

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET • SUITE 200

EUREKA, CA 95501-1865

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

MAILING ADDRESS:

P. O. BOX 4908

EUREKA, CA 95502-4908



F 10a

MEMORANDUM

Date: March 6, 2008

To: Commissioners and Interested Parties

From: Peter Douglas, Executive Director
Robert S. Merrill, District Manager – North Coast District
Melissa B. Kraemer, Coastal Program Analyst – North Coast District

Subject: **Addendum to Commission Meeting for Friday, March 7, 2008**
North Coast District Item F 10a, Appeal No. A-1-HUM-05-041 (Kable)

STAFF NOTE

Staff is proposing to make certain changes to the de novo staff recommendation for Appeal No. A-1-HUM-05-041. The proposed development is in the Manila area on the North Spit of Humboldt Bay and involves construction of a single-family-residence and garage, grading of a driveway, dedication of a 10-foot-wide vertical public access easement across the property, and planting of a vegetation buffer between the new development and wetland ESHA to the south. The staff recommendation of February 21, 2008 recommends 17 special conditions to protect coastal resources.

Comments on the staff recommendation were received orally on February 29, 2008 from applicant Diana Kable and by letter on March 4, 2008 from neighbor Carl Birks (see Attachment 1). Ms. Kable informed staff that Special Condition No. 6, which protects an osprey nest located approximately 300 feet south of the property, is unnecessary, as the tree which used to house the nest blew over in a wind storm three years ago. Mr. Birks raises several questions and concerns and requests various changes to the staff recommendation, including additional special conditions to further protect wetland and dune ESHA on and adjacent to the property. Staff subsequently met with the applicants, appellant, and Mr. Birks on the project site to discuss the proposed changes and determined that certain changes to Special Condition Nos. 1, 5, 6, 7, and 9 and the associated findings would be appropriate. The recommended changes would be further protective of coastal resources. Among other changes, the alignment of the proposed vertical public access easement would be slightly changed to avoid an area of native vegetation. On

March 5, 2008 the applicant submitted a letter with a revised site plan revising the applicant's proposed project description to incorporate the realignment of the proposed access easement (see Attachment 2). The changes to the recommended special conditions and findings are listed and discussed below.

CHANGES TO THE STAFF RECOMMENDATION

Staff continues to recommend that the Commission approve the amended project with the special conditions and findings included in the staff recommendation of February 21, 2008, as modified by the revisions described below.

The revisions to the staff report dated February 21, 2008, including the modification of special condition language and related findings, are discussed below. Text is shown in ~~striketrough~~ for deleted language and **bold double-underlined** for new text.

A. BUFFER FENCING

- *Modify the following text of Special Condition No. 1 on page 6:*

1. **Buffer Fencing Plan**

- A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and written approval, a plan for fencing the habitat buffer open space area surrounding the coastal dune ESHA on the western edge of the property and the delineated one-parameter wetland along the southern portion of the property required by Special Condition No. 8. The buffer fencing plan shall separate the new development and activities associated with residential living from the ESHA and ESHA buffers.

- 1). The plan shall demonstrate that

- (a) The fence shall be a minimum of five (5) feet tall and shall be made of solid wooden board ~~or wire~~;
- (b) The fence shall be established along the **perimeter of the building envelope** ~~development side of the portion of the required open space area west and south~~ of the driveway gate as shown on Exhibit No. 6; and
- (c) The fence shall be installed prior to occupancy of the residence.

- *Revise Section IV-5-A “Protection of Wetlands & Adequacy of Proposed Wetland Setback” on page 29 as follows:*

Therefore, to ensure that residential development does not encroach into the wetland ESHA or the recommended 50-foot buffer area, the Commission attaches Special Condition No. 8. Among other things, this condition requires the recordation of an open space deed restriction over all areas within 50 feet of the exterior boundary of delineated wetlands and all areas south of the proposed driveway, as generally depicted on Exhibit No. 6. The area of the property unaffected by the open space deed restriction (except for the driveway) becomes a building envelope within which the authorized 1,760-square-foot residence and associated yards and other residential development must be located. The deed restriction must be submitted for the review and approval of the Executive Director prior to recordation. The deed restriction would prohibit all development in the affected area except for the removal of non-native vegetation; planting and maintenance of required landscaping; installation of erosion control measures; erection of protective fencing; planting of native vegetation to improve the habitat value; maintenance of utility lines; removal of debris and unauthorized structures; and the installation and maintenance of public access improvements. The Commission notes that the requirement of Special Condition No. 15 to record a deed restriction will ensure that both the applicant and future purchasers of the property are notified of the prohibitions on development within the Martin Creek ESHA and buffer area.

