEN-07-021**
APPLICANTS:	**Greg and Sandra Moore**
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	Approximately one mile north of Gualala, on the west side of Highway One and Old Coast Highway, approximately 300 feet south of the intersection of Highway One and Old Coast Highway, at 37900 Old Coast Highway (APN 145-121-03).
PROJECT DESCRIPTION:	Convert an existing legal non-conforming duplex to two single-family homes by (1) remodeling the duplex into a single unit, including removing the second kitchen and constructing a 530-square-foot addition and a 517- square-foot deck addition; (2) constructing a 605-square-foot detached second residential unit with a 528-square-foot garage below; (3) constructing a 510-square-foot barn/shed with a maximum average height of 15 feet; and (4) performing associated development including constructing a gravel driveway addition and fence, and connecting to utilities.

APPELLANTS:	Commissioners Mike Reilly and Sara Wan
SUBSTANTIVE FILE DOCUMENTS:	1) Mendocino County CDU No. 9-2006 and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATIONS:

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

The development, as approved by the County, consists of the conversion of an existing legal non-conforming duplex on a residential lot to two single-family homes by (1) remodeling the existing duplex into a single unit by removing the second kitchen and constructing a 530-square-foot addition and a 517- square-foot deck addition; (2) constructing a 605-square-foot detached second residential unit with a 528-square-foot garage below; (3) constructing a 510-square-foot barn/shed with a maximum average height of 15 feet; and (4) performing associated development including constructing a gravel driveway addition and fence, and connecting to utilities. The project is located approximately one mile north of Gualala on a blufftop lot at 37900 Old Coast Highway.

The appeal raises contentions alleging inconsistency of the approved project with the certified Mendocino County LCP, including LCP provisions regulating development near Environmentally Sensitive Habitat Areas (ESHA), and the establishment of appropriate buffer areas.

Portions of the approved project involving construction of a barn/shed and driveway expansion are located as close as 20 feet from a population of coastal bluff morning glory (*Calystegia purpurata* sp. *saxicola*), a rare plant ESHA. The appellants contend that the approved development is inconsistent with the County LCP policies requiring appropriate buffer areas to protect ESHA from new development which require that buffers shall not be less than 50-100 feet in width. The appellants also contend that the project does not involve a use that would be permissible in an ESHA buffer. The LCP provides that the only uses that may be allowed in an ESHA buffer are the uses that are allowed in the ESHA buffer itself. The appellants contend that County relied on the erroneous application of Coastal Zoning Code Section 20.496.050 regarding "Other Resource Areas" to determine that the residential uses proposed are allowable uses within rare plant ESHA and therefore within rare plant ESHA buffers.

Staff believes that a complete reading of the County's findings indicates that the County found the approved development to be consistent with the ESHA buffer requirements in part on the basis that the County determined the approved uses to be uses that are allowed within the buffer. The County's findings also assert that the approved development has been mitigated in ways by requiring fencing and other measures that avoid significant disruption of the ESHA habitat and that there are no other feasible locations on the property for the development.

Staff believes, however, that the County relied on the erroneous application of Coastal Zoning Code Section 20.496.050 regarding "Other Resource Areas" to determine that the residential uses approved are an allowable uses within rare plant ESHA and therefore within rare plant ESHA buffers. CZC Section 20.496.050 refers to very specific geographic "Resource Areas" enumerated under LUP Section 3.1 such as specific State Parks and Reserves, Underwater Parks and Reserves, Areas of Special Biological Significance (e.g., Saunders Reef Kelp Beds, Pygmy Forest Ecological Staircase), and Natural Areas (e.g., Ten Mile River Marsh Wetlands, Haven's Neck, etc.). CZC Section 20.496.050 does not address development allowable within general environmentally sensitive habitat areas not otherwise addressed under CZC Section 20.496, such as rare plant habitat. The text of LUP Section 3.1 under the "Natural Habitat and Resource Protection Issues" section distinguishes between environmentally sensitive habitat areas and resource areas. Therefore, rare plant ESHA is clearly not a resource area as referred to in CZC Section 20.496.050.

Staff notes that an interpretation of LCP policies that does not allow residential uses in rare plant ESHA or any other form of ESHA is consistent with Section 30240(a) of the Coastal Act, which does not allow residential uses but does allow uses dependent on rare plant ESHA to be allowed in a rare plant ESHA. Thus, an interpretation of the LCP that does not allow residential uses in rare plant ESHA is consistent with the Coastal Act.

Therefore, in the absence of specific enumerated allowable uses within rare plant habitat - and thus within the rare plant ESHA buffer - in the certified LCP, staff believes a substantial issue is raised as to whether residential uses can be allowed within the minimum 50-foot buffer required by LUP Policy 3.1-7 and CZC Section 20.496.020.

Furthermore, the County's findings do not thoroughly evaluate alternatives that would avoid locating new development within the rare plant ESHA buffer such as eliminating the barn/shed structure from the project, and utilizing the existing driveway and parking areas to serve the second residence, or remodeling the existing structures on the site to accommodate the approved new uses.

Therefore, because ESHA buffers are not allowed to be reduced to less than 50 feet, and because development is allowed within a buffer area only if it is for a use allowed within the ESHA itself and the County has not demonstrated that the approved use is allowable within rare plant ESHA, the degree of legal and factual support for the local

government's decision is low. Furthermore, as the cumulative impact of the loss of rare and endangered plants over time throughout the coastal zone has been significant, the appeal raises issues of statewide significance rather than just a local issue. Therefore, for all of the above reasons, Staff believes that the project as approved by the County raises a substantial issue of conformance with the provisions of the certified LCP regarding the establishment of ESHA buffers and allowable uses within buffers, including, but not limited to LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020.

Therefore, staff recommends that the Commission find that the contentions are valid grounds for an appeal, and that the contentions raise a substantial issue of conformity of the approved development with the certified LCP and the public access policies of the Coastal Act.

The motion to adopt the staff recommendation of Substantial Issue is found on Pages 5-6.

STAFF NOTES:

1. Appeal Process

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

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

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

The approved development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is (1) not designated the "principal permitted use" under the certified LCP, (2) is located between the sea and the first public road paralleling the sea, and (3) within three hundred feet of the top of a seaward facing coastal bluff.

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

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellants and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

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

2. Filing of Appeal

One appeal was filed by Commissioners Mike Reilly and Sara Wan on May 24, 2007 (Exhibit No. 9). The appeal was filed with the Commission in a timely manner within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 10) on May 10, 2007.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-07-021 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-07-021 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received one appeal from Commissioners Mike Reilly and Sara Wan of the County of Mendocino's decision to approve the development.

The development, as approved by the County, consists of the conversion of an existing legal non-conforming duplex on a residential lot to two single-family homes by (1) remodeling the existing duplex into a single unit by removing the second kitchen and constructing a 530-square-foot addition and a 517- square-foot deck addition; (2) constructing a 605-square-foot detached second residential unit with a 528-square-foot garage below; (3) constructing a 510-square-foot barn/shed with a maximum average height of 15 feet; and (4) performing associated development including constructing a gravel driveway addition and fence, and connecting to utilities. The project is located

approximately one mile north of Gualala, on the west side of Highway One and Old Coast Highway, approximately 300 feet south of the intersection of Highway One and Old Coast Highway, at 37900 Old Coast Highway.

The appeal raises contentions alleging inconsistency of the approved project with 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. The appellants' contentions are summarized below, and the full text of the appeal is included as Exhibit No. 9.

Portions of the approved project involving construction of a barn/shed and driveway expansion are located as close as 20 feet from a population of coastal bluff morning glory (*Calystegia purpurata* sp. *saxicola*), a rare CNPS List 1B plant. The County's LCP includes habitats of rare and endangered plants in the definition of Environmentally Sensitive Habitat Areas (ESHAs). The appellants contend that the approved development is inconsistent with the County LCP policies to protect Environmentally Sensitive Habitat Areas (ESHAs), including habitats of rare and endangered plants, with appropriate buffer areas that shall not be less than 50-100 feet in width. The appellants contend the County's approval is inconsistent with these policies for two reasons. First, the LCP ESHA buffer policies do not allow a buffer under any circumstances to be less than 50 feet. The appellants contend that the approved 20-foot-wide setback from the rare plant ESHA of the driveway expansion and the 24-foot-wide setback from the rare plant ESHA of the barn/shed structure approved by the County do not meet this standard.

Second, the appellants contend that the County's approval relied on the erroneous application of Coastal Zoning Code Section 20.496.050 regarding "Other Resource Areas" to allow the approved development within the rare plant ESHA buffer. The appellants note that LUP Policy 3.1-7 and CZC Section 20.496.020 do allow for development to be permitted within a buffer area <u>if</u> the development is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development 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 and mitigation is provided to replace any particular value of the buffer lost by the development. The appellants contend, however, that unlike for other ESHAs such as wetlands and riparian areas, the certified LCP is ambiguous with regard to allowable uses in rare plant habitat, and thus allowable uses within a rare plant buffer. The appellants note that the County's findings for approval relied on CZC Section 20.496.050, which allows development within designated resource areas under mitigating conditions when the continued protection of the resource area is assured. However, the appellants contend that CZC Section 20.496.050 refers to very specific geographic "Resource Areas" enumerated under LUP Section 3.1 such as State Parks and Reserves and does not address development allowable within general environmentally sensitive habitat areas not otherwise addressed under CZC Section 20.496, such as rare plant habitat.

The appellants contend that in the absence of specific enumerated allowable uses within rare plant habitat, the approved residential use of the rare plant ESHA buffer is not consistent with the requirements of LUP Policy 3.1-7 and CZC Section 20.496.020 that only the uses allowed in the ESHA itself may be allowed in the buffer. As a result, the appellants contend that the residential uses proposed must be sited at least 50 feet away from the rare plant ESHA to be consistent with the minimum 50-foot buffer required by LUP Policy 3.1-7 and CZC Section 20.496.020.

B. LOCAL GOVERNMENT ACTION

On April 26, 2007, the Mendocino County Coastal Permit Administrator conditionally approved the coastal development permit for the project (CDU #9-2006) (Exhibit No. 10). The development, as approved by the County involves converting an existing legal non-conforming duplex into two single-family homes by (1) remodeling the duplex into a single unit, including removing the second kitchen and constructing a 530-square-foot addition and a 517- square-foot deck addition; (2) constructing a 605-square-foot detached second residential unit with a 528-square-foot garage below; (3) constructing a 510-square-foot barn/shed with a maximum average height of 15 feet; and (4) performing associated development including constructing a gravel driveway addition and fence, and connecting to utilities.

The approved permit imposed four special conditions, one of which pertains to the appeal's contentions. Special Condition No. 3 imposes several requirements, including requirements that the applicant (1) incorporate into the project all of the recommended mitigation measures contained in the botanical surveys prepared for the project, (2) submit evidence that the temporary exclusion/construction and permanent fencing shown on the site plan has been installed in a manner that will protect coastal bluff morning glory habitat, (3) record a deed restriction that provides that the Northern Coastal Scrub Rare Plan Habitat Area located between the existing residential structure and the coastal bluff shall be protected from development, (4) perform seasonal high weed mowing to keep higher growing weeds and brush from crowding out existing rare plants, (5) remove invasive plants on the parcel, and (6) provide copies of the permit to contractors.

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 Commission staff on May 10, 2007 (Exhibit No. 10). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

The County's approval of the project was appealed to the Coastal Commission in a timely manner by the appellants on May 24, 2007 within 10-working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT AND SITE DESCRIPTION

The subject property is located approximately one mile north of Gualala, on the west side of Highway One and Old Coast Highway, approximately 300 feet south of the intersection of Highway One and Old Coast Highway, at 37900 Old Coast Highway. The 0.95-acre parcel is a bluff top lot that extends from Old Coast Highway to the mean high tide line of the ocean below the bluff.

The property is designated in the Land Use Plan (LUP) and zoned in the Coastal Zoning Code as Rural Residential which allows as the principally permitted use the development of one single-family residence. The LCP limits density to one unit per parcel. The property is currently developed with a residential duplex containing two residential units. The County indicates that the duplex is a legal non-conforming use that was developed many years prior to certification of the Mendocino County LCP. The duplex is served by an existing driveway.

The development, as approved by the County involves converting an existing legal non-conforming duplex into two single-family homes by (1) remodeling the duplex into a single unit, including removing the second kitchen and constructing a 530-square-foot addition and a 517- square-foot deck addition; (2) constructing a 605-square-foot detached second residential unit with a 528-square-foot garage below; (3) constructing a 510-square-foot barn/shed with a maximum average height of 15 feet; and (4) performing associated development including constructing a gravel driveway addition and fence, and connecting to utilities.

The blufftop area of the parcel is part of a nearly level marine terrace. The parcel is vegetated primarily by mowed perennial grasses and forbs, with an over story of Bishop pine (*Pinus muricata*) and Monterey Cypress (Cupressus macrocarpa). An open forest consisting mostly of native bishop pine and non-native Monterey cypress covers about two-thirds of the parcel from the roadway to the duplex sited near the bluff edge. The existing gravel driveway runs along the northwest boundary of the parcel to the duplex and is flanked by a row of cypresses on the neighboring parcel to the north. A separate row of Monterey Pines exist along the southeastern boundary of the parcel on the property of the neighbor to the south. Near the bluff edge, the vegetation changes to a northern coastal scrub community and a small remnant patch of coastal terrace prairie, a rare plant community.

A botanical survey was performed in September of 2006 (See Exhibit No. 11). The survey indicates that rare coastal bluff morning glory (*Calystegia purpurata ssp.*

Saxicola) is present in specific areas of the bishop pine forest area of the parcel between the road and the duplex and also within the coastal scrub community along the bluff. The total population is estimated to number between 258 and 300 individuals. The botanical survey also identified blue violet (Viola adnunca) withn the project area. Blue violet can serve as a host plant for endangered Behren's silverspot butterfly. However, a further survey of the suitability of the parcel to provide butterfly habitat was later performed in 2006 (See Exhibit No. 12), and based on the results of that study and the mitigation measures of the project, the U.S. Fish & Wildlife Service has determined that the project is unlikely to result in incidental take of Behren's silverspot butterfly.

The subject parcel is not located within a designated highly scenic area. In addition, because of the vegetation and existing development, the subject parcel affords very little view of the ocean from Old Coast Highway, the public vantage point closest to the development.

D. SUBSTANTIAL ISSUE ANALYSIS

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

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

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

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

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

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;

2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretations of its LCP; and

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

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

All of the contentions raised by the appellants present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. The contentions allege that the approval of the project by the County is inconsistent with LCP provisions regarding development adjacent to environmentally sensitive habitat areas (ESHA). In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations, the appeal raises a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP and the public access policies of the Coastal Act.

Allegations Raising Substantial Issue:

a. Development Adjacent to Environmentally Sensitive Habitat Areas

Appellant A contends that the approval of the residential project is inconsistent with the environmentally sensitive habitat area (ESHA) policies of the certified LCP, which require, in part, a minimum 50-foot buffer from rare plant ESHA.

1. LCP Policies:

Environmentally Sensitive Habitat Areas (ESHA) is 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 3.1-1 states: (emphasis added)

> *Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.*
>
> *If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.*

LUP Policy 3.1-4 states: (emphasis added)

> *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: (<u>emphasis added</u>)

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. <u>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</u>. New land division shall not be allowed which will create new parcels entirely within a buffer area. <u>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</u>:

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 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.

(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)

LUP Policy 3.1-10 states: (emphasis added)

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;*
- *existing agricultural operations;*
- *removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values.*

LUP Policy 3.1-29 states: (emphasis added)

The California Department of Fish and Game, the California Native Plant Society, and the U.S. Fish and Wildlife Service shall be requested to maintain and augment mapped inventory of all rare, endangered, threatened and protected plant and wildlife habitats on the Mendocino Coast based on up-to-date survey information. Symbols indicating rare or endangered plants and wildlife are placed on the Land Use Maps to generally locate listed species and will be pinpointed as necessary to prevent degradation prior to issuing any development permit. Furthermore, the Department of Fish and Game is requested to work with the county during the planning and permit process to evaluate the significance of mapped sites as they apply to individual development applications.

Coastal Zoning Code Section 20.496.005 and 20.496.010 state (emphasis added):

CHAPTER 20.496
ENVIRONMENTALLY SENSITIVE HABITAT AND OTHER RESOURCE AREAS

Sec. 20.496.005 Applicability.

This Chapter shall apply to all development proposed in the Coastal Zone unless and until it can be demonstrated to the approving authority that the projects will not degrade an environmentally sensitive habitat or resource area and shall be compatible with the continuance of such areas. While symbols denoting habitat and resource areas appear on the Land Use Maps, field investigations and review of the Department of Fish and Game Data Base may be required prior to a determination of the applicability of this Chapter. Additional information developed or obtained by the County as the result of future field

investigation shall be added to the land use maps in future minor amendments or reviews of the Coastal Element of the General Plan of Mendocino County. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.496.010 Purpose.

The purpose of this Chapter is to ensure that environmentally sensitive habitat and other designated resource areas listed on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985, which constitute significant public resources are protected for both the wildlife inhabiting them as well as the enjoyment of present and future populations.

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

Coastal Zoning Code Section 20.496.025 states (emphasis added):

Sec. 20.496.025 Wetlands and Estuaries.

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

(1) Port facility expansion or construction.

…

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

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

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

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

…

(3) Diking or Filling. If a development involves diking or filling of a wetland, required minimum mitigation measures shall include the following:

…

(4) Diking, filling, or dredging of a wetland or estuary shall maintain or enhance the functional capacity of the wetland or estuary. Functional capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity. In order to establish that the functional capacity is being maintained, the applicant shall demonstrate all of the following:

…

Coastal Zoning Code Section 20.496.030 states**:**

Sec. 20.496.030 Open Coastal Waters, Lakes, Streams, Rivers.

(A) Development permitted in open coastal waters and lakes shall be limited to the following:

(1) All development permitted in wetlands and estuaries (Section 20.496.025).

…

(B) Requirements for Permitted Developments in Open Coastal Waters and Lakes.

(1) Diking, filling, or dredging of open coastal waters or lakes shall be permitted only if there is no feasible, less environmentally damaging alternative.

(2) If there is no feasible, less environmentally damaging alternative, mitigation measures shall be provided to minimize adverse environmental effects.

(C) Development permitted in streams and rivers shall be limited to the following:

…

(D) Requirements for Permitted Development in Streams and Rivers.

…

Coastal Zoning Code Section 20.496.035 states**:**

Sec. 20.496.035 Riparian Corridors and other Riparian Resource Areas.

(A) No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:

(1) Channelizations, dams or other alterations of rivers and streams as permitted in Section 20.496.030(C);

(2) Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;

(3) Existing agricultural operations;

(4) Removal of trees for disease control, public safety purposes or personal use for firewood by property owner.

(B) Requirements for development in riparian habitat areas are as follows:

(1) The development shall not significantly disrupt the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;

(2) No other feasible, less environmentally sensitive alternative exists;

(3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;

(4) Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent. (Ord. No. 3785 (part), adopted 1991)

Coastal Zoning Code Section 20.496.040 states**:**

Sec. 20.496.040 Dunes.

(A) Development and activities permitted in dunes shall be limited to the following:

(1) Scientific, educational and passive recreational uses.

(2) One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division.…..…

(B) Requirements for development in dune areas are as follows:…

Coastal Zoning Code Section 20.496.050 (Other Resource Areas) states (emphasis added):

(A) General*. Other designated resource areas as identified on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985 include: State parks and reserves, underwater parks and reserves, areas of special biological significance, natural areas, special treatment areas, fishing access points, areas of special biological importance, significant California ecosystems and coastal marine ecosystems.*

(B) Development of Resource Areas*. Any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area. (Ord. No. 3785 (part), adopted 1991)*

2. NARRATIVE TEXT OF CHAPTER 3 OF LAND USE PLAN REGARDING HABITATS AND NATURAL RESOURCES.

CHAPTER 3 -- THE LAND USE PLAN: RESOURCES AND DEVELOPMENT ISSUES AND POLICIES

3.1 HABITATS AND NATURAL RESOURCES

Coastal Act Requirements

The Coastal Act includes the following policies for protection of land and marine habitats:

Section 30230…

Section 30231...

Section 30233...

Section 30236...

Section 30240.

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

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

Section 30607.1...

Definitions

Anadromous Fish Stream. Fresh water stream used as migration corridor or spawning or nursery habitat by fish, such as salmon and steelhead trout, that live most of their adult lives in saltwater.

Coastal Marine Ecosystem. That area and its environs containing a delicately balanced environmental system which provides a suitable habitat for local indigenous and migrating species, including all life forms in the tidal zones seaward. The Coastal Marine Ecosystem also is recognized to contain and provide valuable food resources, economic opportunities, and aesthetic value to shore-side establishments, residents and the public in general.

Development...

Dunes. Sand formed in hills or ridges by the wind and sometimes stabilized by vegetation. Dunes are distinct ecosystems made up of various community types, ranging from open unvegetated sand hills to stabilized dune forests, that frequently contain rare, endangered, protected, or unusual plant and animal species. This highly specialized habitat can be extremely unstable, sensitive to the continuous interplay of surf, sand, and wind.

Environmentally Sensitive Habitat Areas. 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.

Minor Amendment...

Pygmy Vegetation. A stunted forest, with mature vegetation the majority of which is approximately 2-12 feet in height occurring on soils with conditions which severly limit

the growth of vegetation such as Blacklock soils, and characterized by Mendocino cypresses, Fort Bragg Manzanita, Bolander pines, and pygmy Mendocino bishop pines.

Pygmy-type Vegetation. A forest occurring south of the Navarro River, mainly on Gualala series soils, characterized by stunted vegetation on sites with low commercial timber value. Plant species include knobcone pines and manzanita.

Riparian Habitats. A "riparian habitat" is an area of riparian vegetation. This vegetation is an association of plant species which grows adjacent to freshwater watercourses, including perennial and intermittent streams, lakes, and other bodies of fresh water (see Appendix 8).

Special Plant Habitat. The approximate location of rare, or endangered or threatened plant species identified by the California Department of Fish and Game, the U. S. Fish and Wildlife Service or as designated by the California Native Plant Society is found in the Inventory of Rare and Endangered Vascular Plants of California (1984). "Rare" is defined to mean a plant that is of limited distribution; or that occurs in such small numbers that it is seldom reported; or that occurs only in very few highly restricted populations. "Endangered" is defined to mean a plant threatened with extinction and not likely to survive unless some protective measures are taken.

Special Treatment Area. On July 5, 1977 the California Coastal Commission designated Special Treatment Areas (STAs) in coastal forest districts. Such a designation identifies timberlands where stringent Timber Harvest Plan requirements and harvesting rules are applied in order to protect the area's special scenic and natural qualities. (See California Administrative Code, Title 14, Section 921.) Special Treatment Areas were designated in 1977 to assure the protection of natural and scenic resources, while at the same time allowing management and orderly harvesting of timber resources. The following designated Special Treatment Areas are identified in the Mendocino County Local Coastal Plan**...**

Special Wildlife Habitat. The approximate location of animal species considered to be threatened, rare, endangered, or protected by the California Department of Fish and Game, or the U.S. Fish and Wildlife Service are shown on the land use maps. A rare and endangered species is an animal whose existence is threatened by one or more of the following conditions: the mortality rate exceeds the birth rate; the species is not capable of adapting to environmental change; the species habitat is threatened by destruction or serious disturbance; survival is threatened by the introduction of other species through predation, competition, or disease; or environmental pollution threatens the species survival. A protected species is an animal which cannot be taken or possessed under any permit or license, except when authorized by the Department of Fish and Game for scientific research. Threatened species are defined as those species contained on the lists identified as such by the U.S. Fish and Wildlife Service and the California Department of Fish and Game, as is the case with rare species and endangered species.

Wetlands. Lands which may be covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are extremely fertile and productive environments. Tidal flushing from the ocean and/or nutrient-rich freshwater runoff mix to form a delicate balance responsible for their productivity. They function as nurseries for many aquatic species and serve as feeding and nesting areas for waterfowl, shorebirds and wading birds, as well as a few rare and endangered species.

The edge or upland limit of wetlands is designated by the California Coastal Commission guidelines on wetlands as: (a) the boundary between land with predominantly hydrophytic (adapted to wet conditions) cover and land with predominantly mesophytic (adapted to average conditions) or xerophytic (adapted to dry conditions) cover; (b) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or, in the case of wetlands without vegetation or soils; (c) the boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not. Areas with drained hydric soils that are no longer capable of supporting hydrophytes (species adapted to wet conditions) are not considered wetlands.

Natural Habitat and Resource Protection Issues

The Coastal Act mandates the preservation of significant natural resources and habitats. Much of Mendocino's undeveloped coastal zone provides habitat for diverse species of plants and animals, many of which are vulnerable to disturbance or destruction from human activities. Particular threats are posed by unrestricted recreational use, poor forestry practices, and increasing development. Existing County and State procedures and ordinances have frequently been inadequate to ensure the protection of coastal resources. In the past, the most effective public action has been land acquisition, a less practical strategy in an era of fiscal austerity, rising land values, and more vocal opposition to public ownership.

In Mendocino County, environmentally sensitive habitat areas include: anadromous fish streams, sand dunes, rookeries and marine mammal haulout areas, wetlands, riparian areas, pygmy vegetation containing species of rare or endangered plants, and habitats of rare and endangered plants and animals. In addition, several state agencies and private environmental groups and Local Citizens Advisory Committees have identified certain resource areas which require protection. These include:

Resource Areas

State Parks and Reserves[1]

Sinkyone Wilderness State Park
Usal Ranch Project (proposed trails)

Westport-Union Landing State Beach
MacKerricher State Park
Jug Handle State Reserve
Caspar Headlands State Beach
Caspar Headlands State Reserve
Russian Gulch State Park
Mendocino Headlands State Park
Van Damme State Park
Dark Gulch Unit of Van Damme State Park
Greenwood/Elk Project
Manchester State Beach

Underwater Parks and Reserves[2]

Sinkyone Wilderness State Park (proposed)
MacKerricher State Park
Jug Handle State Reserve (proposed)
Point Cabrillo Reserve (proposed)
Russian Gulch State Park
Mendocino Headlands State Park (proposed)
Van Damme State Park
Manchester State Beach (Point Arena Rock)

Areas of Special Biological Significance[3]

King Range National Conservation Area
Pygmy Forest Ecological Staircase
Saunders Reef Kelp Beds

Natural Areas (includes areas designated by the California Natural Areas Coordinating Council and designated on Land Use Maps)

Chamise Mountain Primitive Area
Bear Harbor
Ten Mile River Marsh Wetlands
Ten Mile Beach Dunes
Inglenook Fen
Pygmy Forest Areas (Habitat value should be determined and scope of area to be preserved, if any that is not already publicly owned.)
Pygmy Forest Ecological Staircase
Caspar Headlands
Pine Grove Bog
Russian Gulch State Park
Salmon Creek

Albion River Riparian Corridor (streamside band of vegetation)
Navarro River Riparian Corridor
Caspar Graveyard Area of Sitka Spruce
Grindle Park - Little Lake Road, Mendocino
Mendocino Headlands
Goat Island
Big River Estuary
Russell Redwood Forest
Van Damme State Park
Albion River Estuary
Navarro River Estuary
Manchester State Beach and Vicinity
Haven's Neck
Anchor Bay
Big River Riparian Corridor (variable width along edge of river from Headlands to the Woodlands - 50' to 200' - area between timberland and flow of stream)

Special Treatment Areas (designated by California Division of Forestry)

Usal Creek
Rockport Beach
Hardy Creek Knoll
Westport
Ten Mile River
Highway one corridor from Ten Mile River to Sonoma County Line
Noyo River
Caspar-Doyle Creek
Big River
Dark Gulch
Albion River
Navarro River
Navarro River to Irish Beach Terrace
Elk Creek
Gualala River

Fishing Access Points[4]

South Kibesillah Fishing Access
Noyo River Fishing Access
Navarro River Fishing Access
Albion River
Loran Station
Point Arena Light House
Big River

Areas of Special Biological Importance[5]

Heron Rookeries:	Hathaway Creek, Albion River, and Fort Bragg
Seabird Rookeries:	Iverson Point, Fish Rock, Sea Lion Rocks, Saddle Point, Goat Rock, White Rock, Gunderson Rock, Nose Rock , Goat Island, Cottoneva Rock, Chris Rock, Cape Viscaine Rocks
Osprey Nest Sites:	Various
Coastal Wetlands:	Hunter's Lagoon, Hathaway Creek, Garcia River, Gualala River, Brush Creek, Manchester Beach Lagoon, Elk Creek, Albion River, Navarro River, Big River, Pudding Creek, Lake Cleone, Sand Lake and Inglenook Fen, Inglenook Creek Marsh, Ten Mile River, Cottaneva Creek, Caspar Creek, Salmon Creek Alder Creek, Noyo River

Significant California Ecosystem[6]

Big River Estuary

Coastal Marine Ecosystem[7]

Mean High Water to State Three-Mile Boundary

Notes:

1. Designated by California Department of Parks and Recreation.

2. Designated by DPR in California State Park System Underwater Parks Master Plan; Point Cabrillo has been designated by the California Department of Fish and Game. Areas are located on the ocean side of area listed. The status as a park or reserve has yet to be determined by DPR.

3. Designated by State Water Quality Control Board.

4. Designated by California Department of Fish and Game, Wildlife Conservation Board and the South Central Citizens Advisory Committee.

5. Designated by California Department of Fish and Game.

6. Nominated for designation by U.S. Fish and Wildlife Service.

7. Designated by Mendocino County Board of Supervisors.

The following paragraphs briefly describe the coastal zone's special natural habitats and their particular problems. Special natural habitats are delineated on the resource maps.

Anadromous Fish Streams....

Riparian areas...

Wetlands....

Dunes...

Rookeries and Haulout Areas...

Pygmy and Pygmy-type Vegetation...

Rare or Endangered Plant and Wildlife Habitat. There are several species of wildlife within or near the coastal zone officially considered to be rare, endangered, or threatened, and are protected. These include the Lotis Blue Butterfly, California Brown Pelican, southern bald eagle, American peregrine falcon, California yellow-billed cuckoo, osprey and the California Grey Whale. Such species are sensitive to human disturbance and pollution. The osprey is particularly vulnerable to timber harvesting operations, and the Department of Fish and Game has recommended several policies for protection of its habitat (#52, California State Department of Fish and Game). In addition, several plant species found in the coastal zone have been classified as either rare or endangered. These include Leafy reed grass, pityopus and Roderick's fritillary. Habitats of rare and endangered plants or animals are shown on the Land Use Plan map. These locations are general; species can and do relocate, so Policy 3.1-1 provides for ongoing investigation of possible local habitats.

Throughout all policies pertaining to Habitats and Natural Resources shall run the continuous theme that natural habitat areas constitute significant public resources which shall be protected not only for the wildlife which inhabits those areas but for the enjoyment of present and future populations of the State of California.

Symbols identifying rare or endangered plant species and, rare, endangered, threatened, or protected wildlife species have been placed upon the land use maps. Extensive areas of the coastal zone which are reliably thought to be rich in such habitats, such as the Lost Coast, have only a few symbols indicating these resources. The symbols printed on the land use maps are informational only and do not denote a definitive identification of these resources. Additional information developed or obtained by the County as the result of future field investigations shall be added to the land use maps in future amendments or reviews of the Coastal Element.

This Local Coastal Plan represents the commitment of the County of Mendocino to provide continuing protection and enhancement of its coastal resources. It is recognized that certain resource areas in this jurisdiction will require public attention to ensure their protection and enhancement, such as:

- degraded or less than pristine wetlands of any size;
- lands that have a history of potential or productive agricultural uses;
- sensitive coastal resource areas which are suffering some form of deterioration or development pressures; and
- areas which are appropriate for well-designed visitor-commercial and recreation facilities.

3. <u>Discussion:</u>

As discussed above, the project site provides habitat for the sensitive plant species *Calystegia purpurata ssp. saxicola* (coastal bluff morning-glory) as identified in a botanical survey conducted at the site. This species is listed on the California Native Plant Society List 1B, indicating that the species is rare or endangered in California and elsewhere. In addition, a small remnant patch of coastal terrace prairie, a rare plant community, exists near the bluff edge.

The County's definition of Environmentally Sensitive Habitat Areas (ESHAs) set forth in Coastal Zoning Code Section 20.496.010 includes habitats of rare and endangered plants. In its findings for approval of the project, the County determined that the areas containing coastal bluff morning glory and its natural habitat areas are ESHA. The findings indicate the County did not determine the coastal terrace prairie community to be ESHA because "the area is too small and isolated to provide natural resource value."

As described by the County, the approved barn structure would be located approximately 24 feet from coastal bluff morning-glory ESHA situated within the bishop pine forest in the two thirds of the property between the road and the existing duplex. The approved driveway would be located approximately 20 feet from coastal bluff morning-glory ESHA in these areas. In addition, the County's findings indicate that approved additions to the existing residential building, including the approved new deck area, the new second residential structure, and garage would be located within 50 feet of coastal bluff morning-glory ESHA situated along the bluff side of the existing residential building. The County indicates that at their closest point, these proposed residential building additions would be approximately 35 feet from the natural habitat area for the coastal bluff morning glory, although the additions would be more than 50 feet from individual coastal bluff morning glory plants and would be separated from the coastal bluff morning glory ESHA by portions of the existing residential structure.

According to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020, 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 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 the 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.

LUP Policy 3.1-7 and CZC Section 20.496.020 do 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 the development 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 and mitigation is provided to replace any particular value of the buffer lost by the development.

The appellants contend the County's approval is inconsistent with these policies for two reasons. First, the LCP ESHA buffer policies do not allow a buffer under any circumstances to be less than 50 feet. The appellants contend that the approved 20-foot-wide setback from the rare plant ESHA of the driveway expansion and the 24-foot-wide setback from the rare plant ESHA of the barn/shed structure approved by the County do not meet this standard.

Second, the appellants contend that the County's approval relied on the erroneous application of Coastal Zoning Code Section 20.496.050 regarding "Other Resource Areas" to allow the approved development within the rare plant ESHA buffer. The appellants note that LUP Policy 3.1-7 and CZC Section 20.496.020 do 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 certain other conditions are met as described above. The appellants contend, however, that unlike for other ESHAs such as wetlands and riparian areas, the certified LCP is ambiguous with regard to allowable uses in rare plant habitat, and thus allowable uses within a rare plant buffer. The appellants note that the County's findings for approval relied on CZC Section 20.496.050 to establish that the residential uses are allowed within rare plant ESHA, which allows development within designated resource areas under mitigating conditions when the continued protection of the resource area is assured. However, the appellants contend that CZC Section 20.496.050 refers to very specific geographic

"Resource Areas" enumerated under LUP Section 3.1 such as State Parks and Reserves and does not address development allowable within general environmentally sensitive habitat areas not otherwise addressed under CZC Section 20.496, such as rare plant habitat. As a result, the appellants contend that the residential uses proposed must be sited at least 50 feet away from the rare plant ESHA to be consistent with the minimum 50-foot buffer required by LUP Policy 3.1-7 and CZC Section 20.496.020.

The Commission first considers the contention that the County directly approved a less than 50-foot buffer even though the LCP policies indicate that 50 feet is the minimum allowable buffer. The County's findings do contain a statement that "the project provides a buffer of a minimum of 20 feet to present rare plants…" However, correspondence receive from Mendocino County staff dated June 7, 2007 and received after the filing of the appeal (See Exhibit 14), indicates that this statement is in fact a mis-statement and indicates that the findings for approval were based on the premise that the approved development comprises uses that are allowed within the buffer. Indeed, a complete reading of the findings indicates that the County found the approved development to be consistent with the ESHA buffer requirements in part on the basis that the County determined the approved uses to be uses that are allowed within the buffer. The County's findings also assert that the approved development has been mitigated in ways by requiring fencing and other measures that avoid significant disruption of the ESHA habitat and that there are no other feasible locations on the property for the development.

As noted above, LUP Policy 3.1-7 and CZC Section 20.496.020 do 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 the development 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 and mitigation is provided to replace any particular value of the buffer lost by the development. Unlike for other ESHAs such as wetlands and riparian areas, the certified LCP does not specify any allowable uses within rare plant habitat.

Also as noted above, to establish that the approved residential and barn uses are uses allowed within the rare plant ESHA buffer, the County's findings for approval rely on CZC Section 20.496.050 states that "any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area." In its June 7, 2007 letter, the County asserts that the designated resource areas must have been intended to include rare plant ESHA as the LCP does not otherwise have policies addressing what uses are allowable within rare plant ESHA. If rare plant ESHA does qualify as a designated resource area covered by CZC Section 20.496.050, the County suggests that any kind of development may be allowed in rare plant habitat so long as continued protection of the resource area is assured.

The Commission notes, however, that CZC Section 20.496.050 refers to very specific geographic "Resource Areas" enumerated under LUP Section 3.1 including specific State Parks and Reserves, Underwater Parks and Reserves, Areas of Special Biological Significance (e.g., Saunders Reef Kelp Beds, Pygmy Forest Ecological Staircase), Natural Areas (e.g., Ten Mile River Marsh Wetlands, Haven's Neck, etc.), Special Treatment Areas designated by the California Division of Forestry, Fishing Access Points, and Areas of Special Biological Importance (including rookeries, osprey nesting sites, and specific coastal wetlands). CZC Section 20.496.050 do not address development allowable within general environmentally sensitive habitat areas not otherwise addressed under CZC Section 20.496, such as rare plant habitat. The text of LUP Section 3.1 under the "Natural Habitat and Resource Protection Issues" section distinguishes between environmentally sensitive habitat areas and resource areas as follows:

> In Mendocino County, environmentally sensitive habitat areas include:
> anadromous fish streams, sand dunes…wetlands, riparian areas, …and habitats of rare and endangered plants and animals. In addition, several state agencies and private environmental groups and Local Citizens Advisory Committees have identified certain resource areas which require protection [emphasis added]. These include:
>
> Resource Areas
>
> State Parks and Reserves,…
> Unde4rwater parks and Reserves,…
> Areas of Special Biological Significance
> King Range National Conservation Area
> Pygmy Forest Ecological Staircase
> Saunders Reef Kelp Beds
> Natural Areas (includes areas designated by the California Natural Areas Coordinating Council and designated on Land Use Maps.) …
> Special Treatment Areas…
> Fishing Access Points…
> Areas of Special Biological Importance
> Heron Rookeries..
> Seabird Rookeries …
> Osprey Nest Sites …
> Coastal Wetlands….
> Significant California Ecosystem…
> Coastal Marine Ecosystem

Thus, the first paragraph of the portion of the text of LUP Section 3.1 cited above distinguishes rare plant ESHA from certain resource areas identified by state agencies and other organizations. The list of resource areas that follows, includes specifically

designated areas and does not include rare plant ESHA. Therefore, rare plant ESHA is clearly not a resource area as referred to in CZC Section 20.496.050.

The Commission notes that an interpretation of LCP policies that does not allow residential uses in rare plant ESHA or any other form of ESHA is consistent with Section 30240 of the Coastal Act. Section 30240(a) of the Coastal Act states:

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

Section 30240(a) does not allow residential uses but does allow uses dependent on rare plant ESHA to be allowed in a rare plant ESHA. Thus, an interpretation of the LCP that does not allow residential uses in rare plant ESHA is consistent with the Coastal Act.

Therefore, in the absence of specific enumerated allowable uses within rare plant habitat - and thus within the rare plant ESHA buffer - in the certified LCP, a substantial issue is raised as to whether residential uses can be allowed within the minimum 50-foot buffer required by LUP Policy 3.1-7 and CZC Section 20.496.020.

Furthermore, the County's findings do not thoroughly evaluate alternatives that would avoid locating new development within the rare plant ESHA buffer such as eliminating the barn/shed structure from the project, and utilizing the existing driveway and parking areas to serve the second residence, or remodeling the existing structures on the site to accommodate the approved new uses.

Therefore, because ESHA buffers are not allowed to be reduced to less than 50 feet, and because development is allowed within a buffer area only if it is for a use allowed within the ESHA itself and the County has not demonstrated that the approved use is allowable within rare plant ESHA, the degree of legal and factual support for the local government's decision is low. Furthermore, as the cumulative impact of the loss of rare and endangered plants over time throughout the coastal zone has been significant, the appeal raises issues of statewide significance rather than just a local issue. Therefore, for all of the above reasons, the Commission finds that the project as approved by the County raises a substantial issue of conformance with the provisions of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020.

Conclusion

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

regarding the establishment of buffers between approved development and environmentally sensitive habitat areas and uses allowed within buffers including, but not limited to LUP Policy 3.1-7 , and Coastal Zoning Code Section 20.496.020.

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

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

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

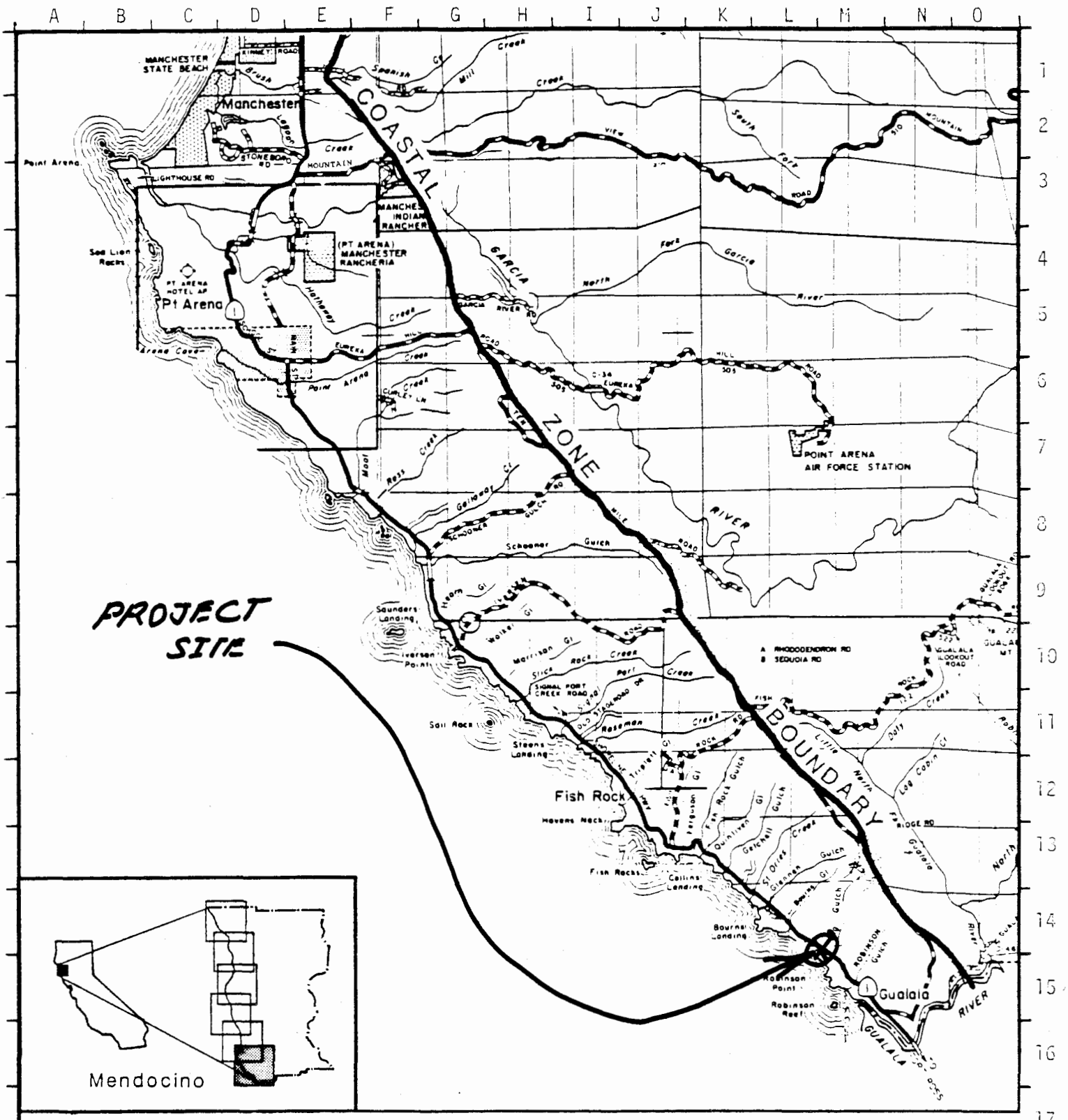
1. Alternatives Analysis

As noted above, it is unclear whether or not feasible project alternatives exist that would not locate new development within 50 feet of rare plant ESHA. To approve the project, the Commission must find that the project will conform with the ESHA buffer requirements of the certified LCP including its requirement that buffers be a minimum of 50 feet. Evaluating the feasibility and relative impact on coastal resources of alternatives is essential for making such a determination. Therefore, the Commission needs to receive an Alternatives Analysis for the subject property that addresses the feasibility of maintaining at least 50-foot buffers for the development, including, but not limited to, alternatives including siting the approved barn and residential structure additions and the approved driveway elsewhere on the property, remodelling the existing structures in place to accommodate the proposed new uses, or the “no project” alternative.

Without the above information, the Commission cannot reach a final determination concerning the project’s consistency with the policies of the LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit the above-identified information.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Site Plan
4. Floor Plans – Existing
5. Floor Plans – Approved
6. Elevations – Existing
7. Elevations – Approved
8. County Required Deed Restriction Area
9. Appeal
10. Notice of Final Local Action
11. Biological Assessment
12. Behrens Silverspot Butterfly Habitat Assessment
13. USFWS Comments on Butterfly Habitat
14. Mendocino County Correspondence



California Coastal Commission

LOCATION MAP

1 0 mi

County of Mendocino

EXHIBIT NO. 1

APPEAL NO.

A-1-MEN-07-021

MOORE

REGIONAL LOCATION

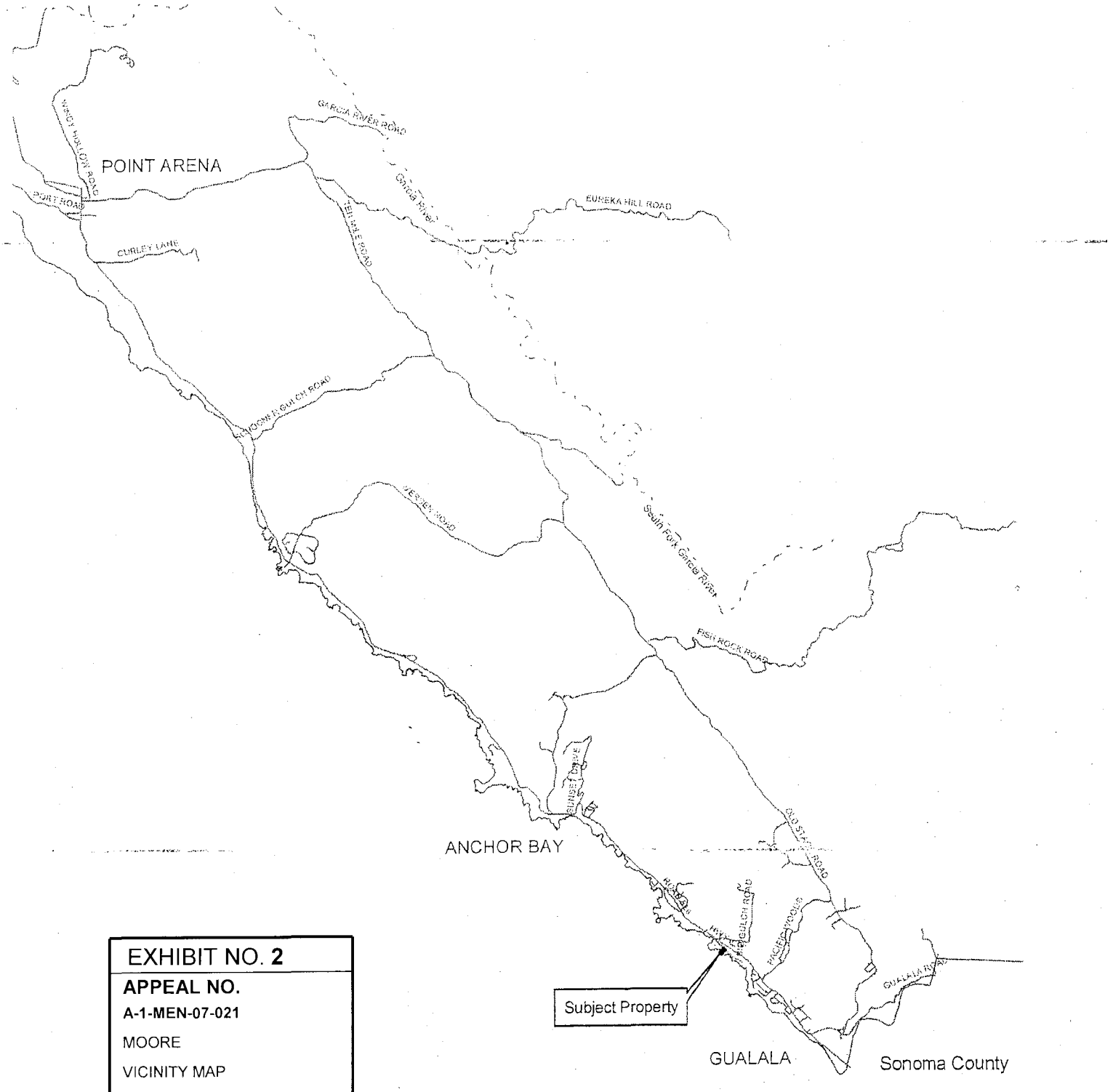


EXHIBIT NO. **2**

APPEAL NO.

A-1-MEN-07-021

MOORE

VICINITY MAP

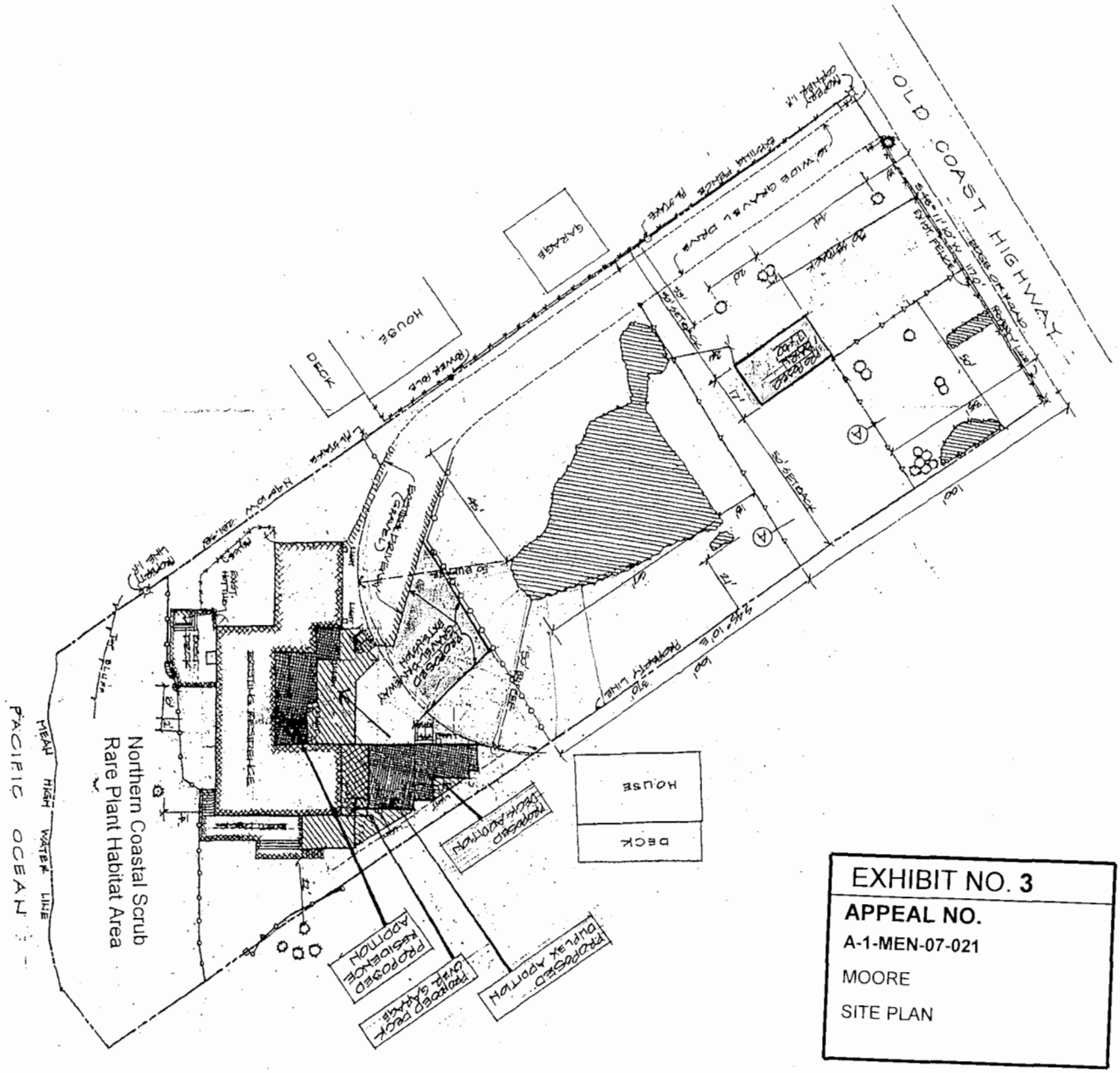


EXHIBIT NO. 3

APPEAL NO.

A-1-MEN-07-021

MOORE

SITE PLAN

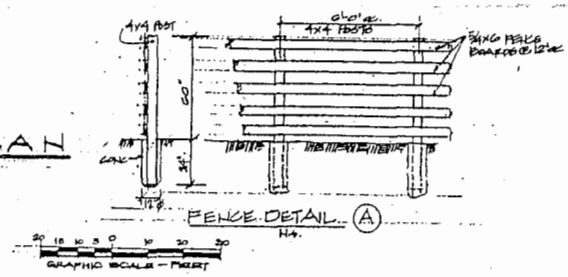
LEGEND BIO-MITIGATION

- CONSTRUCT PERMANENT FENCE
- CONSTRUCT TEMPORARY/EXCLUSIONARY FENCE PRIOR TO ANY CONST. ACTIVITY MAY BE REMOVED UPON COMPLETION OF PROJECT
- BLUE VIOLET
- COASTAL BLUFF MORNING GLORY

SITE PLAN

1"=1'-0"

NOTE: BIO INFORMATION SHOWN ON THIS SITE PLAN BASED ON "BIOTIC ASSESSMENT & RARE PLANT SURVEY" PREPARED BY BIOCONSULTANT LLC, SANTA ROSA, CA REPORT DATED SEPT. 2006



SITE PLAN

NO SCALE

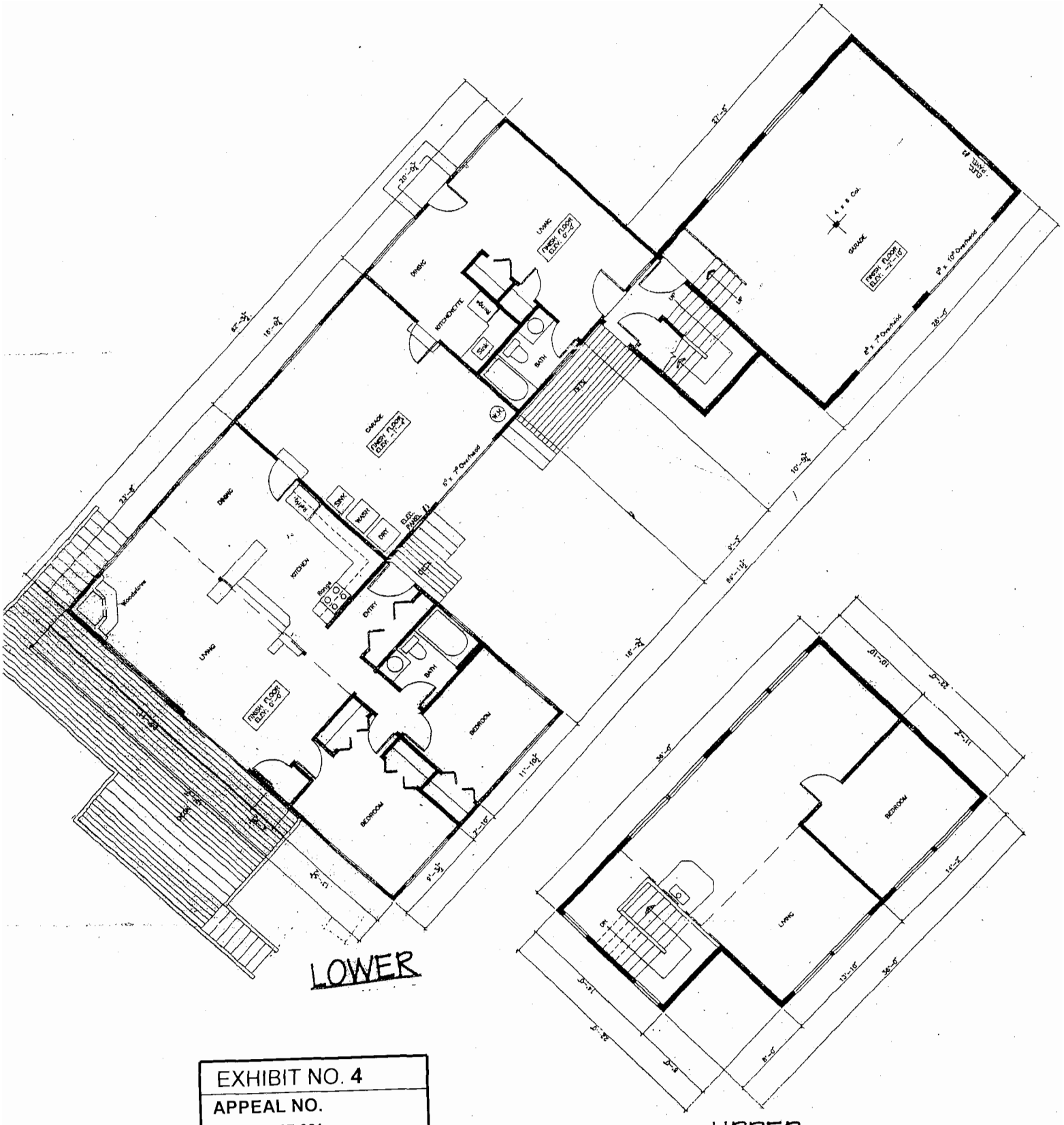


EXHIBIT NO. 4

APPEAL NO.