Special Condition No. 7 requires the submittal of final design plans, including site, floor plan, and building elevations, that demonstrate that all of the residential improvements except the driveway will be located within the building envelope and outside of the open space area. Special Condition No. 1 requires the applicant to erect a minimum 5-foot-high solid board ~~or wire~~ fence around the margins of the open space area as shown on Exhibit No. 6. **The fence is required to be a solid board fence rather than a wire fence to provide a more effective privacy buffer between the future public accessway and the private residence.** Special Condition No. 2 requires that the applicant submit, prior to issuance of the permit for the review and approval of the Executive Director, a landscaping plan for the wetland buffer area that substantially conforms to the applicant’s proposed planting as seen on Exhibit Nos. 4 and 6, but which also includes the following specifications: (1) only native trees and shrubs of local genetic stock that are appropriate to northern coastal dunes habitats shall be used; and (2) fencing as directed in Special Condition No. 1 above shall be erected between the proposed development and the plantings. These requirements will provide an effective wetland buffer that will be enhanced with native vegetation and be free from residential activities and associated disturbance.

- *Revise the text of Findings IV-5-B “Protection of Coastal Dune ESHA & Adequacy of Proposed Setback” on page 38 as follows:*

Therefore, the Commission imposes Special Condition Nos. 8, 1, and 7. Special Condition No. 8 requires the applicant to record an open space deed restriction over an area that includes a minimum 50-foot-wide buffer area between the proposed residence and the coastal dune ESHA beginning at the western property boundary. Development will be precluded in this area except

for certain incidental activities such as planting native plants, removing debris, and repairing utility lines. Special Condition No. 1 requires the applicant to erect a minimum five-foot-high solid board ~~or wire~~ fence a minimum of 50-feet from the western property boundary as shown on Exhibit No. 6. In addition, Special Condition No. 7 requires the applicant to submit a revised site plan showing the home site shifted eastward at least 17 feet to a building envelope that is outside of the required open space area to ensure that a minimum 50-foot dune ESHA setback will be maintained.

Special Condition No. 1 requires a buffer fencing plan to separate the new development and activities associated with residential living from the ESHA and ESHA buffers. As written in the February 21, 2008 staff report, the condition requires that a solid wooden board or wire fence be established along the development side of the portion of the required open space area west and south of the driveway gate as shown on Exhibit No. 6. Mr. Birks suggests that wood fencing should surround the entire building envelope, including the north side.

The primary purpose of the fencing, as discussed in the Findings, is to ensure that residential activities and associated disturbance (e.g., domestic pets) are sufficiently separated from the wetland and dune ESHAs and their associated buffers. However, the staff report of February 21, 2008 inadvertently neglected to require fencing along the northern side of the building envelope. Furthermore, staff now recommends deleting the option to install wire rather than solid wood fencing. The latter will provide for a more effective privacy buffer between the future public accessway and the residence and associated yard areas. Therefore, staff is revising Special Condition No. 1 as shown above to allow for these modifications.

B. CONSTRUCTION FENCING

- *Add the following text to Special Condition No. 5 on page 10:*

5. Erosion & Runoff Control Plan

- A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and written approval, a plan to control erosion and runoff during project construction to protect adjacent wetlands and sensitive habitats.

- 1). The plan shall include, at a minimum, the following components:

- (a) Design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction;

- (b) Soils grading activities shall be restricted to the dry-season between April 15 and October 31;
- (c) A physical barrier consisting of silt fencing and/or bales of straw placed end-to-end shall be installed downslope of any construction areas. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period;
- (d) Vegetation at the site shall be maintained to the maximum extent possible. Topsoil shall be stockpiled and reused as ground cover after excavation work has been completed. Any disturbed areas shall be replanted with noninvasive native plants obtained from local genetic stock immediately following project completion, and covered by jute netting, coir logs, and rice straw;
- (e) Areas disturbed during construction, grading, etc. within the approved wetland buffer area shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area; and
- (f) Development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from grading areas and areas heavily used during construction, and, where feasible, avoidance of grading during the rainy season (November 1 to April 15); and
- (g) Construction fencing (such as orange plastic barrier fencing) shall be placed around the edge of the delineated wetland and dune ESHA vegetation to protect these sensitive habitats from construction activities.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a further Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- *Add the following text to Section IV-5-A "Protection of Wetlands & Adequacy of Proposed Wetland Setback" on page 29 as follows:*

Special Condition No. 7 requires the submittal of final design plans, including site, floor plan, and building elevations, that demonstrate that all of the residential improvements except the

driveway will be located within the building envelope and outside of the open space area. Special Condition No. 1 requires the applicant to erect a minimum 5-foot-high solid board or wire fence around the margins of the open space area as shown on Exhibit No. 6. Special Condition No. 2 requires that the applicant submit, prior to issuance of the permit for the review and approval of the Executive Director, a landscaping plan for the wetland buffer area that substantially conforms to the applicant's proposed planting as seen on Exhibit Nos. 4 and 6, but which also includes the following specifications: (1) only native trees and shrubs of local genetic stock that are appropriate to northern coastal dunes habitats shall be used; and (2) fencing as directed in Special Condition No. 1 above shall be erected between the proposed development and the plantings. **Special Condition No. 5 requires the submittal of an erosion and runoff control plan that specifies, among other requirements, that construction fencing (such as orange plastic barrier fencing) be placed around the edge of the delineated wetland and dune ESHA to protect these sensitive habitats from construction activities.** These requirements will provide an effective wetland buffer that will be enhanced with native vegetation and be free from **construction and** residential activities and associated disturbance.