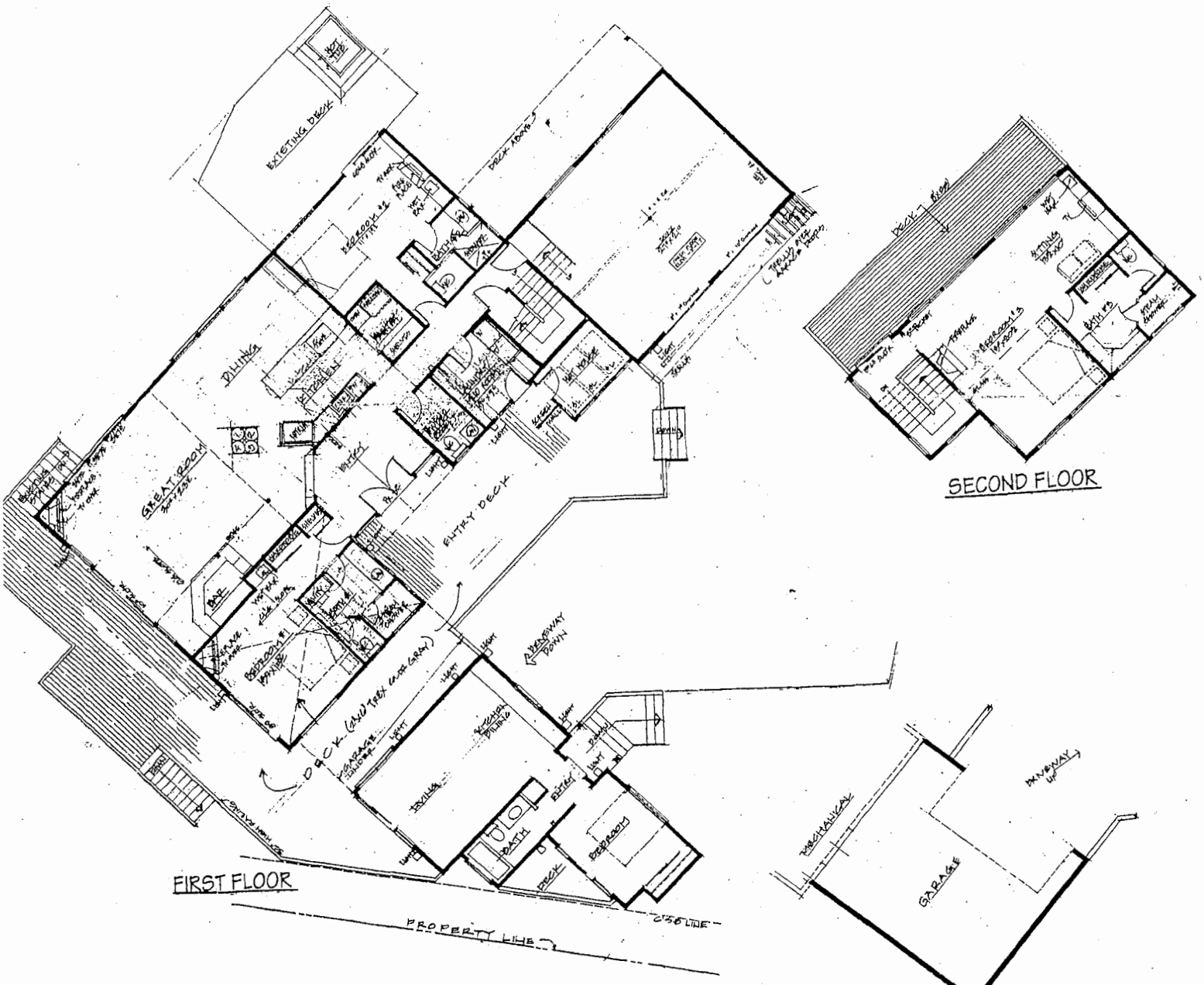
A-1-MEN-07-021

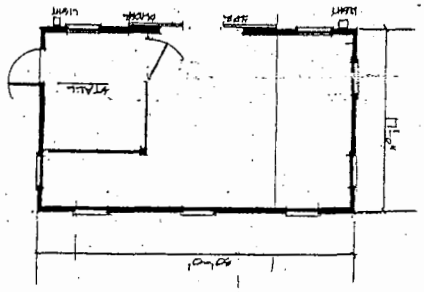
MOORE

FLOOR PLANS - EXISTING

FLOOR PLANS - EXISTING

NO SCALE



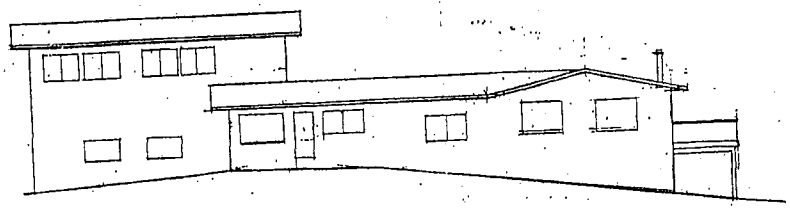


BARN
FLOOR PLAN

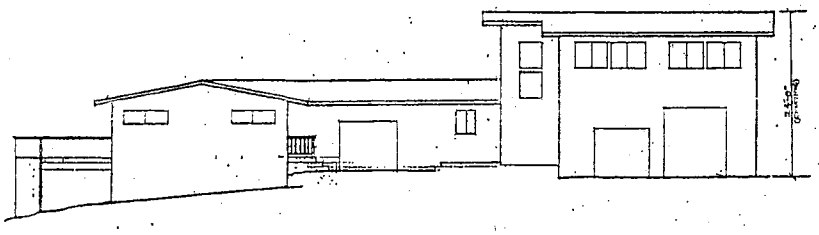
EXHIBIT NO. 5
APPEAL NO.
A-1-MEN-07-021
MOORE
FLOOR PLANS - PROPOSED

FLOOR PLANS - PROPOSED

NO SCALE



SOUTH ELEVATION (EXISTING)



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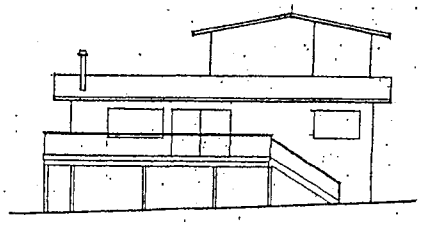

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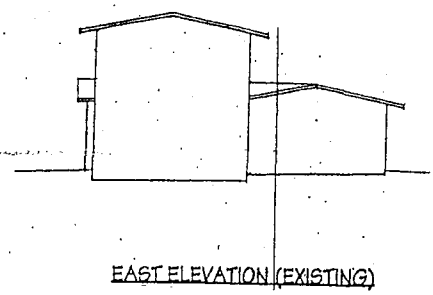


EAST ELEVATION (EXISTING)

EXHIBIT NO. 6

APPEAL NO.

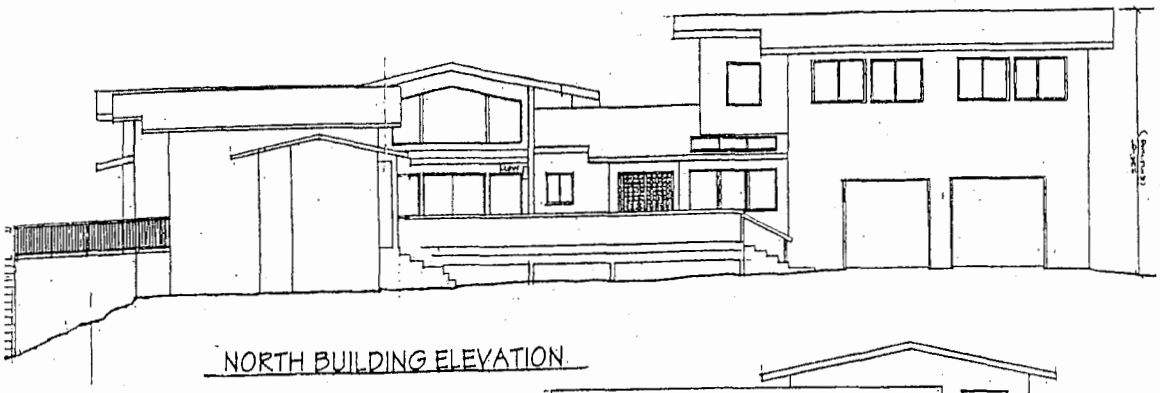
A-1-MEN-07-021

MOORE

ELEVATIONS - EXISTING

ELEVATIONS - EXISTING

NO SCALE



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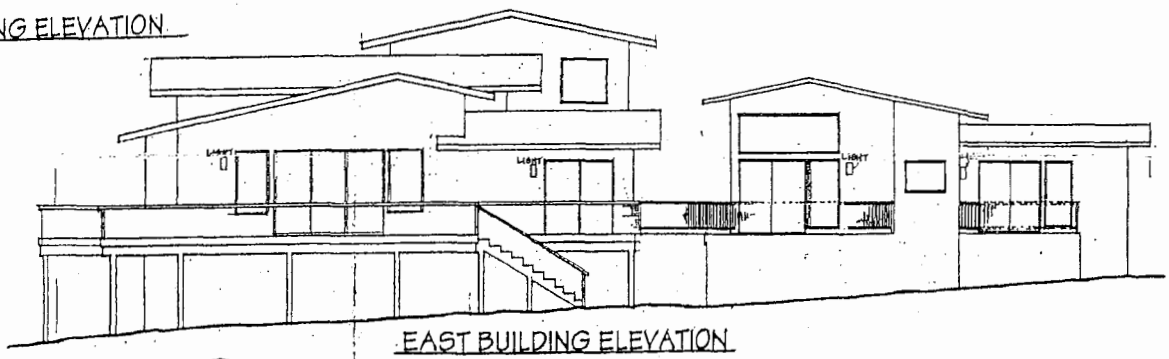

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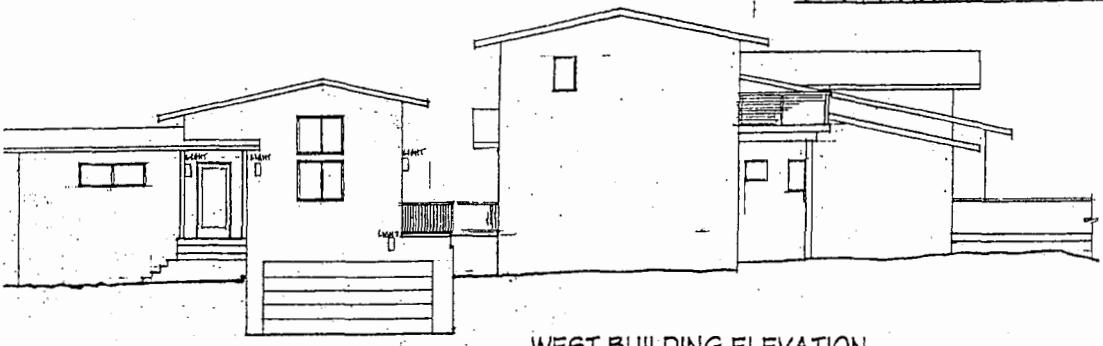

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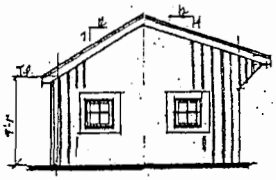
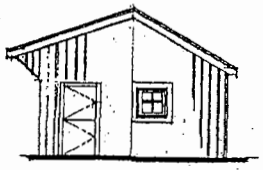
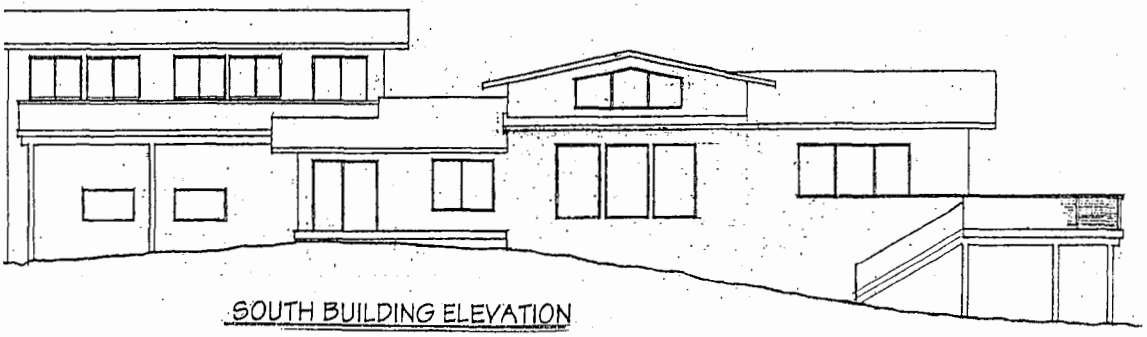


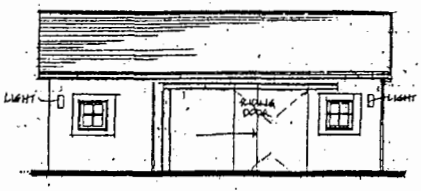
BARN - EAST



BARN - WEST



SOUTH BUILDING ELEVATION



BARN - NORTH

EXHIBIT NO. **7**

APPEAL NO.

A-1-MEN-07-021

MOORE

ELEVATIONS - PROPOSED

ELEVATIONS - PROPOSED

NO SCALE

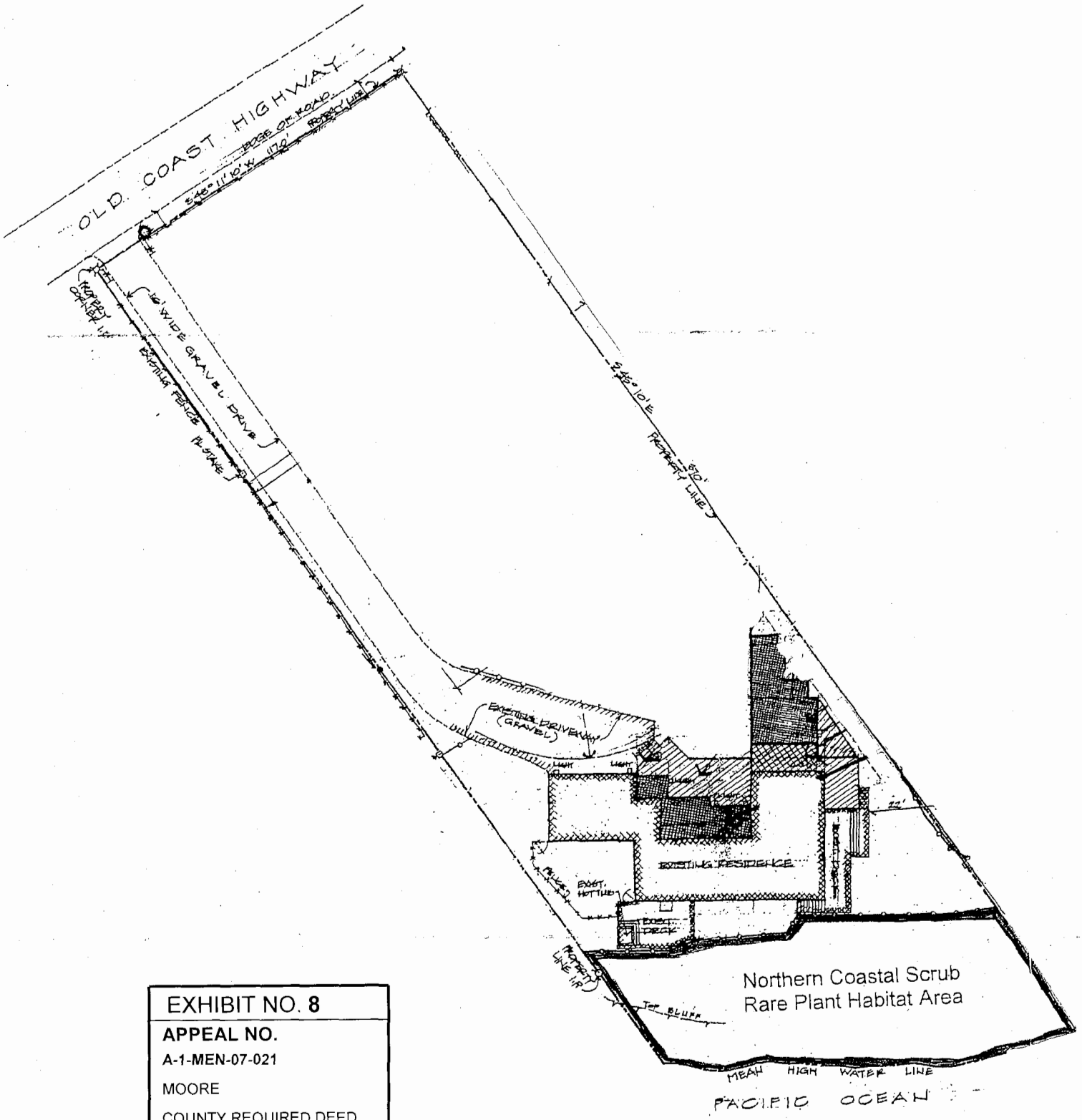


EXHIBIT NO. **8**

APPEAL NO.

A-1-MEN-07-021

MOORE

COUNTY REQUIRED DEED RESTRICTION AREA

DEED RESTRICTION AREA

NO SCALE

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)

RECEIVED
MAY 24 2007
CALIFORNIA
COASTAL COMMISSION

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:

The County of Mendocino approved Coastal Development Use Permit #9-2006 to: (1) convert an existing legal non-conforming duplex to two single-family residences; (2) remodel the existing duplex by removing the second kitchen, adding 530 square feet of interior floor area and adding 517 square feet of deck; (3) construct a 605-square-foot detached second residential unit with a 528-square-foot garage below; (4) construct a 510-square-foot barn/shed; (5) expand the existing driveway to serve the new second residence, and (6) install fencing and utility connections.

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

Approximately 1 mile north of Gualala, on the west side of Old Coast Highway, 300 feet south of its intersection with South Highway 1, at 37900 Old Coast Highway, Gualala, Mendocino County (APN 145-121-03).

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

☐ Approval; no special conditions

☒ Approval with special conditions:

☐ Denial

EXHIBIT NO. 9
APPEAL NO.
A-1-MEN-07-021
MOORE
APPEAL (1 of 14)

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: A-1-MEN-07-021

DATE FILED: 5/24/07

DISTRICT: North Coast

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: April 26, 2007

7. Local government's file number (if any): CDU #9-2006

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:

Greg & Sandra Moore
P.O. Box 23036
Oakland, CA 94623

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

(1)

(2)

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

See ATTACHMENT 2

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

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

SECTION V. Certification

The inform[illegible]e are correct to the best of my/our knowledge.

Signed: Signature on File
Appellant or Agent

Date: May 24, 2007

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

Signed: _____

Date: _____

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: Signature on File
Appellant or Agent

Date: May 24, 2007

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

Signed: _____

Date: _____

ATTACHMENT 1

SECTION I. Appellant(s)

1. Sara J. Wan
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Phone: (415) 904-5201

2. Mike Reilly, Supervisor
County of Sonoma
575 Administration Drive, Room 100
Santa Rosa, CA 95403-2887

Phone: (707) 565-2241

ATTACHMENT 2

Appealable Project:

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

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

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

The subject development is appealable to the Commission pursuant to 30603(a)(1), (2), and (4) of the Coastal Act because the approved development is (1) located between the first public road paralleling the sea, (2) within three hundred feet of the top of the seaward face of a coastal bluff, and (3) not designated the principal permitted use under the certified LCP.

Reasons for Appeal:

The County of Mendocino approved Coastal Development Use Permit #9-2006 to: (1) convert an existing legal non-conforming duplex to two single-family residences; (2) remodel the existing duplex by removing the second kitchen, adding 530 square feet of interior floor area and adding 517 square feet of deck; (3) construct a 605-square-foot detached second residential unit with a 528-square-foot garage below; (4) construct a 510-square-foot barn/shed; (5) expand the existing driveway to serve the new second residence, and (6) install fencing and utility connections.

Portions of the approved project involving construction of a barn/shed and driveway expansion are located as close as 20 feet from a population of coastal bluff morning glory (*Calystegia purpurata* sp. *saxicola*), a rare CNPS List 1B plant. The County's LCP includes habitats of rare and endangered plants in the definition of Environmentally Sensitive Habitat Areas (ESHAs). The approval of this development is inconsistent with

the County LCP policies to protect Environmentally Sensitive Habitat Areas (ESHAs), including habitats of rare and endangered plants, with appropriate buffer areas that shall not be less than 50-100 feet in width, and shall be an appropriate width based on an analysis of seven standards.

1. 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 3.1-7 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.*

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* [emphasis added].

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.

(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)

Coastal Zoning Code Section 20.496.050 "Other Resource Areas" states:

Sec. 20.496.050 Other Resource Areas.

***(A) General.** Other designated resource areas as identified on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985 include: State parks and reserves, underwater parks and reserves, areas of special biological significance, natural areas, special treatment areas, fishing access points, areas of special biological importance, significant California ecosystems and coastal marine ecosystems.*

***(B) Development of Resource Areas**. Any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area. (Ord. No. 3785 (part), adopted 1991)*

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 Adjacent to Environmentally Sensitive Habitat Areas (ESHA)

The approved development allows (1) construction of a 510-square-foot barn/shed, and (2) a 2,500-square-foot driveway expansion that would be located within 24 and 20 feet respectively from a population of coastal bluff morning glory located at the central portion of the site.

As noted above, the County's definition of Environmentally Sensitive Habitat Areas (ESHAs) set forth in Coastal Zoning Code Section 20.496.010 includes habitats of rare and endangered plants. As ESHA, habitats of rare and endangered plants 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 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 the 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 these policies for two reasons. First, the policies do not allow a buffer under any circumstances to be less than 50 feet. The 20-foot-wide buffer from the driveway expansion and the 24-foot-wide buffer from the barn/shed structure approved by the County clearly do not meet this standard. In allowing a rare plant buffer of less than 100 feet, the County's findings do address the seven buffer reduction standards of subsection (a) through (g) of Coastal Zoning Code Section 20.496.020. However, as noted above, Section 20.496.020 first requires a buffer to be no less than 50 feet. The policies then *further* require that the determination of an appropriate buffer width less than 100 feet, but in no case less than 50 feet, be based on the seven standards of subsections (a)-(g) of Section 20.496.020(A)(1).

Second, the County's approval relied on the erroneous application of Coastal Zoning Code Section 20.496.050 regarding "Other Resource Areas" to allow the approved development within the rare plant ESHA buffer. As cited above, LUP Policy 3.1-7 and CZC Section 20.496.020 do 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 the development 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 and mitigation is provided to replace any particular value of the buffer lost by the development. The County's findings correctly point out that, unlike other ESHAs such as wetlands and riparian areas, the certified LCP is silent with regard to allowable uses in rare plant habitat, and thus allowable uses within a rare plant buffer. In its findings for approval, the County applied CZC Section 20.496.050, which allows development within designated resource areas under mitigating conditions when the continued protection of the resource area is assured. However, CZC Section 20.496.050 refers to very specific geographic "Resource Areas" enumerated under LUP Section 3.1 including specific State Parks and Reserves, Underwater Parks and Reserves, Areas of Special Biological Significance (e.g., Saunders Reef Kelp Beds, Pygmy Forest Ecological Staircase), Natural Areas (e.g., Ten Mile River Marsh Wetlands, Haven's Neck, etc.), Special Treatment Areas designated by the California Division of Forestry, Fishing Access Points, and Areas of Special Biological Importance (including rookeries, osprey nesting sites, and specific coastal wetlands). CZC Section 20.496.050 and LUP Section 3.1 do not address development allowable within general environmentally sensitive habitat areas not otherwise addressed under CZC Section 20.496, such as rare plant habitat. Therefore, in the absence of specific enumerated allowable uses within rare plant habitat - and thus within the rare plant ESHA buffer - in the certified LCP, the minimum 50-foot buffer required by LUP Policy 3.1-7 and CZC Section 20.496.020 must be applied.

Furthermore, the County's findings fail to consider alternatives that would avoid locating new development within the rare plant ESHA buffer such as eliminating the barn/shed structure from the project, and utilizing the existing driveway and parking areas to serve the second residence.

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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A-1-MEN-07-021

RECEIVED
MAY 10 2007
CALIFORNIA
COASTAL COMMISSION

May 7, 2007

NOTICE OF FINAL ACTION

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

CASE#: CDU #9-2006
OWNER: Greg & Sandra Moore
AGENT: Howard Curtis Architect
REQUEST: Convert existing legal non-conforming duplex to two single-family residences. Existing structure to remain 24± feet in height. Remodel existing duplex, including removal of second kitchen, 530± sq. foot addition, and 517± sq. foot deck addition; construct a 605± sq. foot detached second residential unit with a 528± sq. foot garage below; and construct a 510± sq. foot barn/shed with a maximum average height of 15± feet. Associated development includes gravel driveway addition, fence, and connect to utilities.
LOCATION: In the Coastal Zone, approximately 1 mile north of Gualala, on the west side of Old Coast Highway (CR 513), 300± feet south of its intersection with South Highway 1, at 37900 Old Coast Highway, Gualala (APN 145-121-03).
PROJECT COORDINATOR: Teresa Beddoe

HEARING DATE: April 26, 2007

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. 10
APPEAL NO.
A-1-MEN-07-021
MOORE
NOTICE OF FINAL LOCAL ACTION (1 of 29)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDU #9-2006 HEARING DATE: 4/26/07

OWNER: Moore

ENVIRONMENTAL CONSIDERATIONS:

X Categorically Exempt

_____ Negative Declaration

_____ EIR

FINDINGS:

X Per staff report

_____ Modifications and/or additions

ACTION:

X Approved

_____ Denied

_____ Continued _____

CONDITIONS:

X Per staff report + revision to Condition 3 (see below)

_____ Modifications and/or additions

"... survey report prior to final inspection of the building permit. Planning staff shall verify removal."

_____
Signed: Coastal Permit Administrator

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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notice moore ccdu 9-2006

April 13, 2007

PUBLIC NOTICE OF PENDING ACTION
STANDARD COASTAL DEVELOPMENT PERMIT

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Thursday, April 26, 2007 in the Planning and Building Services Conference Room, 790 South Franklin Street, Fort Bragg, at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

CASE #: CDU #9-2006
DATE FILED: 3/1/2006
OWNER: Greg & Sandra Moore
AGENT: Howard Curtis Architect
REQUEST: Convert existing legal non-conforming duplex to two single-family residences. Existing structure to remain 24± feet in height. Remodel existing duplex, including removal of second kitchen, 530± sq. foot addition, and 517± sq. foot deck addition; construct a 605± sq. foot detached second residential unit with a 528± sq. foot garage below; and construct a 510± sq. foot barn/shed with a maximum average height of 15± feet. Associated development includes gravel driveway addition, fence, and connect to utilities.
LOCATION: In the Coastal Zone, approximately 1 mile north of Gualala, on the west side of Old Coast Highway (CR 513), 300± feet south of its intersection with South Highway 1, at 37900 Old Coast Highway, Gualala (APN 145-121-03).
PROJECT COORDINATOR: Teresa Beddoe

As you are an adjacent property owner and/or interested party, you are invited to appear at the hearing, or to direct written comments to this office at the above address. If you would like to be notified of the Coastal Permit Administrator's action, please submit a written request to this office. All correspondence should contain reference to the above noted case number.

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

Raymond Hall, Coastal Permit Administrator

OWNERS/APPLICANTS:	Greg & Sandra Moore P.O. Box 23036 Oakland, CA 94623
AGENT:	Howard Curtis Architect P.O. Box 675 Gualala, CA 95445
REQUEST:	Convert existing legal non-conforming duplex to two single-family residences. Existing structure to remain 24± feet in height. Remodel existing duplex, including removal of second kitchen, 530± sq. foot addition, and 517± sq. foot deck addition; construct a 605± sq. foot detached second residential unit with a 528± sq. foot garage below; and construct a 510± sq. foot barn/shed with a maximum average height of 15± feet. Associated development includes gravel driveway addition, fence, and connect to utilities.
LOCATION:	In the Coastal Zone, approximately 1 mile north of Gualala, on the west side of Old Coast Highway (CR 513), 300± feet south of its intersection with South Highway 1, at 37900 Old Coast Highway, Gualala (APN 145-121-03).
APPEALABLE AREA:	Yes – ESHAs, Bluff top lot
PERMIT TYPE:	Use Permit – Alteration of a legal non-conforming structure
TOTAL ACREAGE:	0.95 Acres
GENERAL PLAN:	RR-5 [RR-1]
ZONING:	RR: L-5 [RR]
EXISTING USES:	Duplex
ADJACENT ZONING:	RR: L-5 [RR]
SURROUNDING LAND USES:	Residential
SUPERVISORIAL DISTRICT:	5
CA COASTAL RECORDS PROJECT:	Image 200504186
ENVIRONMENTAL DETERMINATION:	Categorically exempt from CEQA, Class 1 and Class 3

OTHER RELATED APPLICATIONS:

BC 2004-0005 closed 10-8-2004

BF 2004-1036 – Building permit to replace two electric meters. Utility bills from 2003 indicated that the structure previously had two meters.

PROJECT DESCRIPTION: The applicants propose an addition to and conversion of an existing legal non-conforming duplex to two single-family residences. A legal residence and a legal non-conforming second residence currently exist on the parcel, and the proposed removal of one of the residences from the existing structure and construction of a new residence would result in a net of one legal residence and one legally non-conforming second residence, therefore the intensity of non-conforming use would remain the same. The remodel of the existing duplex would include a 530± sq. foot interior addition and 517± sq. foot deck addition to the existing 2,241± sq. foot residence, existing 1,134± sq. feet of attached garages and existing 376± sq. feet of decking, for a total structural size of 3,905± sq. feet. The interior remodel would include removal of the second kitchen, therefore the duplex would become a single-family residence. An approximately 1.5 foot by 8-foot skylight would adorn the new east-facing roof. The existing structure would retain its maximum 24±-foot height, as the addition to the existing structure would have a maximum average height of 17± feet above finished grade. The applicants propose to construct a 605± sq. foot detached second residential unit with a maximum average height of 21± feet above finished grade. The proposed second residential unit would share the proposed deck with the existing residential structure, and an additional 280± sq. feet of decking would be constructed around the proposed second residence. A new 528± sq. foot garage would be constructed under the second residence and deck addition; the garage addition would also share a wall with the existing residential structure. The existing gravel driveway would be extended by 2,500± sq. feet to allow vehicular access to the new garage. The applicants additionally propose to construct a 510± sq. foot barn/shed with a maximum average height of 15± feet above finished grade. A permanent 100± foot long 5-foot high wood fence would be constructed to protect existing rare plants. The new residence would be connected to utilities.

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

Gualala Municipal Advisory Council

At the regularly scheduled meeting held May 4, 2006, GMAC reviewed the project and voted that the project be approved as presented, with the provision that the Planning and Building Department check the project area to assure that the height restriction mandated by the Gualala Town Plan is followed. Conformance with height limits is discussed in the Land Use section below.

Land Use

The parcel is classified on the Coastal Plan Map as Rural Residential Five Acres Minimum with an alternate density of One Acre Minimum (RR-5 [RR-1]). The parcel is similarly zoned; RR:L-5 [RR]. The proposed single-family residence addition, and associated development are permitted uses within the Rural Residential Zoning District, and are consistent with the Rural Residential land use classification.

The existing second residential unit is a permitted legal non-conforming use within the Rural Residential Zoning District. Chapter 20.480 of the Mendocino County Coastal Zoning Code (MCCZC) outlines non-conforming uses and structures and describes a nonconforming use as: *"...a use of a structure or land*

which was lawfully established and maintained prior to the adoption of this Division by which does not conform with the use regulations for the zone in which it is located." Our records indicate that the second residence existed on the parcel previous to the Local Coastal Program and Coastal Act regulations, and our records reflect that the non-conforming use has been maintained to date. The proposed development would allow continuance of the non-conforming second residence. The intensity of use would not be expanded or reduced as a result of this proposed project, but would be reconfigured.

The required yard setbacks for a parcel in an RR zone are 20 feet from front and rear property lines, and 6 feet from side property lines. A corridor preservation setback of 25 feet applies along Old Coast Highway (CR 513), resulting in a front yard setback of either 45-feet from the road corridor centerline or 20 feet from the property line, whichever is greater. As shown on the Site Plan, the structures comply with setbacks required by the County Zoning Code.

Section 20.444.015(G) of the Mendocino County Coastal Zoning Code requires that: "Barns, stables, chicken houses and similar accessory buildings shall be not less than fifty feet from any property line, and not less than (40) feet from any dwelling." As shown on the site plan, the proposed barn meets the required setbacks as outlined.

The site is not within a designated Highly Scenic Area, therefore the height limit is 28 feet above average finish grade. The proposed 17± foot height of the proposed residence addition, 21± foot height of the proposed second residential unit, and 15± foot height of the proposed barn are in compliance with the height limit.

Maximum lot coverage for a lot less than 2 acres in size in an RR zone is 20%. Lot coverage is the percentage of the gross lot area covered by structures. The lot is approximately 0.95 acres, or 41,382 square feet. The Site Plan shows approximately 5,121 square feet of coverage, or 12%. The project complies with lot coverage limits.

Public Access

The project site is located west of Highway 1, but is not designated as a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the developed site, and in fact access is prohibited by the presence of steep bluffs. The nearest public access is the proposed "Bourne's Landing Blufftop Access," located ¼± mile north of the subject parcel. The project would have no effect on public access to the coast.

Hazards

The property is in an area that has a "moderate" fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention. The project site is less than one acre in size and is exempt from CDF's fire safety regulations. Fire safety issues are addressed as part of the building permit process.

The parcel is located on a bluff top. The proposed development would not encroach further toward the coastal bluff than existing development. Nevertheless, a draft Geotechnical Investigation by BACE Geotechnical, dated June 24, 2005, was submitted with the application.

The LUP contains policies relating to development on parcels subject to threats from geologic hazards.

Policy 3.4-7 of the Coastal Element of the General Plan 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:

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 geologists report

Blufftop 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. Based on the 75-year economic lifespan, and applying a factor of safety of two, the geotechnical report recommends a building setback from the bluff edge of 25 feet. As shown on the site plan, the proposed structures meet the 25-foot bluff edge setback.

The geotechnical report states the following regarding seismic safety:

> A minor inactive (ancient) fault was observed on the lower southeast-facing bluff along the southwest edge of the landslide headscarp. The fault orientation consists of a north-northwesterly trending strike, with a steep dip, about 65 degrees from horizontal, to the southwest. Several minor, inactive faults located on the west-facing bluff are apparent from offset sandstone beds, as can be observed on Plate 14. No evidence of active faulting was observed at the site, and none of the published references that we reviewed show faults on, or directed towards, the property.
>
> The subject property is within the Coast Ranges geomorphic province, a zone of high seismic activity associated with the active San Andreas Fault system, located within the canyon of the South Fork of the Gualala River, approximately 2.3 miles (3.7 kilometers) northeast of the site. Future earthquakes could occur on this active fault during the lifetime of the proposed residence.
>
> In general, the intensity of ground shaking at the site will depend on the distance to the causative earthquake epicenter, the magnitude of the shock, and the response characteristics of the underlying earth materials. Generally, wood-frame structures founded in firm materials, and designed in accordance with current building codes are well suited to resist the effects of ground shaking (BACE 2005).

Seismic safety issues are addressed as part of the Building Permit process. Standard Condition Number 5 is included to require that the Coastal Permit be subject to acquisition of the Building Permit.

Landslides and rockfalls are known to occur in the area and are analyzed in the geotechnical report, including documentation of the following recent rockfall and landslide in the vicinity:

- The recent (post 2002) rock fall that occurred on the bluff in the northwest part of the property appears to have involved several large blocks of rock, approximately 6 to 8 feet across, now resting on the beach. This rock fall likely occurred along existing fracture surfaces in the bedrock. Other large blocks of rock adjacent to the fall area also exhibit similar fracturing.

- An arc-shaped, incipient landslide headscarp is located on the south southeast-facing bluff approximately 20 feet southeast of the property line...The scarp area is well vegetated with

> grasses and weeds, and not evidence of recent, "fresh" ground fracturing was observed. No landslides are shown at the property on the published geologic maps we reviewed for this investigation (BACE 2005).

The geotechnical setback was determined with landslide and rockslide concerns in mind. The project area is reasonably safe from rockslides and landslides.

The project area is not located in a tsunami zone or 100-year flood zone.

Staff is confident that the proposed development complies with Chapter 20.500 of the MCCZC.

It is the policy of the Coastal Commission and the County to require recordation of a deed restriction as a condition of development on blufftop parcels, prohibiting the construction of seawalls and requiring that developments, both existing and proposed, 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 existing or proposed development that might fall onto a beach. Special Condition Number 1 is recommended 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 of the Coastal Element 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 parcel and existing residence are visible from Gualala Point County Park to the north. The areas of proposed development would be minimally if at all visible from Gualala Point County Park, as these areas are blocked from view by the existing structure and existing vegetation. The proposed exterior colors would be dark natural wood colors, matching the existing structure, and would blend well with surrounding development and the environment. The maximum height of the proposed additions, approximately 21 feet above existing grade, is visually insignificant as the existing residence is approximately 24 feet in height and would visually buffer the addition in terms of height. The applicant proposes the addition of a small (approximately 1.5 foot by 8-foot) "velux" skylight on the east (landward) elevation. The skylight would not be visible to public view.

Section 20.504.035 of the Coastal Zoning Code (Exterior Lighting Regulations) states:

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

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

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

Exterior lighting is proposed as "Halo H2411" or equal, to be screened on three sides with matching wood siding (shown on Sheet 2 of full sized plans). As proposed, the exterior lighting meets the downcast and shielded criteria. Special Condition Number 2 is recommended to ensure that exterior lights match the screened and downcast light presented in the coastal permit application.

The proposed development conforms to visual resources code.

Natural Resources

The .95 acre bluff top parcel is vegetated primarily by mowed perennial grasses and forbs with an overstory of bishop pine (*Pinus muricata*) and Monterey cypress (*Cupressus macrocarpa*). Approaching the vicinity of the coastal bluff, the vegetation changes to a northern coastal scrub community (Element Code 32100[1]). A small remnant patch of coastal terrace prairie (Element Code CTT41100CA), a rare plant community, intergrades with the coastal scrub community near the bluff edge. The project area was surveyed for rare plants and wildlife by BioConsultant. The survey report, dated September of 2006 is located in the project file. The survey results indicate that rare coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) is present within the project area. The results also indicate that blue violet (*Viola adunca*), the Behren's silverspot butterfly larval host plant, is present within project area. The United States Fish & Wildlife Service (USFWS) was consulted, and determined that a site assessment and a one time presence and absence survey conducted by Richard Arnold of Entomological Consulting Services, Ltd. would be sufficient for determining Behren's silverspot butterfly habitat suitability. The survey occurred and the survey report, dated August 24, 2006, is located in the project file. The butterfly survey report summarizes that the Behrens silverspot butterfly is not likely to occur near the project site because suitable habitat conditions are absent, despite the presence of the larval food plant, *Viola adunca*. The project has been redesigned to best protect natural resources, however development is still proposed within the Environmentally Sensitive Habitat Area (ESHA) buffer; development would be located as close as 24 feet from the ESHA. The survey reports follow recommended protocol, and a reduced buffer analysis per section 20.496.020 of the Mendocino County Coastal Zoning Code has been provided. An analysis of the proposed developmental impact upon these present natural resources of concern is outlined below.

The County of Mendocino Coastal Element describes an Environmentally Sensitive Habitat Area (ESHA) as follows:

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.

The area of coastal terrace prairie, and areas containing coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) and blue violet (*Viola adunca*) were initially considered as natural resource areas of value. However, since the habitat assessment for the Behren's silverspot butterfly indicates that the site lacks the

[1] California Department of Fish and Game Natural Diversity Database.

necessary habitat conditions to be considered rare butterfly habitat, blue violet (*Viola adunca*) areas are omitted from ESHA status. The remnant area of coastal terrace prairie is similarly omitted from ESHA status because the area is too small and isolated to provide natural resource value. Therefore the areas containing coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) and their natural habitat areas are the only areas within the project site that are considered ESHAs for County purposes.

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 ESHAs from disturbances related to proposed development. Section 20.496.020(A)(1) of the MCCZC states:

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.

The project initially proposed additions to the residential structure, a detached guest cottage, and a barn. When the ESHAs were found, the project was redesigned. Additions to the residential structure that were proposed on the west (bluff facing) side were omitted, the guest cottage[2] was moved closer to the existing residence, the barn was pushed as far forward as possible, and a permanent fence was additionally proposed to further protect the ESHA. With the exception of the barn, the proposed redesign resulted in the proposed structures meeting the minimum required 50-foot buffer. Section 20.444.015(G) of the MCCZC requires barns to be "not less than 50 feet from any property line, and not less than 40 feet from any dwelling." The proposed barn is in the only location on the parcel where it can meet this requirement. As shown on the site plan, this location is approximately 24 feet from an ESHA. The project would also require that a section of proposed gravel driveway be located within the 50-foot butter area. As shown on the site plan, the proposed gravel driveway extension would be located approximately 20 feet from an ESHA.

Improvements attached to the existing dwelling, including proposed new deck area, second residential unit, and garage, are within 50 feet of the natural habitat area for coastal bluff morning glory, and within 50 feet of coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola)* individuals located within the natural habitat area. However, the proposed development areas are not within the ESHAs themselves, and are separated from these ESHA areas by the existing residential structure.

At its closest point, the proposed attached addition would be approximately 35 feet from the natural habitat area for the coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*), located west of the existing structure. Actual coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) individuals within this area are more than 50 feet from the proposed development. The proposed development areas are separated from the westerly habitat area and rare plant individuals by the presence of the existing structure, and therefore the proposed developments would not result in any possible reduction of natural habitat area and would not otherwise impede upon the area west of the existing structure.

To the east of the proposed attached developments, other coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) protection areas are shown. Additional proposed development in this area

[2] The guest cottage became a second residence at this point.

includes the proposed barn, as shown on the site plan. While protection is being provided for the rare coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) individuals located on the lawn east of the existing residence, this area is not considered a valuable habitat area. The native habitat for coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) within the project area is the northern coastal scrub community located along the west side of the existing structure (Hickman 1993). In the project area, coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) is found in its natural habitat directly adjacent to the existing residence on the west (bluff top) side. The coastal bluff morning glory is also found in the grassy area between the residence and the road (Old Coast Highway). This area appears to be highly disturbed bishop pine forest that, due to years of mowing, has an understory dominated by exotic grasses and forbs. In the Moore Biological Survey report by BioConsultant dated October 2006, the botanist describes the biological significance of the habitat areas as follows:

> The coastal scrub habitat west of the duplex. is the preferred habitat type for the rare morning glory; therefore, it is important to maintain the integrity of the natural habitat in this area. The bishop pine forest, with its highly modified understory, is not a preferred habitat for the rare species (Fitts 2006).

The rare plant's presence within this area of the parcel appears partially due to proximity to native habitat and primarily to mowing disturbance, which has allowed a sunny opening for the low growing species. This disturbance has artificially created habitat for the plant, and continued disturbance is needed to stunt the natural successional changes that would displace the rare species. Chapman III et al. reference Tilman and Clements in the following passage, which describes the direction the disturbed area would take should the current disturbance discontinue:

> After disturbance, ecosystems undergo succession, a directional change in ecosystem structure and functioning resulting from biotically driven changes in a resource supply. Disturbances that remove live or dead organic matter, for example, are colonized by plants that gradually reduce the availability of light at the soil surface and alter the availability of water and nutrients (Tilman 1985). If there were no further disturbance, succession would proceed toward a climax, the end point of succession (Clements 1916)(Chapin III et al. 2002).

As noted by the botanist, the historic climax community in this disturbed area is the northern bishop pine forest community, a rare community in and of itself, in pristine condition. While protection of the area to preserve the presence of coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) individuals through prescribed annual mowing runs counter to possible restoration of the area back to its natural condition, such preservation is important to allow for existing rare plant species diversity and continuance. Should coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) recover in number sufficiently to be removed from endangered status, retention of the coastal scrub habitat area in its natural condition would provide sufficient protection, and restoration of the eastern lawn area to northern bishop pine forest would be most ecologically appropriate. Mitigation measures proposed by the botanist have been carefully designed to best address protection given the unique circumstances.

Section 20.496.020(A)(1) states that development within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area. County staff finds that uses allowed in rare plant habitats are not specifically called out in the manner that wetlands and estuaries (Sec. 20.496.025), open coastal waters, lakes, streams, rivers (Sec. 20.496.030), riparian corridors and other riparian resource areas (Sec. 20.496.035), dunes (Sec. 20.496.040), and pygmy forests (Sec. 20.496.045) are called out. Section 20.496.050 (other resource areas), is the only additional category, and is outlined as follows:

Sec. 20.496.050 Other Resource Areas.

(A) General. Other designated resource areas as identified on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985 include: State parks and reserves, underwater parks and reserves, areas of special biological significance, natural areas, special treatment areas, fishing access points, areas of special biological importance, significant California ecosystems and coastal marine ecosystems.

(B) Development of Resource Areas. Any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area. (Ord. No. 3785 (part), adopted 1991)

Pages 39, 40, and 41 of the Coastal Element dated November 5, 1985 list definitions of the following:

- Anadromous Fish Stream
- Coastal Marine Ecoystem
- Development
- Dunes
- Environmentally Sensitive Habitat Areas
- Minor Amendment
- Pygmy Vegetation
- Pygmy Type Vegetation
- Riparian Habitats
- Special Plant Habitat
- Special Treatment Area

Definitions continue on page 42 as follows:

- Special Wildlife Habitat
- Wetlands

It makes little sense that "Other resource areas" was meant to encompass all of the above listed definitions, particularly when definitions for "development" and "minor amendment" are included, as are areas already specifically outlined in sections 20.496.025 thru 20.496.045. It would seem logical that the writer meant to reference the Resource Areas listed on Pages 43 thru 45 as follows:

- State Parks and Reserves
- Underwater Parks and Reserves
- Areas of Special Biological Significance
- Natural Areas
- Special Treatment Areas (designated by the California Division of Forestry)
- Fishing Access Points
- Areas of Special Biological Importance
- Significant California Ecosystem
- Coastal Marine Ecosystem

The problem with this assumption is that most of these areas are already specifically outlined in sections 20.496.025 thru 20.496.045. To grasp this rationalization, one must first understand that specific areas are called out under each of these above listed headings. For example, under Significant California

Ecosystem, Big River Estuary is listed. Permitted development within Big River Estuary would already be outlined under (Sec. 20.496.025), Wetlands and Estuaries, therefore inclusion would be superfluous. Similarly, most of the listed Natural Areas are estuaries, riparian areas, creeks, wetlands, etc., and most of the listed Special Treatment Areas are rivers or creeks. When added to the fact that the pages don't match up to those referenced, it makes little sense to assume that the author intended to exclude these specified areas from more detailed analysis. Similarly, it makes little sense to isolate natural resource areas not otherwise discussed, such as rare plant and animal habitat from this last category of "Other Resource Areas," as rare plant and animal habitats clearly are natural resource areas that have otherwise not been clarified in terms of development allowed within the resource area. Inasmuch as Sec. 20.496.050(A) appears to require further modification to impart insight, Section 20.496.050(B) broadly captures the essence of the chapter and of the LCP itself. One could reasonably argue that it was the intent of the authors to provide a section that outlined in broad terms, common sense guidelines for natural resources such as rare plants and rare plant habitats, which are not specifically covered in other sections. Therefore, while the project does not propose development within the rare plant resource area, development is proposed within the buffer, and that development must comply with Section 20.496.020(A)(1), which states that development within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area. Lacking any other definition of allowable development within the buffer, Sec. 20.496.050 of the MCCZC, Other Resource Areas, is used, which allows some development under mitigating conditions, but assures protection of the resource.

As the proposed development would be located less than 50 feet from ESHAs, the minimum buffer size allowed per Section 20.496.020(A)(1) of the MCCZC as outlined above, a reduced buffer analysis as outlined in Section 20.496.020 is required, and has been provided by the botanist. As discussed in a meeting between the Fort Bragg Planning Division and Bob Merrill and Tiffany Tauber of the California Coastal Commission held April 6, 2007, the Coastal Commission requires that for development within an ESHA buffer area, Section 20.496.020(4)(a-k), for permitted development within the buffer, shall be detailed in the staff report. The following discussion addresses this requirement:

Table 1. Reduced buffer analysis, permitted development.

Section 20.496.020(A) of the Mendocino County Coastal Zoning Code	Analysis by BioConsultant, Moore Biological Survey, October 2006	Staff Report Analysis
(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.	The functional capacity and sustainability of the rare plant habitat ESHA will be protected during development with the implementation of mitigation measures (exclusionary/protective fencing, erosion control measures). Seasonal high-weed mowing to keep weeds and brush from invading the rare plant habitat in the pine forest, invasive species removal, and provisions to keep the preferred coastal scrub habitat west of the existing duplex free from development, accessory structures, landscaping, and non-native invasive plants will help to maintain the functional capacity and natural species diversity of the ESHA.	As mitigated, the proposed development is compatible with the continuance of the adjacent habitat area by maintaining the functional capacity and 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.	The remodel portion is minimal and the plans have been redesigned to place the additions in the only remaining areas outside of the delineated ESHA polygons with the largest buffers possible. The granny unit will be sited closer to the duplex in the area largely devoid of understory with a buffer of 25 feet from the closest part of Polygon 1. The barn will be reconfigured and sited in the area between Polygons 1-2 and 3-4, with a buffer of at least 30 ft. between the polygons. These are the most feasible and least environmentally damaging locations for the additions.	The project has been further modified since the botanist analysis. The remodel portion on the west side of the structure has been omitted. The "granny unit" (second residence) is now an additional 25 feet from Polygon 1, so it is now 50 feet from that ESHA, and outside the buffer area. The barn has been pushed as far from the ESHAs as possible, while still meeting the 50 foot from all property lines requirement per Section 20.444.015(G) of the MCCZC. As revised, 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.	All development is proposed for a nearly level area and sited to avoid the rare plant constraints. The hazard of water erosion is slight for the soils present at the site.	The proposed development is sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site included consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels.
(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.	The functional capacity and sustainability of the rare plant habitat ESHA will be protected during development with the implementation of mitigation measures (exclusionary/protective fencing, erosion control measures). Seasonal high-weed mowing to keep weeds and brush from invading the rare plant habitat in the pine forest, invasive species removal, and provisions to keep the preferred coastal scrub habitat west of the existing duplex free from development, accessory structures, landscaping, and non-native invasive plants will help to maintain the functional capacity and natural species diversity of the ESHA.	As mitigated, the proposed development is compatible with the continuance of the adjacent habitat area by maintaining the functional capacity and ability to be self-sustaining and 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.	As described in 4 (b), the proposed construction will occur in the most feasible and least environmentally damaging location. Mitigation measures are proposed.	There is no other feasible site available on the parcel. Mitigation measures proposed replace the protective values of the buffer areas lost due to development at a ratio of at least 1:1.

(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.	The areas proposed for the additions are largely devoid of vegetation - no riparian or coastal scrub vegetation will be removed. No bare soil areas will result from the development. The Project as described will cause minimal noise, dust, artificial light and air pollution.	The development minimizes impervious surfaces in that required driveway addition is permeable gravel. The proposal minimizes removal of vegetation, bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion. No wetland areas are present. The project minimizes 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.	No riparian vegetation will be removed.	No riparian vegetation loss will occur.
(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.	The proposed development does not include structures that would significantly impede the flow of water during large storm events.	The proposed development is not located in a 100-year flood zone.
(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.	Biological diversity in the rare plant habitat ESHA will be protected and enhanced by the mitigation measures. Measures to eradicate non-native invasive species and to keep the rare plant habitat free from development and landscaping will also help to protect biological diversity.	The project allows for protection of hydrologic capacity, subsurface flow patterns, biological diversity, and/or hydrological processes, both terrestrial and aquatic.
(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.	Natural stream environment zones do not occur in the development area.	Natural stream environment zones will not be impacted by the proposed development.

(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)*	The proposed development will not have a significant impact on the environment if the recommended mitigation measures are adopted.	The proposed mitigations are required as a condition of the project approval.

The project redesign prioritizes the protection of the coastal scrub habitat area by omitting proposed development from that area. The survey report describes coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) as "hardy and resilient" (Fitts 2006). With proposed mitigations, as outlined in the survey report and included as Special Condition Number 3, the project provides a buffer of a minimum of 20 feet to present rare plants located outside the natural habitat area, and all proposed project aspects are separated from the coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) natural habitat area by the existing structure. To the extent possible, structures would be located outside the 50-foot buffer to present rare plants located outside the natural habitat area. The exception to this is the proposed barn, which would be located a distance of 24 feet from rare plants located outside the natural habitat area. A permanent fence is proposed between the barn and the central present rare plant location to protect that area from animal and human disturbances. As proposed, the project would not result in direct impacts to rare plants located outside the natural habitat area, would not result in a reduction of natural rare plant habitat, and complies with the intent of the LCP for natural resources protection, as mitigation measures have been recommended to reduce potential impacts.

Archaeological/Cultural Resources

The project site is currently developed and not located in an area likely to contain archaeological or cultural resources. The site is a developed lot in a developed subdivision. Nevertheless, Standard Condition Number 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance (Chapter 22.12 of the Mendocino County Code) 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 designated as a Critical Water Resources area (CWR) as shown in the 1982 Coastal Groundwater Study prepared by the Department of Water Resources. Domestic water is currently provided to the site by North Gualala Water. The proposed project was referred to North Gualala Water, who responded with "no comment." A clearance letter will be required as part of the building permit process.

Sewage disposal is currently provided to the site by the Gualala Community Services District. The proposed project was referred to the Gualala Community Services District, who responded with a "will serve" letter, indicating a willingness to serve the proposed project. No adverse impacts to groundwater resources are anticipated.

Transportation/Circulation

There is an existing driveway approach serving the site. The application was referred to the Mendocino County Department of Transportation (DoT) for comment. DoT recommended improvement of the existing encroachment to County standards, and submitted a recommended condition of approval for encroachment improvements to be constructed within the County road right-of-way. The Department's recommended condition is included as Special Condition Number 4.

The project will not intensify the use of the site, and therefore will not result in additional impacts to local and regional roadways.

Zoning Requirements

The project complies with the zoning requirements for the Rural Residential District set forth in Chapter 20.376, 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, the Coastal Permit Administrator approves the proposed project, and adopts 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.

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 11th 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.

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 shall be 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. The permit was obtained or extended by fraud.

   b. One or more of the conditions upon which the permit was granted have been violated.

   c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or 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 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 (100) 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. 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 which shall provide that:

   a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazards and the landowner assumes the risk from such hazards;

   b) The landowner agrees to indemnify and hold harmless the County of Mendocino, it 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;

   (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.

2. Prior to final clearance of the building permit, verification shall be provided by the Building Division that exterior lighting is downcast and shielded, as shown in the coastal development permit application.

3. All mitigation measures recommended by BioConsultant (September 2006 report for subject parcel) shall be incorporated into the project. Prior to issuance of the building permit and construction activities, the applicant shall provide proof to the Planning Division that temporary exclusionary/construction and permanent fencing as shown on

the site plan and outlined in the survey report, has been installed in a manner appropriate to protect coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) individuals and habitat. All construction related activities must be contained by the fencing, which shall remain undisturbed during all phases of construction.

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 which shall provide that the "Northern Coastal Scrub Rare Plant Habitat Area" located between the existing residential structure and the coastal bluff shall be protected from development and disturbance in perpetuity. Invasive plant removal shall occur by hand within this area, and shall be the only disturbance allowed within this sensitive resource area. Exhibit G, which outlines the area labeled "Northern Coastal Scrub Rare Plant Habitat Area" and shows the boundaries of this area as the side yard property lines, the mean high water line, and the western edge of the existing residential structure, all outlined in bold, shall be attached to the deed restriction.

Seasonal high weed mowing shall occur to vegetated areas of parcel on the inland side of the existing residential structure, under and near existing pine trees. The intent of the mowing is to keep higher growing weeds and brush from crowding out existing rare plants.

Invasive plants iceplant (*Carpobrotus* spp.), English ivy (*Hedera helix*), and periwinkle (*Vinca major*) shall be removed by hand from all areas of the parcel as outlined in the survey report.

The contractor shall follow industry best management practices for erosion control.

A copy of the staff report and coastal permit for CDU 9-2006 must be provided to the contractor and all sub-contractors conducting the work, and must be in their possession at the work site. This requirement is intended to ensure that the project construction is done in a manner consistent with the submitted application and all other supplemental information contained in the staff report.

4. Prior to commencement of construction activities for the residence, applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation and construct appropriate improvements to protect the County road during the construction phase of the project. In conformance with encroachment permit procedures administered by the Mendocino County Department of Transportation, applicant shall construct a Standard Private Driveway onto Old Coast Highway (CR 513), to a minimum width of ten (10) feet, area to be improved fifteen (15) feet from the edge of the County road, to be surfaced with surfacing comparable to that on the County road.

Staff Report Prepared By:

April 11, 2007
Date

T Signature on File
Teresa Beddoe
Planner I

Attachments:

Exhibit A	Location Map
Exhibit B	Site Plan
Exhibit C	Floor Plans - Existing
Exhibit D	Floor Plans - Proposed
Exhibit E	Elevations – Existing
Exhibit F	Elevations – Proposed
Exhibit G	Deed Restriction Area

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 (For an appeal to the Mendocino County Board of Supervisors.)

SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning – Ukiah	Check lot coverage, barn needs to be 50' from property lines.
Department of Transportation	Standard private drive encroachment/permit needed.
Environmental Health – Fort Bragg	Comments may be solicited from North Gualala Water and Gualala Community Service District.
Building Inspection – Fort Bragg	No comment.
Assessor	No response.
Department of Fish & Game	Concurrence with proposed mitigations.
Coastal Commission	No response.
GMAC	Voted to recommend approval. GMAC comments outlined in GMAC section above.
North Gualala Water Co.	No comment.
Gualala Community Services District	Will serve.
U.S. Fish and Wildlife Service	The project with the mitigation measures proposed is unlikely to result in incidental take of Behren's silverspot butterfly.

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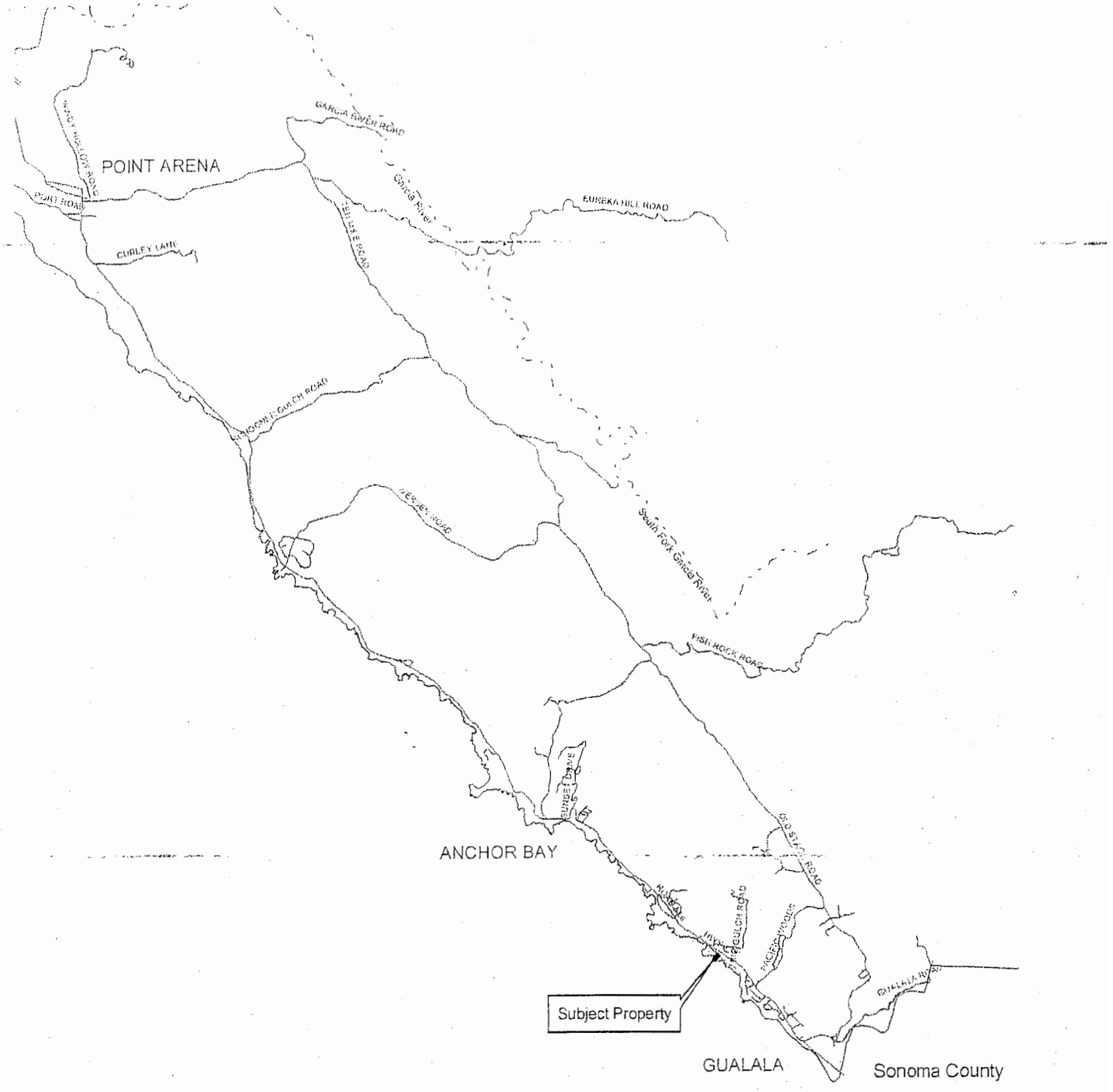

EXHIBIT A

LOCATION MAP

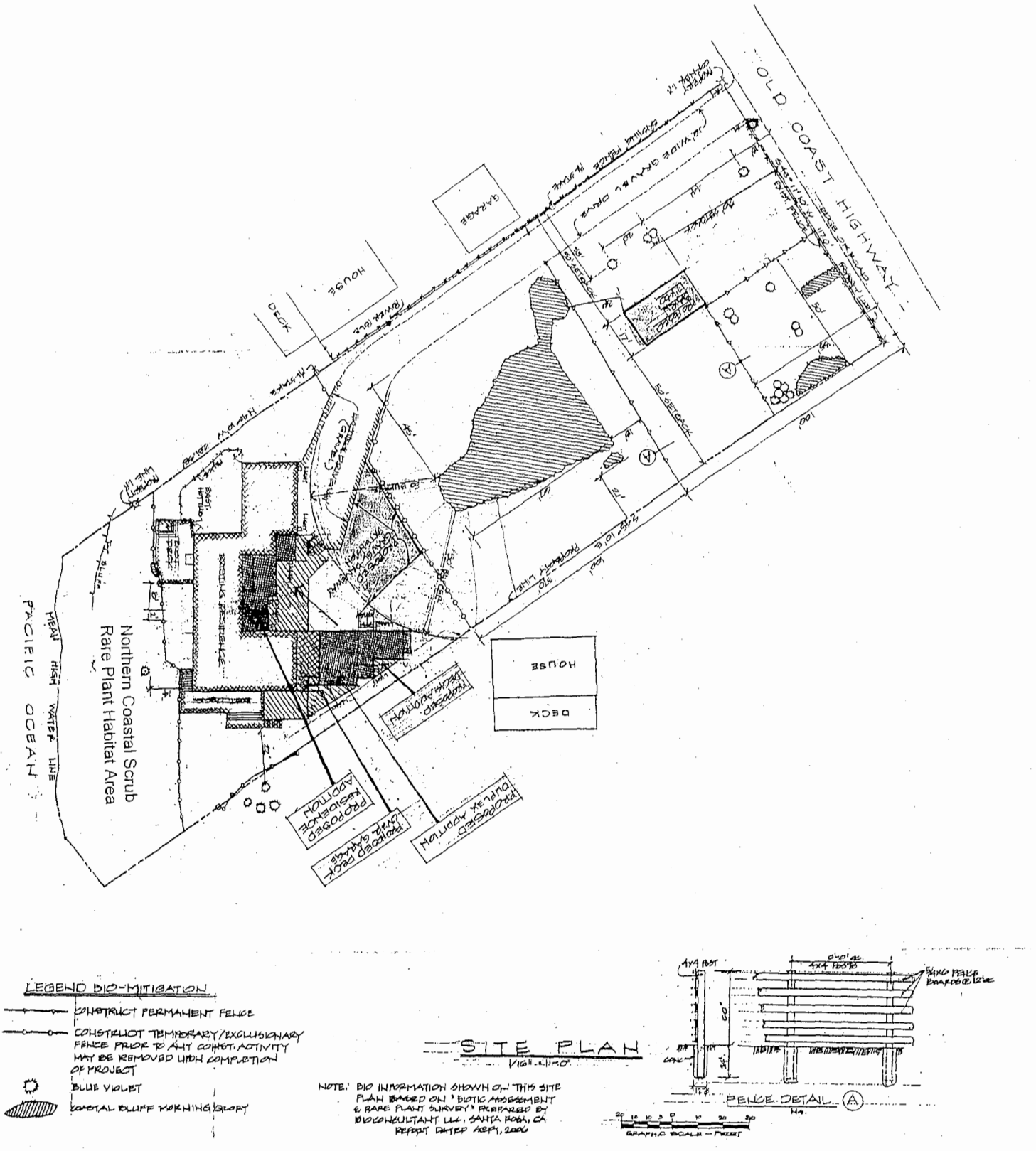

EXHIBIT B

SITE PLAN

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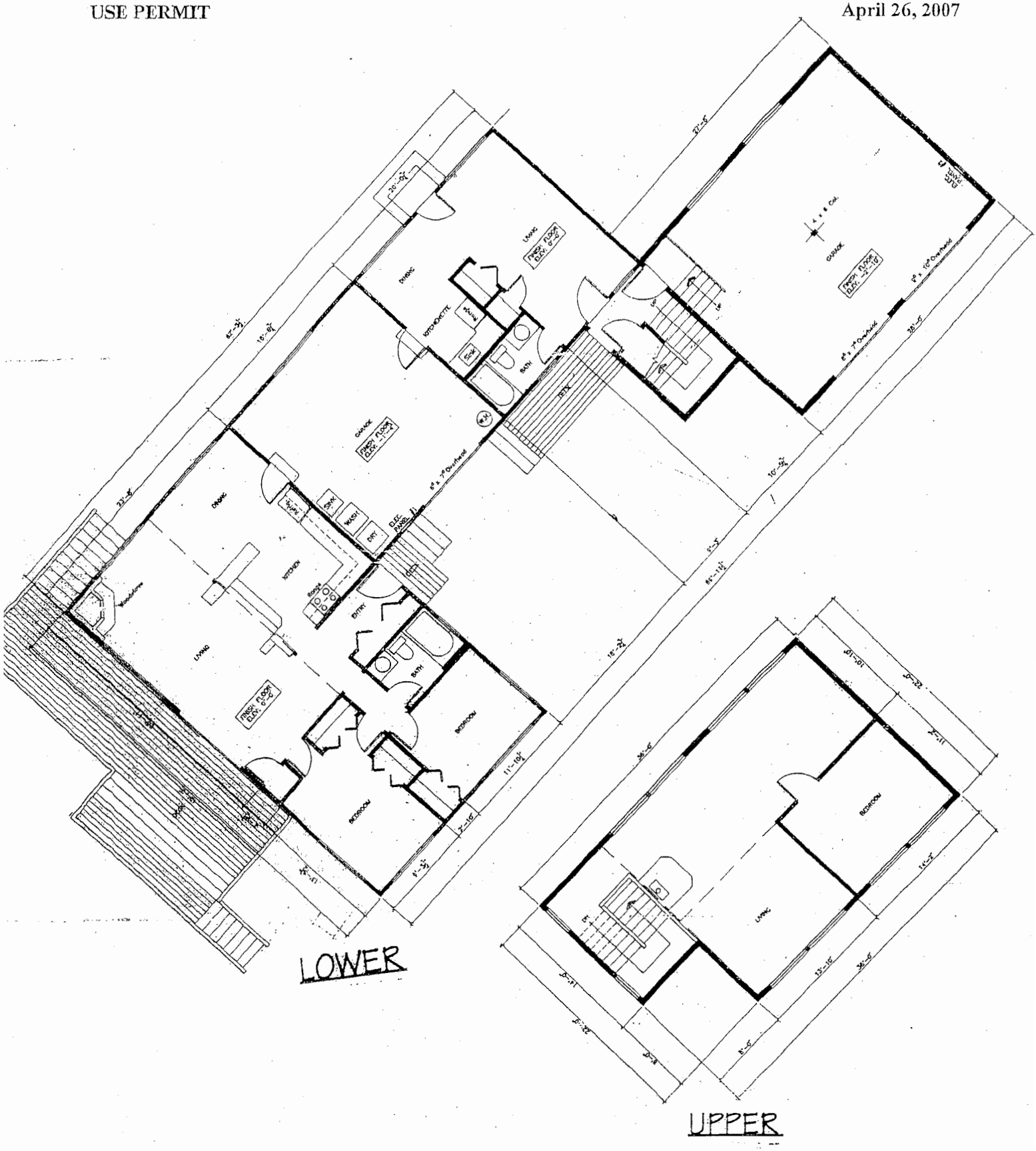

EXHIBIT C

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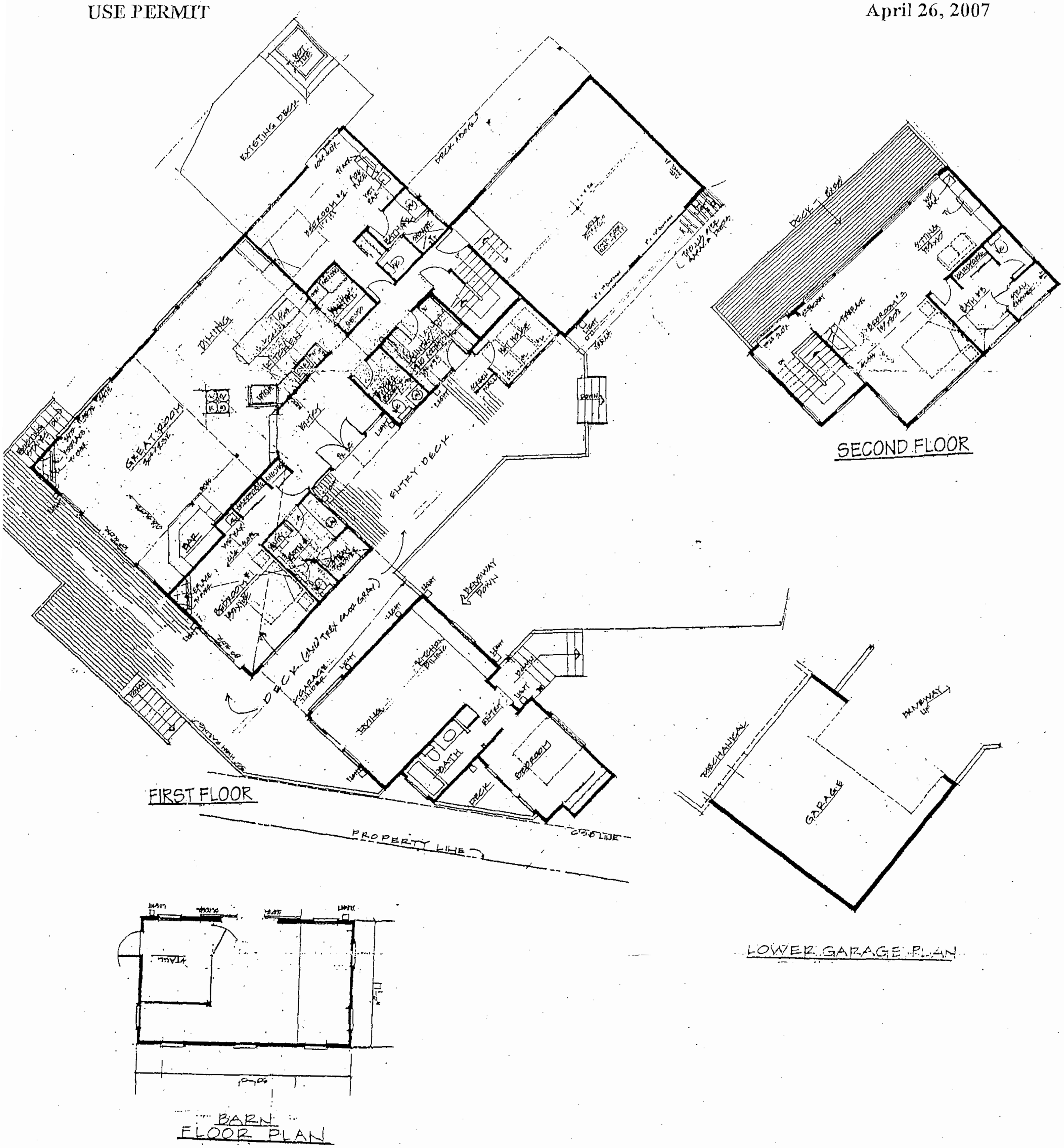
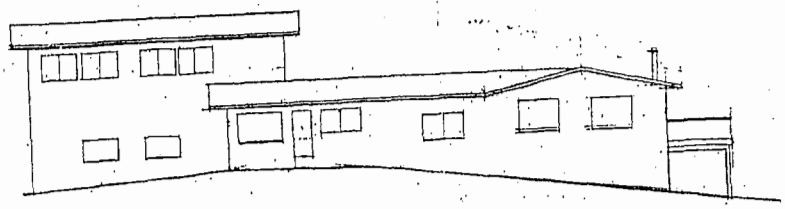

EXISTING DECK
DINING
GREAT ROOM
BAR
ENTRY DECK
DRIVEWAY DOWN
GARAGE
DECK
LIVING
BATH
BEDROOM
FIRST FLOOR
PROPERTY LINE
SECOND FLOOR
DRIVEWAY UP
GARAGE
LOWER GARAGE PLAN
BARN
FLOOR PLAN

NO SCALE



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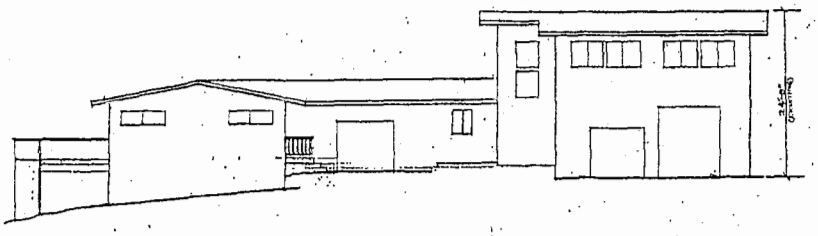

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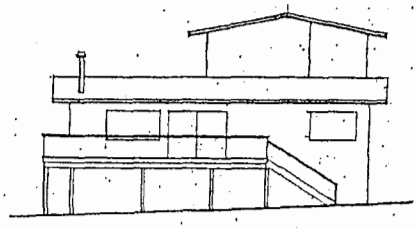

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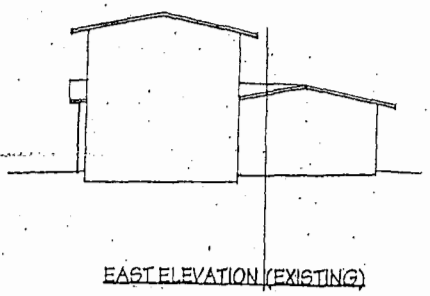

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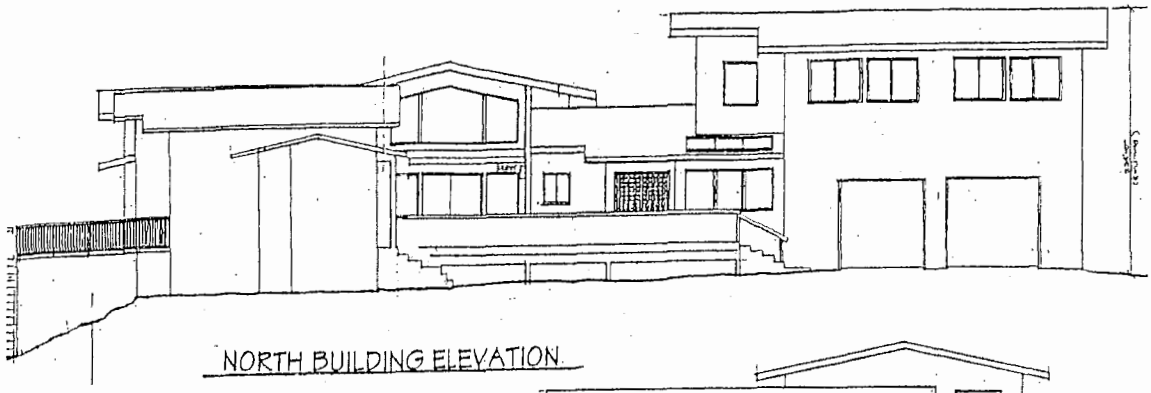

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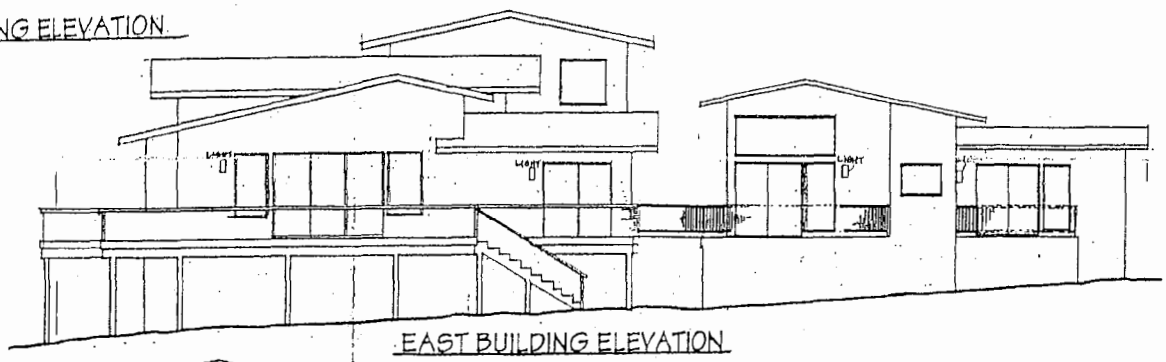

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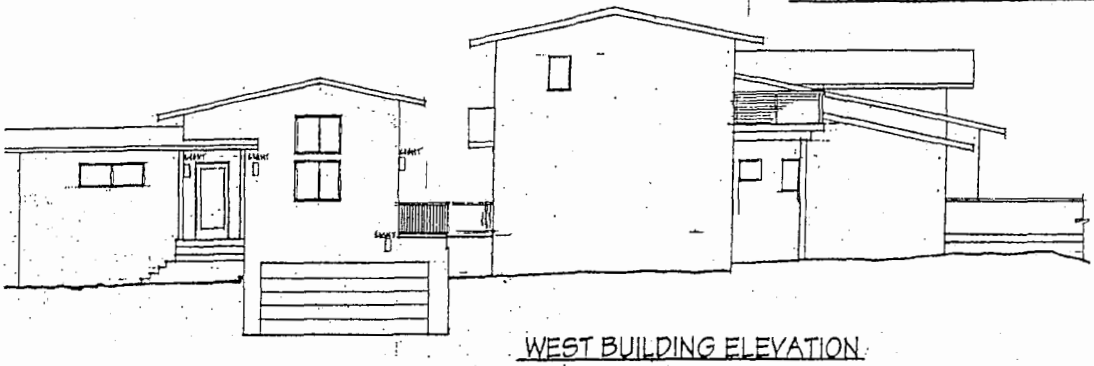

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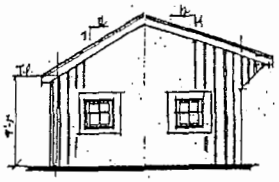
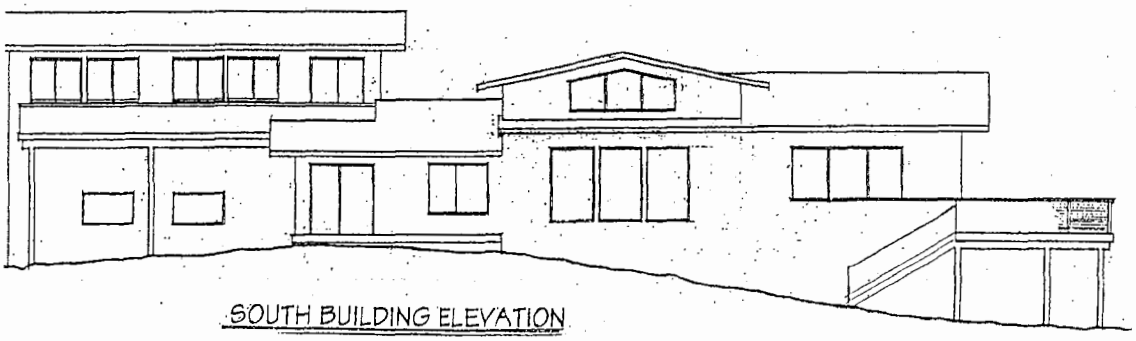


BARN - EAST



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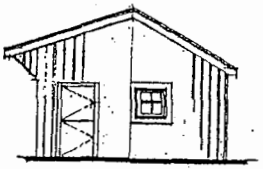

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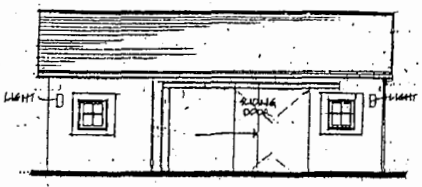
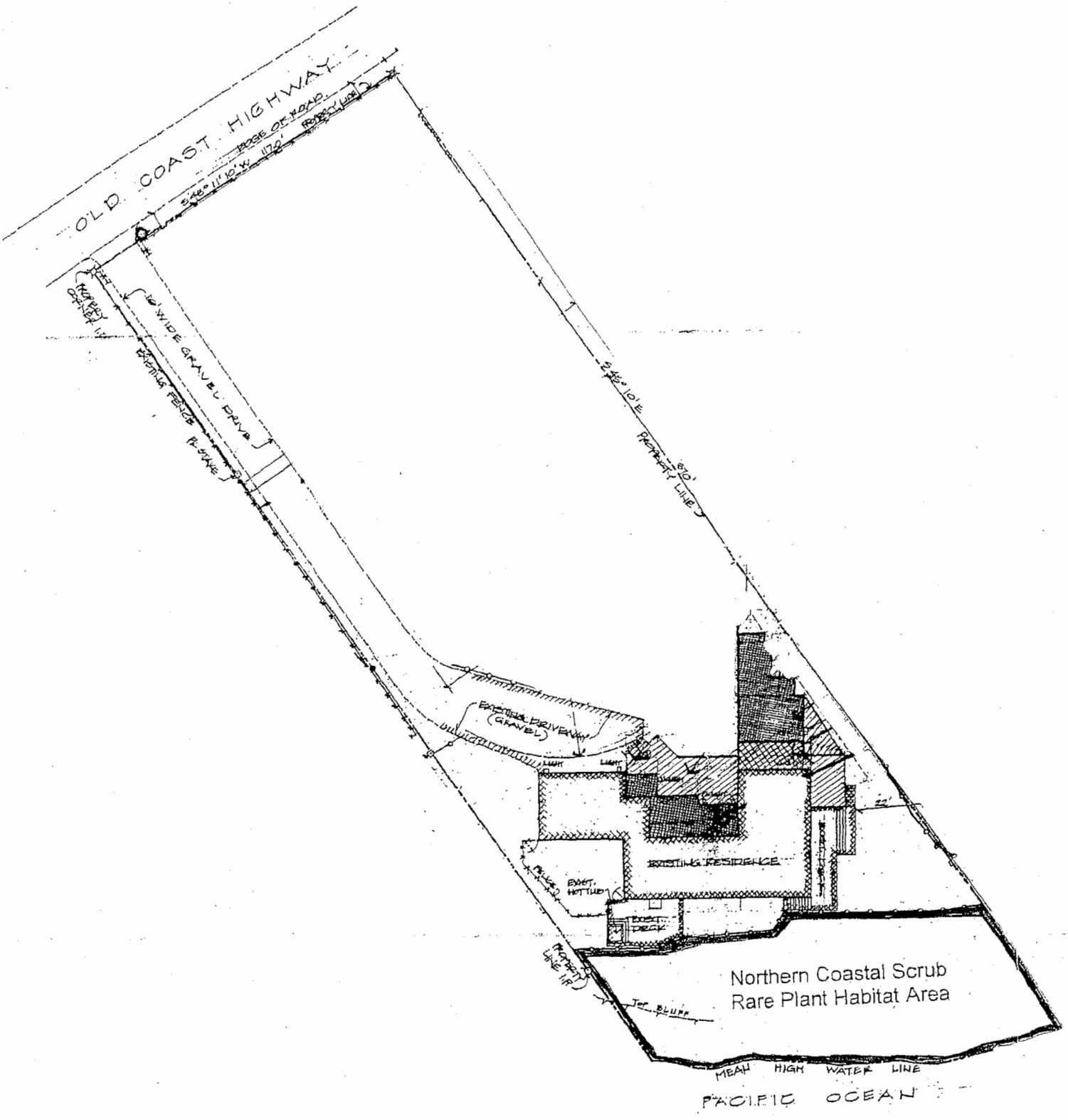


BARN - NORTH

EXHIBIT F

ELEVATIONS - PROPOSED

NO SCALE


OLD COAST HIGHWAY
EDGE OF ROAD
S46°11'16"W 172'
PROPERTY LINE
10' WIDE GRAVEL DRIVE
EXISTING FENCE
PLANTER
S42°10'E
PROPERTY LINE
870'
EXISTING DRIVEWAY (GRAVEL)
EXISTING RESIDENCE
EXIST. HOT TUB
EXIST. DECK
PROPERTY LINE
TOP BLUFF
Northern Coastal Scrub
Rare Plant Habitat Area
MEAN HIGH WATER LINE
PACIFIC OCEAN

BIOTIC ASSESSMENT
&
RARE PLANT SURVEY

Moore Project

(APN 145-121-003)

Sept., 2006

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EXHIBIT NO. 11
APPEAL NO.
A-1-MEN-07-021
MOORE
BIOLOGICAL ASSESSMENT
(1 of 33)

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BIOTIC ASSESSMENT AND RARE PLANT SURVEY

Greg and Sandra Moore (APN 145-121-03)

SUMMARY

A biotic assessment and rare plant survey conducted at parcel APN 145-121-03 *on May 26, August 7, and September 1, 2006 resulted in the discovery of coastal bluff morning-glory* (Calystegia purpurata *ssp.* saxicola), *a CNPS List 1B taxon. Approximately 213 morning-glory plants were observed in an open stand of bishop pine and Monterey cypress located between Old Coast Highway and an existing duplex. An estimated 45 individuals were observed within and alongside northern coastal scrub habitat on the coastal bluff.*

The survey also detected a limited population of early blue violet (Viola adunca), *the primary larval host plant for the federally endangered Behren's silverspot butterfly* (Speyeria zerene behrensii). *Due to the presence of the on-site host plant and other potential habitat features, an additional site assessment and survey for the silverspot butterfly was conducted by Richard Arnold, Ph.D., with negative results. The Project Site was assessed as containing only limited resources for special-status wildlife and none were observed during the three-day site visits.*

The rare morning-glory plants and their habitat meet the definition within the County of Mendocino's Local Coastal Program (LCP) as an "environmentally sensitive habitat area" (ESHA). The project proposes a reduced buffer width for the rare plant ESHA. This report presents a buffer zone analysis addressing the reduced buffer to the rare plant occurrences, and it offers mitigation measures to avoid, reduce, and mitigate potential negative impacts of the proposed development.

INTRODUCTION

Howard E. Curtis, AIA has applied for Coastal Development Permit (CDP) # 18-2006 on behalf of property owners Greg and Sandra Moore. The CDP application is a remodel and improvement project on a single parcel (APN 145-121-03) in Gualala, California.

The Mendocino County Department of Planning and Building Services is responsible for protecting biotic resources during planned developments in the Coastal Zone, and consequently requires biological studies be submitted with development applications when environmentally sensitive habitat areas (ESHAs) are thought to be nearby. To comply with county regulations to protect rare species and environmentally sensitive habitats, Mr. and Mrs. Moore contracted BioConsultant LLC to perform a site assessment and survey for the presence of potentially occurring special-status plant species and /or sensitive habitat areas on the Project Site. The results of these surveys are presented in this report and will be submitted to the Mendocino County Planning Department representative and to the landowners.

Project Site Location
The Project Site is located one mile north of Gualala and west of State Highway 1. The physical address is 37900 Old Coast Highway, Gualala, CA (APN 145-121-03) (**Figure 1**). Situated on a coastal bluff in a low-density residential neighborhood, the Project Site lies between Old Coast Highway and the Pacific Ocean and is oriented to the southwest. It is bounded by developed parcels to the north and south.

Proposed Development
The project proposes to convert an existing duplex to a single-family residence with the addition of 450 sq. ft. of living space, 280 sq. ft. of upper deck, and 1315 sq. ft. of lower decking. Part of the addition includes a room extension that will lengthen a portion of the west wall out 4 ft. and extend it 22 ft. to an existing deck. A 510 sq. ft. barn/utility shed and a 640 sq. ft. "granny unit" will be also constructed.

The residence will be serviced by existing utilities and an on-site well and septic system. An existing gravel driveway provides access. Minimal cypress tree (1-2) removal may be necessary for the placement of the granny unit. The development site plan and rare and sensitive plant locations are shown in **Figure 2**.

Project Site Description
The Project Site's configuration, boundaries, existing and proposed structures, and rare and sensitive plant locations are mapped on Figure 2. A color aerial photo shows the Project Site and the surrounding environmental setting (**Figure 3**). Used together, Figures 2 and 3 provide a complete representation of the site and its environs.

The rectangular-shaped, 0.95 acre parcel is situated on a level marine terrace, extending from Old Coast Highway to the outer edge of the coastal bluff (see Figure 3). An open forest consisting mostly of native bishop pine and non-native Monterey cypress covers about two thirds of the parcel, from the roadway to the existing duplex. South and west of the duplex, the windswept outer bluff area is primarily composed of dense northern coastal scrub, which spills over the lip of the bluff onto near-vertical sea cliffs.

A gravel driveway runs along the northwest boundary leading to the duplex, and it is flanked by a row of cypresses on the neighboring parcel to the north. A wide mowed path and a row of Monterey pines on the neighboring parcel to the south define the southeast boundary.

According to the Soil Survey of Mendocino County, California, Western Part (2001), the Project Site is underlain by soil mapping unit *225: Windyhollow loam, 0 to 5 percent slopes.* This very deep, somewhat poorly drained loam is on marine terraces, where it formed in alluvium derived from mixed rock sources. The vegetation is mainly perennial grasses and forbs. Permeability is moderately slow and available water capacity is high. The soil is saturated with water for brief or long periods following episodes of heavy rain from December through April. Surface runoff is very slow or slow, and the hazard of water erosion is slight if the surface is left bare. The main limitations affecting homesite development on the Windyhollow soil are the seasonally saturated soil conditions and the moderately slow permeability in the subsoil. Surface drainage is needed for roads and buildings.

Literature Review
Prior to conducting the field surveys, the California Department of Fish and Game Natural Diversity Database (CNDDB) [2006] was queried for special-status species and natural communities reported from the Gualala, Point Arena, Saunders Reef, and Stewart's Point USGS 7.5 minute quadrangles. The resulting CNDDB list, which includes 12 animal species and 27 plant species categorized as endangered, threatened, rare, sensitive, and/or species of special concern as well as 5 rare natural communities, is attached as **Appendix A**.

A review of the California Native Plant Society's *Electronic Inventory of Rare and Endangered Plants of California* (CNPS 2006) for the 4-quadrangle area resulted in 14 additional plant species. **Appendix B** combines the results of the CNDDB and CNPS queries and is a comprehensive list of all 41 special-status plants with potential to occur in the Project Site vicinity.

The following six plant species have cited CNDDB occurrences within one mile of the Project Site: coastal bluff morning-glory, swamp harebell, supple daisy, thin-lobed horkelia, coast lily, and purple-stemmed checkerbloom. An overlapping polygon of the Townsend's big-eared bat and Behren's silverspot butterfly (occurrence #3) located 1.16 miles to the north are the only nearby wildlife records.

SITE ASSESSMENT AND SURVEY RESULTS

BioConsultant LLC staff, Derek Marshall and Linda Esposito, conducted a habitat-based assessment and survey for rare and endangered species on May 26, 2006. The two-person survey effort duration totaled 4.25 hours. The investigators walked the entire site, making a careful search for potentially occurring special-status species. They noted and recorded details of terrain, hydrology, plant communities, and the presence of individual plant and animal species. Plant samples were obtained for diagnostic review in the laboratory.

Having determined the identity of specimens collected May 26 as the special-status coastal bluff morning-glory, they returned to the site on August 7 with BioConsultant LLC staff Kim Fitts to document the size and extent of the population and its proximity to the proposed structures and also to survey for late-flowering special-status plants. Rare plant habitat and other sensitive resources were mapped with GPS. The three-person follow-up survey effort duration totaled 3.5 hours. Kim Fitts and Derek Marshall made a final brief visit on September 1, to count rare plants in the area of impact following the redesign of the project.

Special-status Plant Assessment
The entire parcel was surveyed on foot to the bluff edge. As shown in Figure 3, the sea cliffs at the southwest boundary are mostly sheer rock, with vegetation limited to the upper cliff faces. This vegetation was visually inspected from vantage points on the bluff.

Vegetation Communities

The outer bluff is open except for a half dozen non-native Monterey cypresses (*Cupressus macrocarpa*) located south of the existing duplex. Most of the outer bluff west of the duplex is covered with northern coastal scrub. From the cypress trees to the south edge of the duplex, the ground is variously duff covered, bare, or sparsely vegetated with non-native weeds such as rattlesnake grass (*Briza maxima*) and rough cat's-ear (*Hypochaeris radicata*) and native plants including manycolored lupine (*Lupinus variicolor*), pussy ears (*Calochortus tolmiei*), and tufted hairgrass (*Deschampsia cespitosa*). This bearish, duff covered area gives way to a very small remnant of coastal terrace prairie, which grades into the scrub. A single large, sprawling, wind-pruned native grand fir (*Abies grandis*) is centered at the bluff edge. As previously described, an open stand of pine and cypress covers the inner two thirds of the parcel, from the duplex to the roadway, and the boundaries with neighboring parcels are marked by a cypress and a Monterey pine row. There is a cypress-dominated area just east of the duplex.

The pattern of native vegetation suggests that the historical natural communities of the site included coastal terrace prairie as well as northern bishop pine forest and northern coastal scrub. It is likely that coastal terrace prairie was once more extensive, covering the present site of the duplex and some or all of the cypress-dominated area east of the duplex. Bishop pine may be naturally occurring, but it is conceivable that some or all of the trees were planted. Although bishop pine is a native tree and northern bishop pine forest is a component of the local plant community mosaic, the Windyhollow soils of the site typically support perennial grasses and forbs. Bishop pine, which is tolerant of saturated soil conditions, is a suitable tree species to plant as a windbreak on this soil unit, according to the Mendocino County Soil Survey.

Northern bishop pine forest

According to Holland (1986), this community often occurs on sterile, rocky soil and is typically dominated by pure stands of bishop pine (*Pinus muricata*). An understory of shrubs and perennial herbs is nearly continuous in open stands on moist sites and nearly absent from dense stands or dry, rocky sites. Characteristic understory species are bracken (*Pteridium aquilinum var. pubescens*), sword fern (*Polystichum munitum*), coffeeberry (*Rhamnus californica*), poison oak (*Toxicodendron diversilobum*), black huckleberry (*Vaccinium ovatum*), and *Rubus* species.

At the Project Site, widely spaced bishop pine and Monterey cypress form the overstory of the forested area along with two small diameter Douglas-firs. A shrub layer is lacking except for a single coffeeberry about 15 ft. tall. Cypress is the sole tree species in the area immediately east of the duplex; here the ground is covered with cypress needles and is devoid of understory vegetation. The remaining forest floor is covered with a thick layer of duff and is relatively sparsely vegetated with ferns, vines, and annual and perennial grasses and forbs. Typical forest natives such as bracken, sword fern, bedstraw (*Galium triflorum, G. aparine*), milkwort (*Polygala californica*), yerba buena (*Satureja douglasii*), and trailing California blackberry (*Rubus ursinus*) co-occur with non-native forbs and grasses such as velvet grass (*Holcus lanatus*), bull thistle (*Cirsium vulgare*), and fireweed (*Erechtites glomerata*). There is also a scattering of native plants more

typical of coastal scrub and open grassland, including coast paintbrush (*Castilleja wightii*), coastal bluff morning-glory, and beach strawberry (*Fragaria chiloensis*).

This community is similar to northern bishop pine forest, but in contrast to the native community, there are many planted and/or naturalized cypress trees and a highly modified understory. According to the Holland description, an open bishop pine stand on a moist site such as the subject parcel would typically have a continuous understory with numerous shrubs.

Northern coastal scrub

Holland (1986) describes northern coastal scrub as a community of usually dense shrubs from 0.5 to 2 m. in height with scattered grassy openings, typically occurring on windy, exposed sites with shallow, rocky soils. This community has a patchy distribution along the coast where it is often interspersed with coastal terrace prairie.

At the Project Site, the scrub community is strongly dominated by densely mounded native bearberry (*Arctostaphylos uva-ursi*). It is entirely native in composition, with characteristic species including Henderson's angelica (*Angelica hendersonii*), California blackberry, Carmel ceanothus (*Ceanothus griseus*), coffeeberry, California-aster (*Lessingia filaginifolia* var. *californica*), coast goldenrod (*Solidago spathulata* ssp. *spathulata*), yarrow (*Achillea millefolium*), cows clover (*Trifolium wormskioldii*), California brome (*Bromus carinatus*), and Douglas's iris (*Iris douglasiana*). As seen from the bluff edge, the coastal scrub vegetation on the upper cliff face is similar in composition but also includes liveforever (*Dudleya* sp.), a native succulent.

A stated, a small remnant patch of coastal terrace prairie grades into the scrub habitat. The most important species is tufted hairgrass, a perennial native bunchgrass. Coastal terrace prairie is considered a rare natural community, according to the CNDDB.

Non-native invasive species

A portion of the outer bluff edge (between the wind-pruned grand fir and the cypresses) is covered by common hottentot fig, also known as highway ice plant (*Carpobrotus edulis*). Highway ice plant is a rapidly growing, succulent perennial that has been widely planted for soil stabilization and landscaping. It forms deep, impenetrable mats that spread easily beyond landscape plantings to invade native plant communities. A portion of the ice plant occurrence has apparently been treated with herbicide as evidenced by a grey, tangled mass of dead stems; however, vigorous regrowth is present throughout the treated area. The mat spills over the lip of the bluff onto the upper cliff.

English ivy (*Hedera helix*) is present within the forested area, where it covers the lower trunks of some bishop pines and also occurs as scattered small plants in the understory. Just beyond the east corner of the Project Site, a source plant covers some wooden fencing along the roadway. English ivy also grows against the existing duplex on the east side. This perennial non-native can damage fences, smother forest trees, and destroy understory vegetation.

Greater periwinkle (*Vinca major*) occurs in a single location on the east side of the duplex, in the opening between the existing residences. It is adjacent to the English ivy

occurrence described above. Greater periwinkle forms dense carpets and competes with native species.

Rare, Threatened and Endangered Plants

Of the 41 special-status plant species with potential to occur in the Project Site vicinity (see Appendix B), 24 have potential to occur in habitats present at the Project Site, based upon the May 26, 2006 site assessment. **Table 1** lists these species with their common names, blooming times, status, and the plant communities in which they occur.

Table 1. Rare, threatened and endangered plants with potential to occur in habitats present at the Project Site.

Scientific Name	Common Name	Plant Communities	Bloom Time	Status
Agrostis blasdalei	Blasdale's bent grass	Coastal bluff scrub, coastal dunes, coastal prairie	May-Jul	CNPS List 1B.2
Angelica lucida	sea-watch	Coastal bluff scrub, coastal dunes, coastal scrub, marshes & swamps (coastal salt)	May-Sep	CNPS List 4.2
Calamagrostis bolanderi	Bolander's reed grass	Bogs and fens, broadleafed upland forest, closed-cone coniferous forest, coastal scrub, meadows & seeps, marshes & swamps, north coast coniferous forest/mesic	May-Aug	CNPS List 4.2
Calamagrostis foliosa	leafy reed grass	Coastal bluff scrub, north coast coniferous forest/rocky	May-Sep	CNPS List 4.2; CA Rare
Calandrinia breweri	Brewer's calandrinia	Chaparral, coastal scrub/sandy or loamy, disturbed sites and burns	Mar-Jun	CNPS List 4.2
Calystegia purpurata ssp. *saxicola*	coastal bluff morning-glory	Coastal dunes, coastal scrub	May-Sep	CNPS List 1B.2
Campanula californica	swamp harebell	Bogs & fens, closed-cone coniferous forest, coastal prairie, meadows & seeps, marshes & swamps (freshwater), north coast coniferous forest/mesic	Jun-Oct	CNPS List 1B.2
Carex californica	California sedge	Bogs & fens, closed-cone coniferous forest, coastal prairie, meadows & seeps, marshes and swamps (margins)	May-Aug	CNPS List 2.3
Carex saliniformis	deceiving sedge	Coastal prairie, coastal scrub, meadows & seeps, marshes & swamps (coastal salt)/mesic	Jun	CNPS List 1B.2
Castilleja mendocinensis	Mendocino coast Indian paintbrush	Coastal bluff scrub, closed-cone coniferous forest, coastal dunes, coastal prairie, coastal scrub	Apr-Aug	CNPS List 1B.2
Erigeron supplex	supple daisy	Coastal bluff scrub, coastal prairie	May-Jul	CNPS List 1B.2
Fritillaria roderickii	Roderick's fritillary	Coastal bluff scrub, coastal prairie, valley & foothill grassland	Mar-May	CNPS List 1B.1; CA Endangered
Gilia capitata ssp. *pacifica*	Pacific gilia	Coastal bluff scrub, chaparral, coastal prairie. valley & foothill grassland	Apr-Aug	CNPS List 1B.2
Gilia capitata ssp. *tomentosa*	woolly-headed gilia	Coastal bluff scrub (rocky, outcrops)	May-Jul	CNPS List 1B.1
Lasthenia macrantha ssp. *bakeri*	Baker's goldfields	Closed-cone coniferous forest, coastal scrub, meadows & seeps, marshes & swamps	Apr-Oct	CNPS List 1B.2

Lasthenia macrantha ssp. *macrantha*	perennial goldfields	Coastal bluff scrub, coastal dunes, coastal scrub	Jan-Nov	CNPS List 1B.2
Leptosiphon acicularis	bristly leptosiphon	Chaparral, cismontane woodland, coastal prairie, valley & foothill grassland	Apr-Jul	CNPS List 4.2
Lilium maritimum	coast lily	Broadleafed upland forest, closed-cone coniferous forest, coastal prairie, coastal scrub, marshes & swamps (freshwater), north coast coniferous forest	May-Aug	CNPS List 1B.1
Lotus formosissimus	harlequin lotus	Broadleafed upland forest, coastal bluff scrub, closed-cone coniferous forest, cismontane woodland, coastal prairie, coastal scrub, meadows & seeps, marshes & swamps, north coast coniferous forest, valley & foothill grassland/wetlands, roadsides	Mar-Jul	CNPS List 4.2
Perideridia gairdneri ssp. *gairdneri*	Gairdner's yampah	Broadleafed upland forest, chaparral, coastal prairie, valley & foothill grassland, vernal pools/mesic	Jun-Oct	CNPS List 4.2
Sidalcea malachroides	maple-leaved checkerbloom	Broadleafed upland forest, coastal prairie, coastal scrub, north coast coniferous forest, riparian woodland/often in disturbed areas	Apr-Jul	CNPS List 1B.2
Sidalcea malviflora ssp. *purpurea*	purple-stemmed checkerbloom	Broadleafed upland forest, coastal prairie	May	CNPS List 1B.2
Stellaria littoralis	beach starwort	Bogs & fens, coastal bluff scrub, coastal dunes, coastal scrub, marshes & swamps	Mar-Jul	CNPS List 4.2
Veratrum fimbriatum	fringed false-hellebore	Bogs & fens, coastal scrub, meadows & seeps, north coast coniferous forest/mesic	Jul-Sep	CNPS List 4.3

CNPS List:

1B – Rare or Endangered in California and elsewhere
2 – Rare or Endangered in California, more common elsewhere
3 – Plants for which we need more information – Review list
4 – Plants of limited distribution – Watch list

CNPS Threat Code extension:

1 – Seriously endangered in California (over 80% of occurrences threatened / high degree and immediacy of threat)
2 – Fairly endangered in California (20-80% occurrences threatened)
3 – Not very endangered in California (<20% of occurrences threatened or no current threats known)

Early blue violet (*Viola adunca*) is also found in habitats present at the site; this species flowers from April to June.

The ideal time to survey for special-status plants is during the season of active growth and at the blooming time of the target species, and two or more surveys are sometimes required to detect early and late flowering plants. The May 26 and August 7, 2006 rare plant surveys coincided with the blooming period of early blue violet and all but one of the above-listed 24 special-status plants, deceiving sedge, which blooms in June.

Plant Survey Results
Coastal bluff morning-glory, a special-status plant, was discovered at the Project Site. The Behren's silverspot butterfly larval host plant, early blue violet, was also found (see below). No other special-status plants were observed during the surveys.

A careful search revealed only one plant belonging to the sedge (*Carex*) genus, foothill sedge (*Carex tumulicola*), which occurs in the forested area. We can therefore reasonably conclude that deceiving sedge is not present at the Project Site.

Coastal bluff morning-glory
The May 26 survey identified coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) in the forest and coastal scrub habitats. Noting morphological variation within the population, the investigators collected a sample of plants to analyze in the laboratory and to press as vouchers. On August 7, they mapped the rare plant population extent and counted individuals in each of 5 discrete polygons (Figure 2) by first outlining polygon boundaries with flagging and then walking parallel transects 2 ft. apart. In order to determine the taxonomic affinity of the population to the rare subspecies, they collected additional voucher specimens representing the complete range of morphological variation present at the site.

The population was estimated to number between 258 and 300 individuals. Within four polygons, 213 morning-glory plants were counted in the bishop pine forest (**Figure 4**), and approximately 45 occur in Polygon 5 in coastal scrub on the outer bluff (**Figure 5**). Plants ranged from sprawling vines on the forest floor, to clambering vines in coastal scrub and growing up through grand fir on the bluff, to tiny vines in bare soil alongside the existing duplex. The rare morning-glory habitat extent totals 4,365 sq. ft. or 0.1 acre.

Table 2 provides the numbers of individual plants at each location, polygon areas, distances from project-related impacts, and proximity to proposed structures or proposed buffer zones.

Table 2. Species found on Project Site, *Calystegia purpurata ssp. saxicola; August, 2006*

Species ID	# of Plants	Distance From Impact (ft)	Area (Sq')	Description
East of existing duplex- distances measure on-site				
Poly 1	127	25ft.(granny) 30ft.(barn)	2500	Located between granny unit and barn
Poly 2	9	80ft.(granny) 40ft.(barn)	30	Located between granny unit and barn
Poly 3	46	45ft.(barn)	145	Protected with permanent fencing
Poly 4	31	50ft.(barn)	90	Protected with permanent fencing
West of existing duplex- distances measured on-site				
Poly 5	45	0-60(duplex)	1600	>5 plants impacted – construction fencing
TOTAL	**258**		4,361 (0.1ac)	

Coastal bluff morning-glory is a perennial herb belonging to the family Convolvulaceae. According to the CNPS *Electronic Inventory* (2006), it occurs between 10 and 105 meters elevation in Contra Costa, Lake, Mendocino, Marin, and Sonoma counties in coastal dune and coastal scrub habitats and is endemic to California. Coastal bluff morning-glory has no state or federal threatened or endangered status. However, it is a CNPS List 1B.2 taxon. The code "2" in the listing indicates that this taxon is fairly endangered in California, with 20-80% of occurrences threatened.

List 1B plants are rare throughout their range. They are judged to be vulnerable under present circumstances or to have a high potential for becoming so because of their limited or vulnerable habitat, their low numbers of individuals per population (even though they may be wide ranging), or their limited numbers of populations. It is mandatory that they be fully considered during preparation of environmental documents relating to CEQA (CNPS, 2006). Coastal bluff morning-glory is eligible for listing under the California Endangered Species Act (CESA), and as such, the plants and their habitat meet the definition within the County of Mendocino's Local Coastal Program (LCP) as an "environmentally sensitive habitat area" (ESHA).

Coastal bluff morning-glory is one of two subspecies of *Calystegia purpurata*. The common subspecies, climbing morning-glory (*C. purpurata* ssp. *purpurata*), overlaps the rare subspecies in range and grows in chaparral as well as coastal scrub habitats. According to *The Jepson Manual* (Hickman, 1993), features that distinguish coastal bluff morning-glory from the common subspecies are a trailing or weakly climbing growth habit; stems <1 meter long; leaves ovate-triangular to kidney-shaped, with sinuses generally more-or-less closed, tips generally rounded to notched, lobes rounded, and margins more-or-less wavy; and flower bractlets often alternate and lobed. Contrasting features in climbing morning-glory are a strongly climbing growth habit; stems >1 meter long; leaves triangular in shape, with sinuses v-shaped, tips narrowly pointed, lobes strongly angled, and margins not wavy; and flower bractlets opposite and unlobed. Intergradation between the subspecies is common.

Specimens from the Project Site were carefully examined and found to possess the trailing to weakly climbing growth habit as well as an overall preponderance of other features that distinguish the rare taxon from the common one. There were no plants perfectly matching the common ssp. *purpurata*, but numerous individuals matched ssp. *saxicola* in all respects. Some plants displayed intermediate characters, and a small number possessed clear ssp. *purpurata* traits such as triangular leaf shape, narrowly pointed tips, and somewhat angled lobes. However, traits of the rare taxon were more prevalent overall. We therefore determined that the Project Site contains an occurrence of coastal bluff morning-glory.

To confirm our findings, we compared specimens from the Project Site to a digital photograph of a herbarium specimen at the California Consortium of Herbaria website (http://ucjeps.berkeley.edu/consortium). In addition, during the August 7 survey, we visited a reference population approximately 200 ft. from the Project Site, CNDDB occurrence #23, and compared the plants to those of the subject parcel. Richard Brummitt, the recognized authority on the genus Calystegia, has positively identified

occurrence #23. We noted that two additional CNDDB occurrences of the rare taxon (#13 and #22) are located within one mile of the Project Site.

It is our opinion that the on-site population shows evidence of intergradation with the common ssp. *purpurata* but has an overall greater affinity to the rare ssp. *saxicola*. In a brief phone consultation, CDFG staff Corrine Grey stated that pursuit of further expert confirmation was unnecessary. We therefore treat the population as coastal bluff morning-glory in this report (**Figure 6**).

Early blue violet

A small population of early blue violet (*Viola adunca*) was discovered in two areas at the Project Site (see Figure 2). Violet clusters were flagged and individual plants were counted during the May 26 survey, when the violets were in bloom. A total of 26 to 28 individuals were counted: 19 in the understory of the bishop pine forest; 4-5 west of the duplex in northern coastal scrub; and 3-4 just off-site. **Table 3** provides the numbers of individual plants at each location, proximity to proposed structures, and protective measures.

Table 3. Species found on Project Site, early blue violet, *viola adunca;* August, 2006.

Species ID	# of Plants	Description
Viola 1	1	Near barn in pasture area
Viola 2	3	Near barn in pasture area
Viola 3	1	Near barn in pasture area
Viola 4	1	Near barn in pasture area
Viola 5	1	Protected with permanent fencing
Viola 6	2	Protected with permanent fencing
Viola 7	8	Protected with permanent fencing
Viola 8	2	Protected with permanent fencing
Viola 9	4-5	West of existing duplex- construction fencing
Viola 10	3-4	Off site- South of existing duplex- construction fencing
TOTAL	**26-28**	

Early blue violet is a perennial herb with stems clustered on thin, much-branched rhizomes. Because this species forms patches of interconnected plants, it is not always possible to make precise counts of numbers of individuals; however, individual plants were more easily counted under the bishop pine forest due to the sparseness of the understory vegetation.

Wildlife Habitat Assessment and Survey Methodology

Based upon the site assessment and the literature review, the Project Site contains limited resources for special-status wildlife. The absence of aquatic environs and Douglas-fir dominated forested habitat within the Project Site eliminates the majority of the species

on the list. The Project Site is outside of the Point Arena mountain beaver distribution range, and the limited on-site suitable habitat removed this species from consideration. Nesting raptors have no resource due to the lack of appropriate sized and shaped trees.

The pine-dominated site supported little potential habitat for the tree vole and was assessed as marginal at best. Only 2 small diameter Douglas-fir trees were present; however, since bishop pines have been recently documented as supporting vole nests, we surveyed the canopies of all trees. A survey protocol for the Sonoma tree vole is being developed; therefore the survey was conducted in adherence to the red tree vole (*Arborimus longicaudus*) protocol guidelines.

The site does not contain "cave analogs" such as abandoned buildings, bridges, or large hollowed trees required by the Townsend's big-eared bat as roosting habitat. The gradual development in the area and day-to-day human use would further limit bat species like the Townsend's bat, which is sensitive to human proximity.

The botanical survey found a population of early blue violet (*Viola adunca*) in two areas (see the Plant Survey Results section for more detail). Early blue violet is the primary larval host plant for the federally endangered Behren's silverspot butterfly (*Speyeria zerene behrensii*). A limited amount and distribution of potential late season nectar sources were also identified in the botanical surveys: in the understory of the pine forest rough cat's-ear, two species of fireweed (*Erechtites minima* and *E. glomerata*), bull thistle, and two species of sow thistle (*Sonchus asper* and *S. oleraceus*) were present; and yarrow, coast goldenrod, California-aster, manycolored lupine, and rough cat's-ear were noted west of the duplex.

Although the historic occurrences of the Behren's silverspot butterfly in the local area are thought to be extinct, and the closest extant population is located 12 miles (occurrence #7) in Point Arena, the on-site resources may represent marginally suitable habitat for the Behren's silverspot butterfly, as well as for the over-wintering monarch butterfly.

Wildlife Survey Results

The survey effort did not identify any special-status species. Sign of tree vole nests was not detected in the canopies or on the ground, and the species is not expected to occur on-site. No butterfly species were observed during the field studies; however, the surveys were conducted early in the flight period of the Behren's silverspot butterfly and prior to the mid-October arrival of over-wintering monarchs to the northern California coast.

Behren's silverspot butterfly

As stated, Behren's silverspot butterflies were not observed during our field studies; the August 7th date overlapped the summer flight period. The flight period of the single-brood butterfly depends upon environmental conditions and ranges from July to August (USFWS, 2003).

Although the site was assessed as only marginally suitable habitat for the Behren's silverspot butterfly, the proposed development plans have the potential to impact the protected butterfly's habitat, and thus require confirmation as to the suitability of the site to support the Behren's silverspot. Through a brief phone consultation with John Hunter

of USFWS, it was determined that a site assessment and a one-time presence and absence survey conducted by Richard Arnold of Entomological Consulting Services, Ltd., will be sufficient for their use in determining habitat suitability. Mr. Arnold conducted his assessment and survey on August 19, 2006 and concluded that the endangered Silverspot was unlikely to occur on-site because the habitat conditions were unsuitable, despite the presence of the host plant. BioConsultant LLC will send his letter report with a request for technical assistance to Mr. John Hunter for the final determination.

BUFFER ZONE ANALYSIS

Section 20.308.040 of the Mendocino County Coastal Zoning Code defines an environmentally sensitive habitat area (ESHA) as:

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

The subject parcel contains an ESHA consisting of a population of a rare plant, coastal bluff morning-glory, and its habitat. There is currently no buffer separating the on-site ESHA from the existing residence and associated structures.

Projects that propose construction with a buffer less than 100ft. from an ESHA must provide information that demonstrates a lesser buffer distance will not have a significant adverse impact on the habitat. The buffer zone analysis utilizing Mendocino LCP Ordinance 20.496.020 (A) through 4 (j) and 20.532.095 (4) is presented in Table 4: Reduced Buffer Analysis.

Table 4. Reduced buffer Zone Analysis.

Section 20.496.020 Coastal Zoning Ordinance	
(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.	Buffer widths were analyzed based on current on-site habitat conditions, parcel size and configuration, and existing structures.

(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.	The use of the standard 100ft. buffer for all of the EHSA's polygons would render the Project Site un-developable. Even the use of 50ft. buffers throughout would eliminate the placement of the barn and granny unit. As a result, the focus of this buffer matrix is the analysis of the least environmentally damaging proposal. Additionally, the applicant is not proposing to sub-divide the parcel and the proposed development is consistent with adjacent development within the approved subdivision. There is currently no buffer separating the on-site ESHA from the existing duplex and associated structures.
(a) Biological Significance of Adjacent Lands. The degree of significance depends upon the habitat requirements of the species in the habitat area.	The coastal scrub habitat west of the duplex is the preferred habitat type for the rare morning-glory; therefore, it is important to maintain the integrity of the natural habitat in this area. The bishop pine forest, with its highly modified understory, is not a preferred habitat for the rare species.
(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.	No buffer currently separates the on-site ESHA (a population of a rare morning-glory numbering between 258-300 individuals) from the existing duplex and associated structures. The rare plants are presently growing right up to the existing structures, but in lesser frequencies as compared to the intact coastal scrub that covers the bluff edge. The species is hardy and resilient and recovers following construction. It is anticipated that survivor plants and those outside the development zone will reoccupy the affected area and once again surround the completed structures. Mitigation measures have been developed to avoid and reduce potential negative impacts to the rare plant habitat ESHA and to improve and preserve the integrity of the rare plant habitat. These include exclusionary fencing during construction; industry best management practices for erosion control; adoption of conservation restrictions to preserve the habitat from future development or landscaping; removal of non-native invasive species; and seasonal high-weed mowing in

	the bishop pine forest to reduce weed competition in this area.
b(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species.	No special-status wildlife species were observed at the Project Site.
b(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance.	Common wildlife species are often well adapted to low-level human noise and disturbance. Continued use by the local wildlife community is expected. As stated, the rare morning-glory is hardy and well adapted to grow in and around manmade structures as long as natural habitat is maintained.
b(iii) An assessment of the impact and activity levels of the proposed development on the resource.	Adoption of the recommended mitigation measures, i.e., exclusionary fencing and industry best management practices for erosion control combined with invasive plant removal and potential restrictions on further development within the rare plant ESHA, will buffer impacts to the ESHA during and post-development. The proposed remodel and additions represent a relatively small-scale construction project.
(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.	On the Windyhollow soils of the Project Site, surface runoff is very slow or slow, and the hazard of water erosion is slight if the surface is left bare. The proposed development will take place in a nearly level area, and construction is not expected to significantly change the potential for erosion. The contractor will use the industry's best management practices for erosion control.
(d) Use of Natural Topographic Features to Locate Development	The building envelope is located in an area of nearly level topography.
(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.	The development proposes to remodel and expand an existing duplex. The additional structures (barn and granny unit) will be sited based upon the rare plant constraints.

(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.	The proposed remodel and additions are within an established subdivision, and the project has proposed appropriate mitigation measures.
(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.	The project proposes to remodel and expand an existing duplex into a single-family residence on a small parcel. A 640 sq. ft. granny unit and a 510 sq. ft. barn are also proposed. The proposal represents a fairly small-scale construction project within an established 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).	There is currently no buffer separating the on-site ESHA from the existing residence and associated structures. During construction, exclusionary fencing will protect all but 5 of the estimated 258-300 coastal bluff morning-glory plants occurring on-site. Buffer distances will vary depending on individual plant locations with respect to protective fencing and impact areas.
(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.	The applicant does not propose subdividing the property or adjusting the boundary lines.
4(a) Permitted Development. 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 functional capacity and sustainability of the rare plant habitat ESHA will be protected during development with the implementation of mitigation measures (exclusionary/protective fencing, erosion control measures). Seasonal high-weed mowing to keep weeds and brush from invading the rare plant habitat in the pine forest, invasive species removal, and provisions to keep the preferred coastal scrub habitat west of the existing duplex free from development, accessory structures, landscaping, and non-native invasive plants will help to maintain the functional capacity and natural species diversity of the ESHA.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.	The remodel portion is minimal and the plans have been redesigned to place the additions in the only remaining areas outside of the delineated ESHA polygons with the largest buffers possible. The granny unit will be sited closer to the duplex in the area largely devoid of understory with a buffer of 25ft. from the closest part of Polygon 1. The barn will be reconfigured and sited in the area between Polygons 1- 2 and 3-4, with a buffer of at least 30ft. between the polygons. These are the most feasible and least environmentally damaging locations for the additions.
(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.	All development is proposed for a nearly level area and sited to avoid the rare plant constraints. The hazard of water erosion is slight for the soils present at the site.
(d) Same as 4(a)	Same as 4(a)
(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.	As described in 4 (b), the proposed construction will occur in the most feasible and least environmentally damaging location. Mitigation measures are proposed.
(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.	The areas proposed for the additions are largely devoid of vegetation- no riparian or coastal scrub vegetation will be removed. No bare soil areas will result from the development. The Project as described will cause minimal noise, dust, artificial light and air pollution.
(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.	No riparian vegetation will be removed.
(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.	The proposed development does not include structures that would significantly impede the flow of water during large storm events.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.	Biological diversity in the rare plant habitat ESHA will be protected and enhanced by the proposed mitigation measures. Measures to eradicate non-native invasive species and to keep the rare plant habitat free from development and landscaping will also help to protect biological diversity.
(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.	Natural stream environment zones do not occur in the development area.
Sec. 20.532.095 Required Findings For all Coastal Development Permits.	
(4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.	The proposed development will not have a significant impact on the environment if the recommended mitigations are adopted.

IMPACT ANALYSIS AND MITIGATION MEASURES

Based upon the literature review, site assessment, and survey results it is our conclusion that the Project Site does not support special-status wildlife species. As stated above, Dr. Arnold concluded that the endangered Silverspot was unlikely to occur on-site because the habitat conditions were unsuitable, despite the presence of scattered host plants. The early blue violet does not meet the definition of an ESHA, and is not protected by USFWS if assessments/surveys have determined that the occurrence does not constitute suitable Silverspot habitat. Therefore, the project as proposed does not specifically protect all individual violets, but the recommended mitigation fencing will protect the majority of the population. See Table 3 and below.

The Project Site contains an ESHA consisting of coastal bluff morning-glory plants and their habitat. As described in this report, an estimated 258 morning-glory plants occur in 5 separate polygons in the bishop pine forest and coastal scrub habitats, occupying a total 0.1 acres. Based upon these findings, the initial building plan has been redesigned to avoid and protect the delineated rare plant occurrences. However, due to the widespread distribution of coastal bluff morning-glory throughout the parcel, the project proposes

reduced buffers and a permanent loss of at least 2 individuals and a probable temporary loss/impact of an additional 3 plants.

The redesigned plans now have sited the granny unit closer to the duplex in the cypress-dominated area largely devoid of understory (**Figure 7**), and the barn will be reconfigured and sited in the area between Polygons 1- 2 and 3-4 (see Figure 2). Protective construction and post-construction fencing will protect all of the individual rare plants east of the duplex in the bishop pine forest. West of the duplex, the room expansion will eliminate 2 plants located within 1.5 ft. of the existing structure (**Figure 8**), and the deck construction will most likely at least temporarily impact 3 plants located immediately adjacent to the existing deck (**Figure 9**). The remaining population will be protected from construction impacts with exclusionary fencing and a possible deed restriction. Additionally, to improve the overall habitat and protect native species diversity, the removal of invasive plants is recommended.

Potential Impact 1: Impacts to coastal bluff morning-glory and its habitat.

- **Mitigation Measure 1a:** Prior to construction activities, install exclusionary/construction fencing to protect the rare plant population and its habitat. All construction related activities must be contained by the fencing, which should remain undisturbed during all phases of construction. The contractor will follow industry best management practices for erosion control.

  As shown in Figure 2, an L-shaped permanent fence shall be installed at 55ft. out from the road. This fence will protect morning glory Polygons 3 and 4, and 13 of the 19 viola plants east of the duplex. A second permanent fence shall be installed at 100 ft. from the road and stretch across the parcel to the south boundary. This will create an L-shaped area for the barn and small pasture. A temporary construction fence will be installed across the width of the parcel at 200 ft. This fence, with the permanent L-shaped fence will enclose morning-glory Polygons 1 and 2, and protect them during construction activities. West of the duplex, a third temporary construction fence will be installed adjacent to the existing deck and extend across the parcel to protect morning glory Polygon #5 and Viola #10. A short section of fencing should be used to protect Viola #10 from general construction impacts.

- **Mitigation Measure 1b:** Conduct seasonal high-weed mowing to keep weeds and brush from invading the rare morning-glory habitat under the pine forest. Leave coastal scrub areas west of the existing duplex undisturbed.

- **Mitigation Measure 1c:** Improve the overall habitat and protect native species diversity by removing non-native invasive plants. *Highway ice plant*: Remove as much of the mat as can be done safely, exercising caution with regard to the dangerously sheer cliff and ignoring stems that extend past the bluff edge. Ice plant is easily removed by hand pulling. Note that stem segments can develop roots and continue to grow when separated from the parent plant. *English ivy*: Carefully cut ivy from tree trunks at waist height, loosen the vines, and remove

the plant by cutting out the roots. Remove the isolated forest understory plants and the vines east of the duplex by hand pulling. *Greater periwinkle*: Because the periwinkle occurrence is relatively small and localized, complete hand removal is the easiest and most effective eradication method. All ice plant stem segments, English ivy vines, and periwinkle runners should be taken off-site to a landfill to prevent reinfestation.

- **Mitigation Measure 1c:** To partially mitigate for the loss of biologically valuable coastal bluff morning-glory plants and habitat, investigate the development of a rare plant conservation area and/or deed restrictions to protect some of the remaining habitat, keeping it free from development, accessory structures, landscaping, and non-native invasive plants. The coastal scrub habitat west of the duplex is the preferred habitat type for the rare morning-glory, and we recommend that this area receive conservation protection.

Potential Impact 2: Impacts to early blue violet.

- **Mitigation Measure 2a:** Prior to construction activities, install protective fencing as described above (see Mitigation Measure 1a).

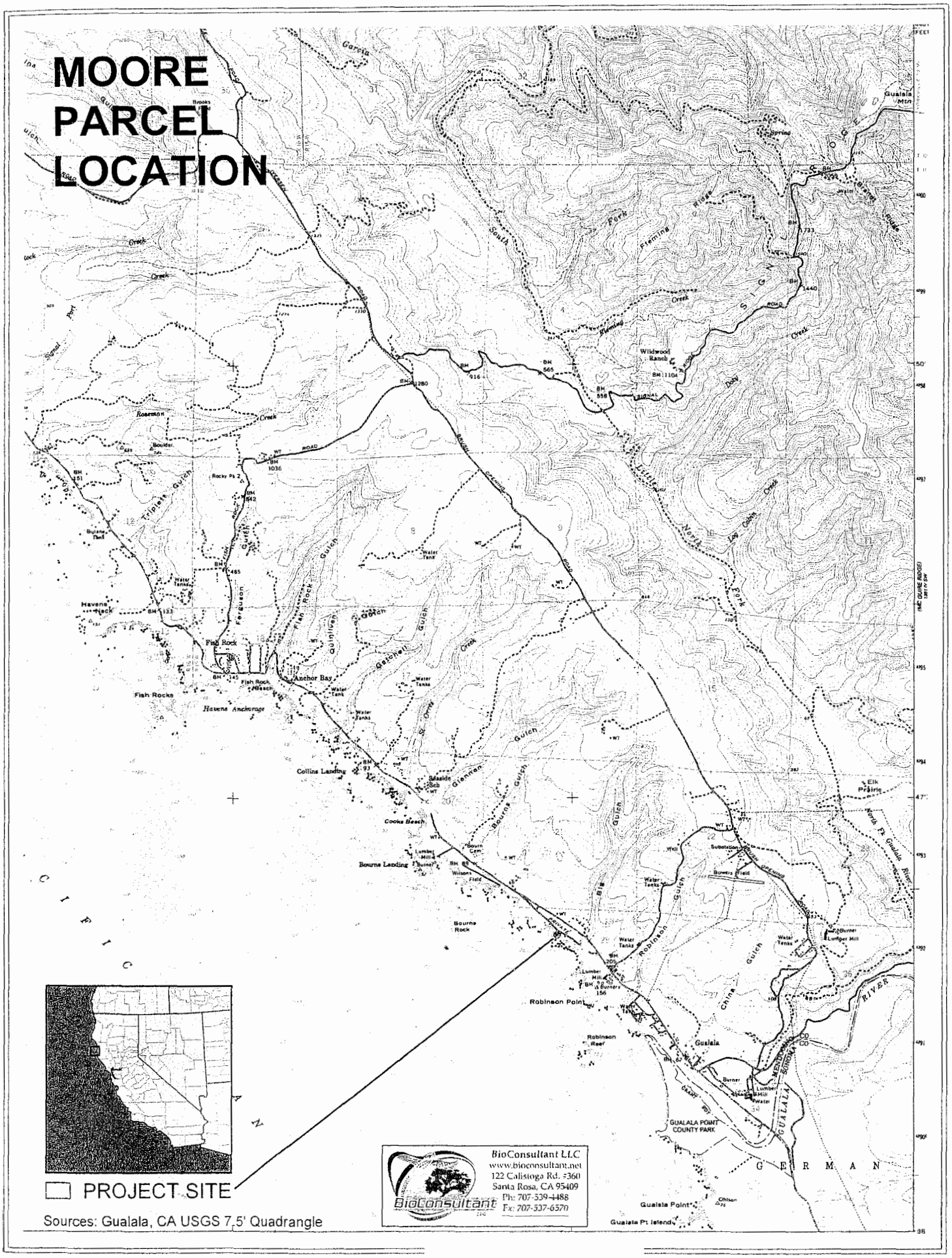
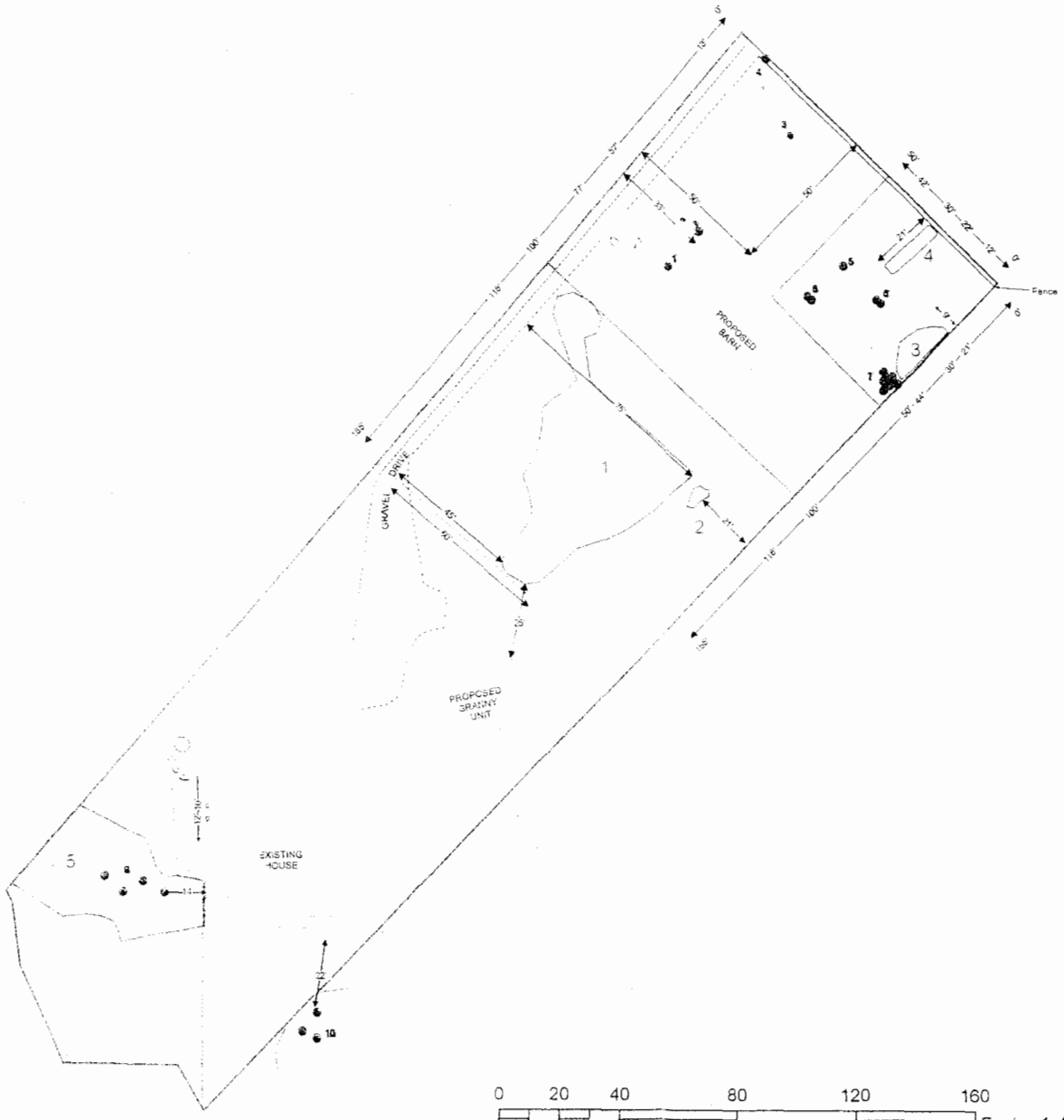


Figure 1. Moore Project parcel location map.



Sources:
Natural resources from BioConsultant LLC; Map produced by Derek Marshall. Hand digitized from maps and photos. not to be used for survey applications. Structures are an approximation.

MOORE BIOTIC PROJECT

May, 2006
APN145-121-003

FIG 2

Legend

N

- Violet
- Morning-glory
- Construction Fence
- Permanent Fence

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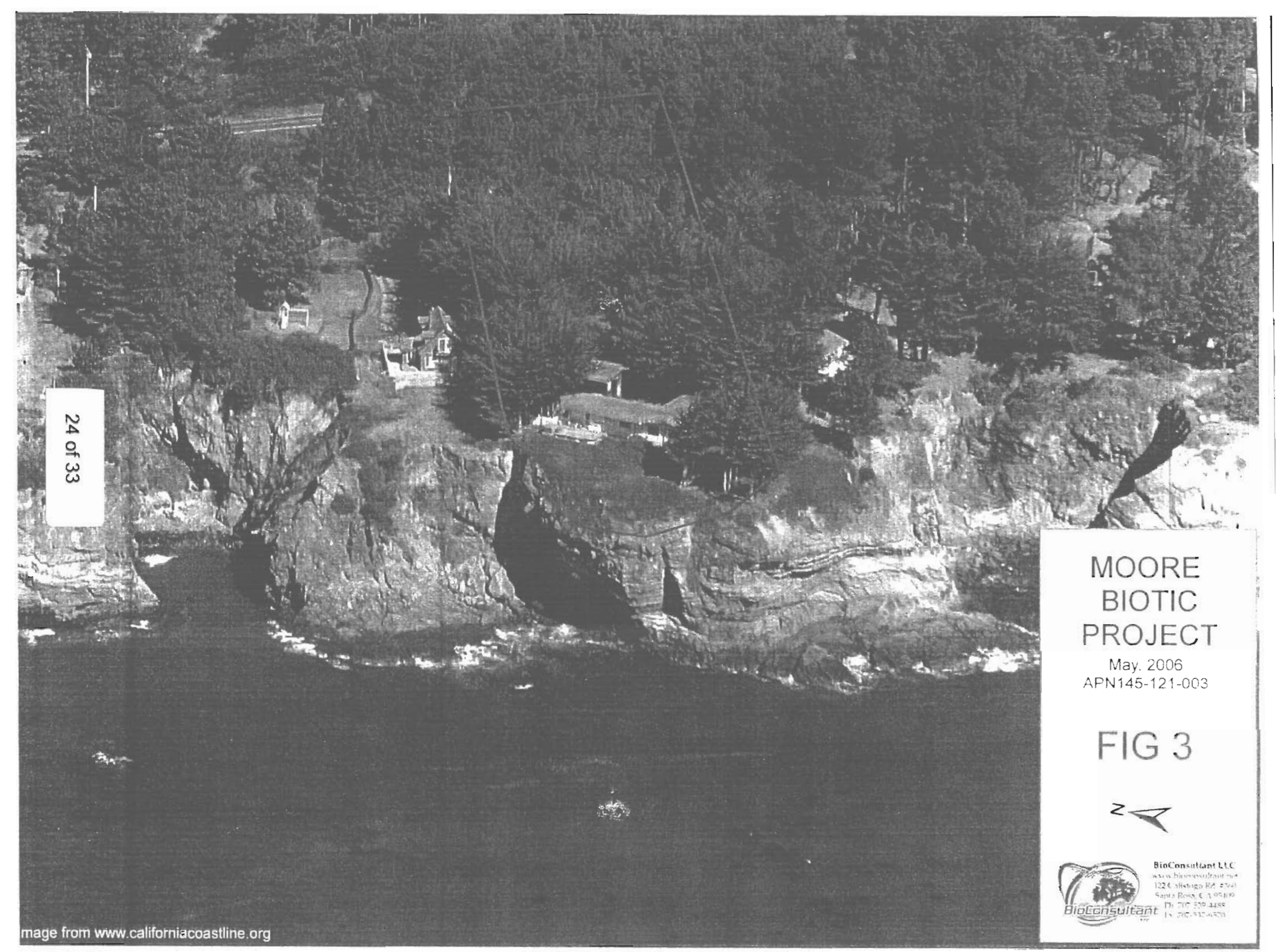
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MOORE
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FIG 3
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BioConsultant
mage from www.californiacoastline.org

Figure 4. The rare morning-glory bishop pine habitat of Polygon 1 and 2. Blue flags mark the locations of individual plant clusters.

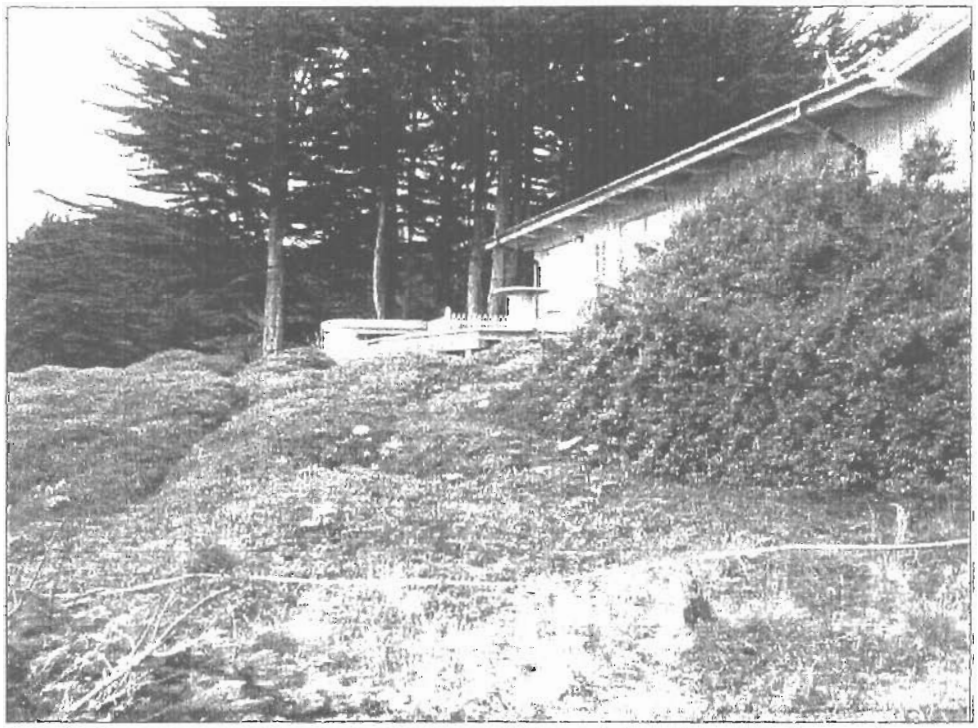

Figure 5. The rare morning-glory coastal scrub habitat of Polygon 5.

Figure 6. Coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) in the pine forest.

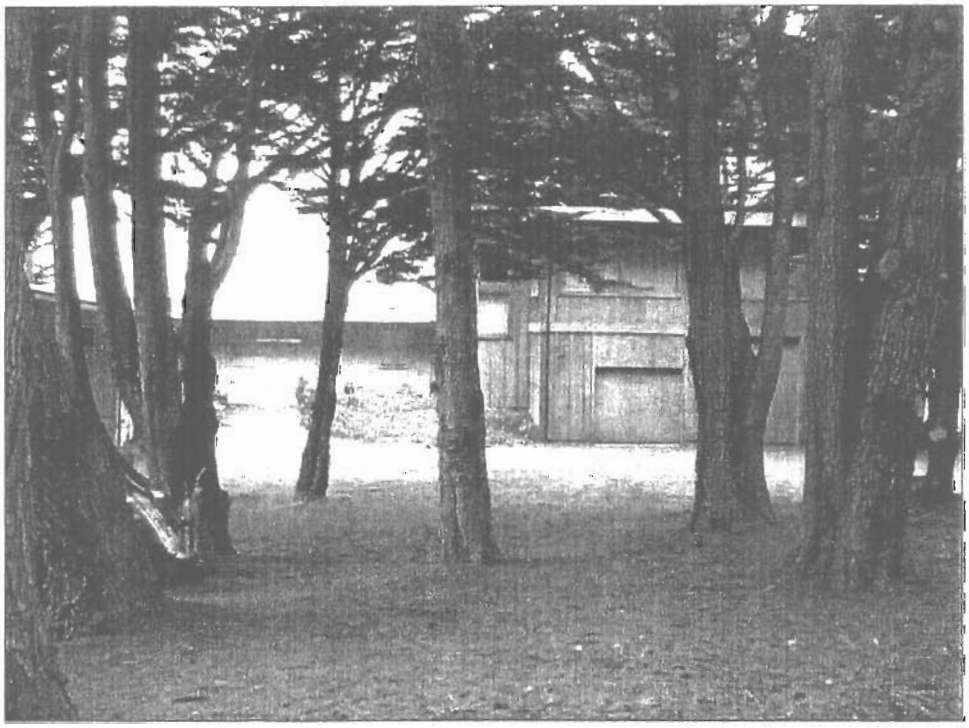

Figure 7. Cypress-dominated area where the granny unit will be sited.

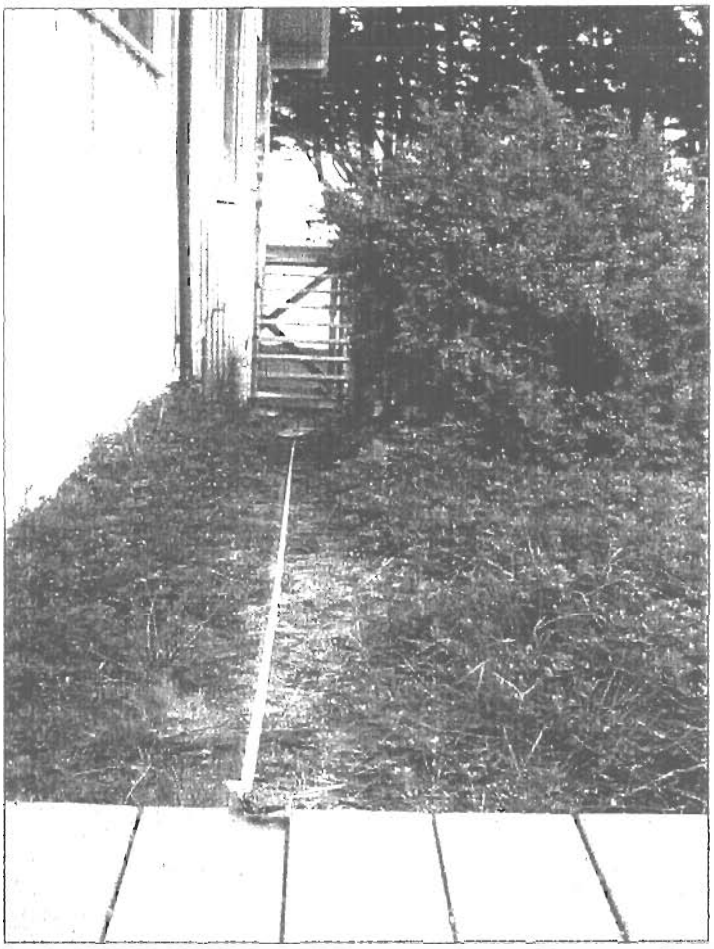

Figure 8. The area of the room expansion. Orange flags denote the locations of the 2 plants within the impact zone.

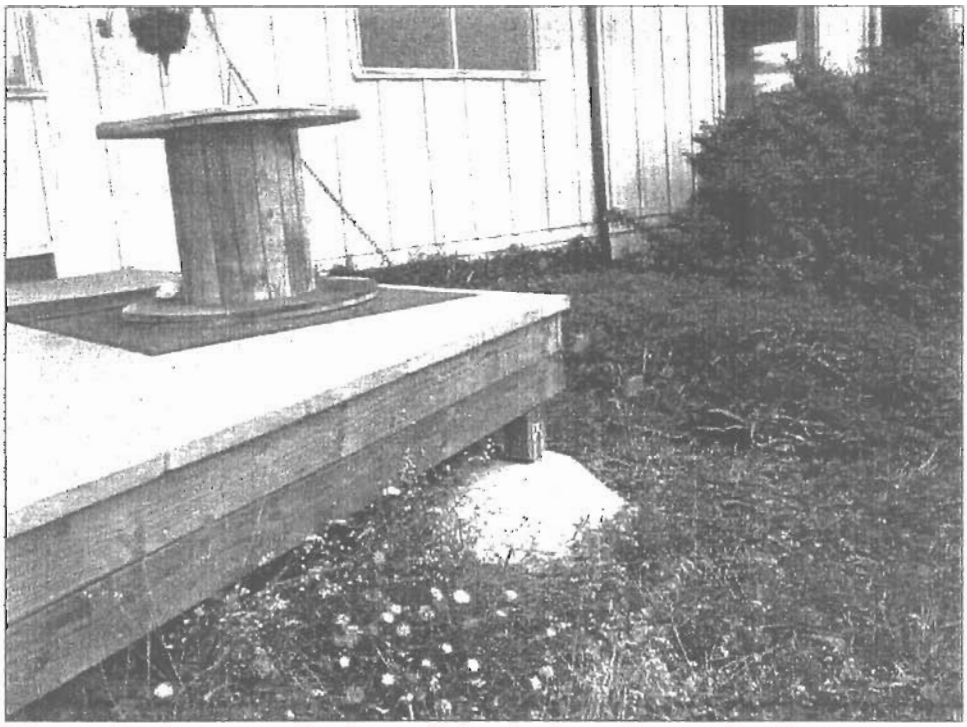

Figure 9. An overall view of the 5 plants located adjacent to the existing structures in the impact zone.

APPENDIX A: CNDDB list of Plants, Animals, & Communities in the four closest USGS 7.5' Quads.

	Scientific Name/Common Name	Element Code	Federal Status	State Status	GRank	SRank	CDFG or CNPS/R-E-D
1	***Abronia umbellata ssp. breviflora*** pink sand-verbena	PDNYC010N2			G4G5T2	S2.1	1B/2-3-2
2	***Agrostis blasdalei*** Blasdale's bent grass	PMPOA04060			G2	S2.2	1B/3-2-3
3	***Agrostis clivicola var. punta-reyesensis*** Point Reyes bent grass	PMPOA040A2			G3?T1Q	S1.2	
4	***Aplodontia rufa nigra*** Point Arena mountain beaver	AMAFA01011	Endangered		G5T1	S1	SC
5	***Arborimus pomo*** Sonoma tree vole	AMAFF10030			G3	S3	SC
6	***Astragalus agnicidus*** Humboldt milk-vetch	PDFAB0F080		Endangered	G2	S2.1	1B/2-3-3
7	***Calystegia purpurata ssp. saxicola*** coastal bluff morning-glory	PDCON040D2			G4T2	S2.2	1B/2-2-3
8	***Campanula californica*** swamp harebell	PDCAM02060			G3	S3.2	1B/1-2-3
9	***Carex californica*** California sedge	PMCYP032D0			G5	S2?	2/3-1-1
10	***Carex lyngbyei*** Lyngbye's sedge	PMCYP037Y0			G5	S2.2	2/2-2-1
11	***Carex saliniformis*** deceiving sedge	PMCYP03BY0			G2	S2.2	1B/2-2-3
12	***Castilleja ambigua ssp. humboldtiensis*** Humboldt Bay owl's-clover	PDSCR0D402			G4T2	S2.2	1B/2-2-3
13	***Castilleja mendocinensis*** Mendocino coast Indian paintbrush	PDSCR0D3N0			G2	S2.2	1B/2-2-2
14	***Cerorhinca monocerata*** rhinoceros auklet	ABNNN11010			G5	S3	SC
15	***Coastal Brackish Marsh***	CTT52200CA			G2	S2.1	
16	***Coastal Terrace Prairie***	CTT41100CA			G2	S2.1	
17	***Coastal and Valley Freshwater Marsh***	CTT52410CA			G3	S2.1	
18	***Corynorhinus townsendii*** Townsend's big-eared bat	AMACC08010			G4T3T4	S2S3	SC
19	***Cupressus goveniana ssp. pigmaea*** pygmy cypress	PGCUP04032			G2T2	S2.2	1B/2-2-3
20	***Danaus plexippus*** monarch butterfly	IILEPP2010			G5	S3	
21	***Emys (=Clemmys) marmorata marmorata*** northwestern pond turtle	ARAAD02031			G3G4T3	S3	SC
22	***Erigeron supplex*** supple daisy	PDAST3M3Z0			G1	S1.1	1B/3-2-3
23	***Eucyclogobius newberryi*** tidewater goby	AFCQN04010	Endangered		G3	S2S3	SC
24	***Fratercula cirrhata*** tufted puffin	ABNNN12010			G5	S2	SC

	Scientific Name/Common Name	Element Code	Federal Status	State Status	GRank	SRank	CDFG or CNPS/R-E-D
25	***Fritillaria roderickii*** Roderick's fritillary	PMLIL0V0M0		Endangered	G1Q	S1.1	1B/3-3-3
26	***Gilia capitata ssp. pacifica*** Pacific gilia	PDPLM040B6			G5T3T4	S2.2?	1B/2-2-2
27	***Gilia capitata ssp. tomentosa*** woolly-headed gilia	PDPLM040B9			G5T1	S1.1	1B/3-3-3
28	***Glyceria grandis*** American manna grass	PMPOA2Y080			G5	S1.3?	2/3-1-1
29	***Hesperevax sparsiflora var. brevifolia*** short-leaved evax	PDASTE5011			G4T3	S3.2	2/2-2-1
30	***Horkelia marinensis*** Point Reyes horkelia	PDROS0W0B0			G2	S2.2	1B/3-2-3
31	***Horkelia tenuiloba*** thin-lobed horkelia	PDROS0W0E0			G2	S2.2	1B/2-2-3
32	***Lasthenia conjugens*** Contra Costa goldfields	PDAST5L040	Endangered		G1	S1.1	1B/3-3-3
33	***Lasthenia macrantha ssp. bakeri*** Baker's goldfields	PDAST5L0C4			G3TH	SH	1B/2-2-3
34	***Lasthenia macrantha ssp. macrantha*** perennial goldfields	PDAST5L0C5			G3T2	S2.2	1B/2-2-3
35	***Lavinia symmetricus parvipinnis*** Gualala roach	AFCJB19025			G5T1T2	S1S2	SC
36	***Lilium maritimum*** coast lily	PMLIL1A0C0			G2	S2.1	1B/2-3-3
37	***Northern Coastal Bluff Scrub***	CTT31100CA			G2	S2.2	
38	***Northern Coastal Salt Marsh***	CTT52110CA			G3	S3.2	
39	***Oncorhynchus gorbuscha*** pink salmon	AFCHA02010			G5	S1	SC
40	***Rana boylii*** foothill yellow-legged frog	AAABH01050			G3	S2S3	SC
41	***Sidalcea calycosa ssp. rhizomata*** Point Reyes checkerbloom	PDMAL11012			G5T2	S2.2	1B/2-2-3
42	***Sidalcea malachroides*** maple-leaved checkerbloom	PDMAL110E0			G3G4	S3S4.2	1B/2-2-2
43	***Sidalcea malviflora ssp. purpurea*** purple-stemmed checkerbloom	PDMAL110FL			G5T2	S2.2	1B/2-2-3
44	***Speyeria zerene behrensii*** Behren's silverspot butterfly	IILEPJ6088	Endangered		G5T1	S1	

APPENDIX B: Special- status Plants with Potential to Occur in the Project Site.

Special-status Plants with Potential to Occur in the Project Site Vicinity
Sources: CDFG Natural Diversity Database (2006) and CNPS Electronic Inventory of Rare and Endangered Plants of California (2006)

Scientific Name	Common Name	Federal Status	State Status	CNPS List	Blooms
Abronia umbellata ssp. breviflora	pink sand-verbena			List 1B.1	Jun-Oct
Agrostis blasdalei	Blasdale's bent grass			List 1B.2	May-Jul
Agrostis clivicola var. punta-reyensis	Point Reyes bent grass			None	May-Jul
Angelica lucida	sea-watch			List 4.2	May-Sep
Astragalus agnicidus	Humboldt milk-vetch		Endangered	List 1B.1	Apr-Aug
Calamagrostis bolanderi	Bolander's reed grass			List 4.2	May-Aug
Calamagrostis foliosa	leafy reed grass		Rare	List 4.2	May-Sep
Calandrinia breweri	Brewer's calandrinia			List 4.2	Mar-Jun
Calystegia purpurata ssp. saxicola	coastal bluff morning-glory			List 1B.2	May-Sep
Campanula californica	swamp harebell			List 1B.2	Jun-Oct
Carex californica	California sedge			List 2.3	May-Aug
Carex lyngbyei	Lyngbye's sedge			List 2.2	May-Aug
Carex saliniformis	deceiving sedge			List 1B.2	Jun
Castilleja ambigua ssp. humboldtiensis	Humboldt Bay owl's-clover			List 1B.2	Apr-Aug
Castilleja mendocinensis	Mendocino coast Indian paintbrush			List 1B.2	Apr-Aug
Ceanothus gloriosus var. gloriosus	Point Reyes ceanothus			List 4.3	Mar-May
Cupressus goveniana ssp. pigmaea	pygmy cypress			List 1B.2	NA
Erigeron biolettii	streamside daisy			List 3	Jun-Oct
Erigeron supplex	supple daisy			List 1B.2	May-Jul
Fritillaria roderickii	Roderick's fritillary		Endangered	List 1B.1	Mar-May
Gilia capitata ssp. pacifica	Pacific gilia			List 1B.2	Apr-Aug
Gilia capitata ssp. tomentosa	woolly-headed gilia			List 1B.1	May-Jul
Glyceria grandis	American manna grass			List 2.3	Jun-Aug
Hesperevax sparsiflora var. brevifolia	short-leaved evax			List 2.2	Mar-Jun
Horkelia marinensis	Point Reyes horkelia			List 1B.2	May-Sep
Horkelia tenuiloba	thin-lobed horkelia			List 1B.2	May-Jul
Lasthenia conjugens	Contra Costa goldfields	Endangered		List 1B.1	Mar-Jun
Lasthenia macrantha ssp. bakeri	Baker's goldfields			List 1B.2	Apr-Oct
Lasthenia macrantha ssp. macrantha	perennial goldfields			List 1B.2	Jan-Nov
Leptosiphon acicularis	bristly leptosiphon			List 4.2	Apr-Jul
Lilium maritimum	coast lily			List 1B.1	May-Aug
Lotus formosissimus	harlequin lotus			List 4.2	Mar-Jul
Lycopodium clavatum	running-pine			List 2.3	Jun-Aug
Perideridia gairdneri ssp. gairdneri	Gairdner's yampah			List 4.2	Jun-Oct
Pleuropogon refractus	nodding semaphore grass			List 4.2	Apr-Aug
Sidalcea calycosa ssp. rhizomata	Point Reyes checkerbloom			List 1B.2	Apr-Sep
Sidalcea malachroides	maple-leaved checkerbloom			List 1B.2	Apr-Jul
Sidalcea malviflora ssp. purpurea	purple-stemmed checkerbloom			List 1B.2	May
Stellaria littoralis	beach starwort			List 4.2	Mar-Jul
Veratrum fimbriatum	fringed false-hellebore			List 4.3	Jul-Sep
Zigadenus micranthus var. fontanus	marsh zigadenus			List 4.2	Apr-Jul

The California Native Plant Society's (CNPS) Lists

1A = Presumed extinct in California

1B = Rare or Endangered in California and elsewhere

2 = Rare or Endangered in California, more common elsewhere

3 = Plants for which we need more information – Review list

4 = Plants of limited distribution – Watch list

CNPS Threat Code Extension

.1 = Seriously endangered in California (over 80% of occurrences threatened / high degree and immediacy of threat)

.2 = Fairly endangered in California (20-80% of occurrences threatened)

.3 = Not very endangered in California (<20% of occurrences threatened or no current threats known)

Photo from California Coastal Records Project
http://www.californiacoastline.org/cgi-bin/captionList.cgi?searchstr=200504186

Richard A. Arnold, Ph.D.
President

Entomological Consulting Services, Ltd.

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bugdctr@comcast.net • www.ecsltd.com

24 August 2006

Howard E. Curtis, AIA
P.O. Box 675
Gualala, CA 95445

Re: Greg & Sandra Moore's Property at 37900 Old Coast Highway in Gualala, CA
APN 145-121-03
Habitat Assessment for the Endangered Behrens Silverspot Butterfly

Dear Mr. Curtis:

This letter reports the findings of my habitat assessment survey at the aforementioned 0.95-acre residential property, located about one mile north of Gualala, for the federally protected, endangered butterfly species known as the Behrens Silverspot. I can summarize the findings of my survey by stating that this butterfly is not likely to occur at this property. The remainder of this report provides pertinent background information on the silverspot and describes my survey methods and findings in greater detail.

BACKGROUND INFORMATION

Behrens Silverspot, *Speyeria zerene behrensii*, is a member of the brush-footed family of butterflies (Lepidoptera: Nymphalidae). It is named after the gentleman, James Behrens, who probably captured the original specimens used to describe this subspecies. Silverspots are also sometimes commonly referred to as fritillaries. On the undersides of the wings are several prominent silver spots, hence the common name.

Behrens Silverspot is one of 18 subspecies of *Speyeria zerene*, a species that ranges throughout most of the cordilleran region of the western U.S. and southwestern Canada. Behrens Silverspot is associated with coastal prairie communities that grow on the terraces and headlands along the immediate Sonoma and Mendocino coasts. Small stands of Beach pines (*Pinus contorta*) interspersed throughout the coastal prairie provide shelter from prevailing coastal winds, which would otherwise limit activity of this cold-blooded butterfly. The larval food plant is most likely *Viola adunca* (Violaceae), although other violets, if present, might also be utilized. Adults are fond of composites for nectar and have been observed feeding on *Senecio vulgaris*, *Cirsium vulgare*, *Silybum marianum*, *Aster chilensis*, and *Erigeron glaucus*. Ironically, the first three of the aforementioned nectar plants are invasive weeds. Much of the former coastal terrace prairie habitat of Sonoma and Mendocino counties has been converted to other land uses, especially grazing, which

depending upon its timing and intensity often favors invasive, annual plants rather than the bunch grasses and other herbaceous plants that are characteristic of the prairie. Residential development and some farming have also converted or altered former prairie areas.

Historically the silverspot was known from eight locations between the Russian River and Mendocino. Historical locations include:

a) Mendocino, presumably the headlands, which is the type locality;
b) Point Arena;
c) Manchester area, which includes records as far as 6 mi. inland (east) of Manchester, primarily along Mountain View Road;
d) ca. 1 mi. south of Anchor Bay;
e) Sea Ranch;
f) Stewart's Point;
g) Salt Point; and
h) Vicinity of Fort Ross.

Of these historical locations, today the silverspot is still known to occur at Point Arena, Manchester, Stewart's Point, and Salt Point. Silverspots from the Russian River area exhibit phenotypes that are somewhat intermediate in appearance with the endangered Myrtle's Silverspot.

The adult flight season is usually about mid-June through August. Adults have a wingspan of approximately 2.25 inches. The upper surfaces are golden brown with numerous black spots and lines. The undersides are brown, orange-brown, and tan with black lines and distinctive silver and black spots. Basal portions of the wings and body are densely pubescent.

Behrens Silverspot was recognized as endangered by the U.S. Fish & Wildlife Service in 1997. To-date, critical habitat has not been proposed. The California Fish & Game Code specifically excludes insects as a type of organism that can be recognized by the state as endangered species. However, under the California Environmental Quality Act (CEQA), the Behrens Silverspot is treated as a rare species pursuant to section 15380. The California Coastal Act often recognizes places that support endangered species as Environmentally Sensitive Habitat Areas (ESHAs).

SURVEY METHODS AND RESULTS

Site Description.

I visited the Moore's property on August 19, 2006. It is located between the Old Coast Highway and the Pacific Ocean. This stretch of the Old Coast Highway is a residential neighborhood. An existing duplex is situated near the southwestern end of the site and overlooks the ocean. Access is via a gravel driveway from Old Coast Highway.

During my site visit I hiked throughout the property to observe the vegetation, soils, and land uses. I also drove throughout the surrounding neighborhoods to examine vegetation types and to determine current land uses to evaluate whether the silverspot might occur on nearby properties.

BioConsultant LLC (2006) prepared a biotic assessment report for the property and described the plant communities and species that occur there. Prominent vegetation consists of coastal bluff scrub, a wooded area, consisting of degraded Northern Bishop pine forest, a very small patch of coastal terrace prairie, and invasive weeds, which are dominant in a few locations but widely scattered throughout other portions of the property. The Bishop pine forest may not be natural because its lacks the usual shrub understory, many of the trees appear to be similar in age, and the forest is underlain by Windy Hollow soils, which generally support perennial grasses and forbs rather than forest vegetation.

Habitat Assessment Findings.

Of the four vegetation types observed at the Moore's property, only coastal terrace prairie normally provides breeding habitat for the endangered Behrens Silverspot. Unfortunately, the coastal terrace prairie habitat at the Moore property is very small in size and is isolated from other larger patches of prairie. BioConsultant LLC (2006) found about 26 *Viola adunca* plants growing primarily in the northeastern, forested portions of the site, adjacent to Old Coast Highway, where partial sunlight occurs at ground level. The coastal bluff scrub may support a couple of nectar plants of the silverspot, *Aster chilensis* and *Erigeron glaucus*, but none was observed during my visit.

Even sparsely forested areas, such as occurs at the Moore's property, are generally not considered good habitat for the silverspot due to shading. Silverspots, like all butterflies, are cold-blooded and can become active at about 58° F when the weather is sunny with little or no winds. If it is foggy and/or windy, the ambient air temperature needs to be a few degrees higher for the silverspots to become and remain active. Since summer high temperatures along the Mendocino coast are often only in the low to mid-60°s F, shaded areas, such as the forest, can cause the adult butterfly to cool down and become inactive. Even though a few *Viola adunca* plants grow in the forested portion of the property, this does not constitute good breeding habitat for the silverspot because of the shading. Also, larvae of the silverspot do not remain on the *Viola adunca* plants throughout their maturation; rather, they often crawl off the plants during the daytime and return to the plants at night to feed. Like the adult life stage, activity of the larvae is temperature dependent so food plants growing in shaded locations are less likely to be eaten by larvae.

Properties immediately surrounding the Moore's property support the same four vegetation types. The Bishop pine forest is more sparse on some properties and and more dense on others, but is more or less continuous between the coast and Highway 1 along this stretch of Old Coast Highway. Vegetation east of the Moore's

property and Highway 1 consists of dense forest and scrub. A more extensive area of coastal terrace prairie was observed about 0.25 mi. north of the Moore's property. However, because this area was posted "No Trespassing", I could not investigate it except from the Highway 1 right-of-way.

Silverspot Survey Findings.

My site visit occurred near the end of the silverspot's 2006 flight season. No adult silverspots were observed at the Moore's property. Since the *Viola adunca* foliage was still apparent and had been flagged by BioConsultant LLC, I searched all of the plants for signs of larval feeding damage, but none was found. At the coastal terrace prairie site ca. 0.25 mi. north of the Moore's property, I searched for adults using binoculars from several vantage points along the Highway 1 right of way, but no Behrens Silverspots were observed.

On the same day, I also briefly visited the Stornetta BLM property in Point Arena, which is a known location for the Behrens Silverspot. Seven males and two females were observed at the BLM property in about a 1.5 hr. period.

CONCLUSIONS

Due to the absence of suitable habitat conditions on-site and immediately nearby the Moore's property, I conclude that the endangered Behrens Silverspot is not likely to occur there because habitat conditions are not suitable despite the presence of a few individuals of the butterfly's larval food plant. The proposed remodeling and other improvements proposed by Greg and Sandra Moore at their property should not impact this butterfly or its habitats. As recommended by BioConsultant LLC, I agree that siting of new structures should be done in a manner to protect the resident *Viola adunca* plants. However, no additional mitigation for the endangered butterfly should be necessary since the proposed project should not cause any adverse impacts to the silverspot or its habitat.

REFERENCES

BioConsultant LLC. 2006. Biotic assessmen and rare plant survey for Greg and Sandra Moore (APN 145-121-03). 14 pp. & figures.

U.S. Fish & Wildlife Service. 1997. Endangered and threatened wildlife and plants: determination of endangered status for the Callippe Silverspot butterfly and Behrens Silverspot butterfly and threatened status for the Alameda Whipsnake: final rule. Federal Register 62:64306-64320.

If you have any questions about my report, just contact me.

Sincerely,

Signature on File

Richard A. Arnold, Ph.D., President

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Arcata Fish and Wildlife Office
1655 Heindon Road
Arcata, California, 95521
Phone: (707) 822-7201 FAX: (707) 822-8411

In Reply Refer To:
AFWO

Ms. Teresa Beddoe
County of Mendocino Department of Planning and Building Services
790 South Franklin Street
Fort Bragg, CA 95437

Subject: Proposed Construction at APN 145-121-003 (AFWO File Number 8-14-TA-2007-3060.1)

Dear Ms. Beddoe:

This responds to a request from BioConsultant LLC for U.S. Fish and Wildlife Service (Service) technical assistance that was received in our office October 20, 2006. Additional information was received on October 30, 2006. At issue in the request is the likelihood of incidental take of Behren's silverspot butterfly (*Speyeria zerene behrensii*) as a result of this project. The Behren's silverspot butterfly is listed as endangered under the Endangered Species Act of 1973, as amended (Act).

The Service has determined that this construction project with mitigation measures as described in the report entitled "Biotic Assessment & Rare Plant Survey: Moore Project" and dated September 2006 is unlikely to result in incidental take of Behren's silverspot butterfly. All material used in this technical assistance is on file at the Arcata Fish and Wildlife Office. If you have any questions regarding this correspondence, please contact Mr. John Hunter of my staff at the above letterhead address or at (707) 822-7201.

Sincerely,

Signature on File

Michael M. Long
Field Supervisor

cc: Kim Fitts, BioConsultant, Santa Rosa, CA

EXHIBIT NO. 13
APPEAL NO.
A-1-MEN-07-021
MOORE
USFWS COMMENTS ON BUTTERFLY HABITAT

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

RAYMOND HALL, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
pbs@co.mendocino.ca.us

EXHIBIT NO. **14**
APPEAL NO.
A-1-MEN-07-021
MOORE
MENDOCINO COUNTY CORRESPONDENCE (1 of 3)

June 7, 2007

Tiffany S. Tauber, Coastal Planner
California Coastal Commission, North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501

RECEIVED
JUN 11 2007
CALIFORNIA
COASTAL COMMISSION

RE: Commission Appeal No. A-1-MEN-07-021

Ms. Tauber,

Mendocino County coastal planning staff is writing in response to the Commission Notification of Appeal for Coastal Development Use Permit application number CDU 9-2006 (Moore). Staff contends that the project is in fact consistent with the County LCP policies to protect natural resources. Our argument against the reasons listed for appeal is as follows:

In Attachment 2, on the unnumbered seventh page, fourth paragraph under the heading of Discussion, the Commission writes that the County's approval is inconsistent because policies do not allow a buffer under any circumstances to be less than 50 feet. The Commission is correct in their assertion that policies require the buffer area to be no less than 50 feet. The Commission is incorrect in their assertion that the County has approved a buffer of less than 50 feet. The misunderstanding may stem from the miswording of a sentence on page CPA-14 of the staff report. County staff wrote (emphasis added): "With proposed mitigations, as outlined in the survey report and included in Special Condition Number 3, the project provides a buffer of a minimum of 20 feet to present rare plants..." County staff should have written: "With proposed mitigations, as outlined in the survey report and included in Special Condition Number 3, the project provides a setback of a minimum of 20 feet to present rare plants..." The buffer area is in fact set at 50 feet. While the reduced buffer analysis performed by the botanist to establish the buffer width (per Section 20.496.020(A)(1)(a-g), located in the botanical report) suggests that a buffer of less than 50 feet is appropriate, the buffer area defaults to 50 feet, as required by the code. The 50 foot buffer is assumed, as is clarified in several areas in the staff report, and most clearly stated on CPA-10[1]:

> As the proposed development would be located less than 50 feet from ESHAs, the minimum buffer size allowed per Section 20.496.020(A)(1) of the MCCZC as outlined above, a reduced buffer analysis as outlined in Section 20.496.020 is required, and has been provided by the botanist.

The barn and driveway developments were approved to be **within** the 50 foot buffer, consistent with LCP policies outlined in 20.496.020(A)(4)(a-k) of the Mendocino County Coastal Zoning Code (MCCZC), outlined starting on Page CPA-10 of the Staff Report. **This section (20.496.020(A)(4)(a-k) of the MCCZC) sets the standards by which development may be allowed within the buffer area.**

[1] The minimum 50 foot buffer is also discussed in detail on page CPA-7 of the staff report, however a misworded reference to a 50-foot "butter" area found on page CPA-7 appears to further confuse the argument.

In Attachment 2, on the unnumbered page eight, in the first paragraph, the Commission states that "the County's approval relied on the erroneous application of Coastal Zoning Code Section 20.496.050 regarding "Other Resource Areas" to allow the approved development within the rare plant ESHA buffer. As outlined in the paragraph above, **the County did not in fact rely on Section 20.496.050 of the MCCZC**: the development within the buffer was in fact supported by Section 20.496.020(A)(4)(a-k), the section which outlines the standards by which development is allowed in a buffer area. The discussion regarding Section 20.496.050 was included to ensure a thorough analysis, should section 20.496.050 apply. We also disagree with your assertion that the application of Section 20.496.050 was erroneous.

Policy 3.1-24 of the County of Mendocino Coastal Element states:

Any development within designated resource areas, if not specifically addressed by other policies, shall be carefully reviewed and established in accord with conditions which could allow some development under mitigating conditions but would assure the continued protection of the resource.

Section 20.496.050(A) states:

(A) General. *Other designated resource areas as identified on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985 include: State parks and reserves, underwater parks and reserves, areas of special biological significance, natural areas, special treatment areas, fishing access points, areas of special biological importance, significant California ecosystems and coastal marine ecosystems.*

As plants and plant habitats are not otherwise covered (the Commission agrees on unnumbered page eight of Attachment 2 that "The County's findings correctly point out that, unlike other ESHAs such as wetlands and riparian areas, the certified LCP is silent with regard to allowable uses in rare plant habitat"), and as the definition does not appear to specifically limit designated resource areas to those listed, but merely includes them, the discussion of Section 20.496.050 was included in case the intent of the writers was in fact to include all natural resource areas of concern designated as ESHAs but not otherwise specifically addressed by other policies. Again, the matter is moot in that the discussion of Section 20.496.050 was included only to ensure compliance with Section 20.496.050; the discussion of Section 20.496.020(A)(4)(a-k) was included to ensure the allowance of development within the buffer area.

Commission staff state that the County failed to consider alternatives that would avoid locating new development within the rare plant ESHA buffer, such as eliminating the barn/shed structure from the project, and utilizing the existing driveway and parking areas to serve the second residence. Section 20.496.020(A)(4)(a-k) outlines the standards by which development may be permitted within a buffer, and the project complies with those set standards, as discussed in the staff report starting on page CPA-10. Eliminating the barn was not considered because that would be a partial denial of the proposed project, and there is no reason to deny if the project complies with the required policies for development within an ESHA buffer (see Special

Conditions 3 & 4). Similarly, the proposed gravel driveway extension, necessary for access to the proposed garage addition, was not denied because the development is in compliance with the required standards listed in Section 20.496.020 of the MCCZC.

We are talking about a plant that has spread from its natural habitat area to a lawn which experiences regular disturbance on a residentially developed parcel. The proposed mitigation measures would not only protect the plants on the lawn (which are growing out of their natural habitat type), but would ensure that the natural habitat area is protected in perpetuity through deed restriction. The applicants totally redesigned the project to ensure adequate protection of natural resources during our review of the project, and the project is in compliance with the County LCP policies. Please carefully look over the discussion of Section 20.496.020(A)(4)(a-k) located in the staff report before considering whether a "substantial issue" is raised by the County approval.

Thank you for your consideration.

Sincerely,

Signature on File

Teresa Beddoe
Planner I

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