Mr. Birks suggests that construction fencing be placed around the existing extent of wetland vegetation to isolate the sensitive habitat from construction activities. Special Condition No. 5 requires an erosion and runoff control plan for the construction phase of the project to, among other things, minimize the volume and velocity of stormwater runoff leaving the developed site and to capture sediment and other pollutants contained in stormwater runoff from the development by facilitating on-site infiltration and trapping of sediment generated from construction. Staff believes installation of the construction fencing as suggested around the construction area would further protect sensitive habitat areas from construction activities. Therefore, staff is revising Special Condition No. 5 as shown above to allow for the requested modification.

C. OSPREY NEST

- *Delete Special Condition No. 6 on page 10 in its entirety:*

6. — Protection of Osprey Nest

~~**PRIOR TO MARCH 1ST OF EACH YEAR OF CONSTRUCTION,** the applicant shall submit to the Executive Director, for review and written approval, results of an osprey survey performed at a seasonally appropriate time period by a qualified biologist in consultation with the California Department of Fish and Game stating whether or not the osprey nest located approximately 300 feet to the south of the subject property is being actively used by the birds. If the nest is found not to be active, then no further restrictions apply. If the nest is found to be active, then no construction or other site work that could disturb the osprey may occur from March 1 until August 15.~~

- *Revise the text of Finding IV-5 “Protection of Wetlands, Water Quality, and Environmentally Sensitive Habitat Areas” on page 21 as follows:*

The single family residence, as proposed, would be located a minimum of 83-100 feet from the delineated one parameter wetland (which is dominated by willows), and the proposed driveway would be located a minimum of 15-30 feet from the delineated wetland. Additionally, the single family residence, as proposed, would be located approximately 35 feet from coastal dune ESHA, as detailed in Finding No. 5-B below. ~~Finally, the proposed single family residence would be located approximately 300 feet from an osprey nest that was documented as active in 2005. Osprey (*Pandion haliaetus*) is listed as a Species of Concern by the Department of Fish and Game and meets the County LCP and Coastal Act definitions of ESHA (see Finding 5-C below).~~

- *Revise the text of Finding IV-5-C “Protection of Osprey Nest” on pages 38-39 as follows:*

C. Protection of Osprey Nest

The proposed development would be located approximately 300 feet from ~~an~~ **a former** osprey nest that was documented as active in 2005. Osprey (*Pandion haliaetus*) is listed as a Species of Concern by the California Department of Fish and Game and meets the County LCP and Coastal Act definitions of ESHA, as the species is especially valuable because of its special nature and its habitat is easily disturbed or degraded by human activities and development. The species is known for its strong nest-site fidelity; breeding pairs usually return to the same site year after year to breed. **However, during a severe wind storm that occurred since the nest was documented in 2005, the large conifer tree within which the nest was located blew over, and the nest was destroyed. No new osprey nest has been identified in the area.** Therefore, it is reasonable to conclude that the nest documented in 2005 approximately 300 feet southwest of the subject site ~~has the potential to be actively used by birds again in the future. Nesting pairs of osprey defend the area around their nest and raise one brood per year.~~

~~Poole (1989, as cited on the CDFG website <https://r1.dfg.ca.gov/portal/itp/WildlifeSpecies/Osprey/tabid/620/Default.aspx>) noted that osprey is particularly sensitive to abrupt or irregular disturbances when eggs or young are in the nest and remain alert to subtle differences in human behavior. Disturbance during the courtship period may cause abandonment of nest territories, and activities that flush an adult from the nest during incubation may result in nest abandonment. They are most sensitive to disturbance during courtship, incubation, and when young are on the nest.~~

~~Individual osprey pairs apparently vary in their ability to tolerate human disturbance. Some research indicates that tolerance to human activities depends upon the timing and frequency of the activities and on the degree of habituation that individual pairs develop to them. Ospreys initiating nesting in or near an area frequented by humans may be more tolerant of subsequent human activities than those unaccustomed to humans. Again, human activities that are initiated during incubation and early nesting are probably most disturbing to ospreys. Disturbance during this critical period can cause adults to leave the nest frequently or for extended periods of time,~~

~~which can be fatal to embryos and nestlings. Some studies recommend that human activities within 660 feet (201 meters) of any active osprey nest be restricted from April 1 to October 1 (Washington Department of Fish and Wildlife <http://wdfw.wa.gov/archives/pdf/94026031.pdf>). In consultations with Commission staff, California Department of Fish and Game staff have indicated that in the Humboldt Bay area, human activities near active osprey nests should be restricted from March 1 to August 15.~~

~~The Commission recognizes that the proposed development could disturb an active osprey nest and contribute to the flushing or abandonment of the nest by nesting birds, which in turn could impact the viability of eggs or offspring in the nest. Construction noises such as hammering, power tools, heavy equipment, air compressors, etc. could be disruptive enough to disturb the birds. Therefore, the Commission finds that Special Condition No. 6 is necessary to ensure the protection of any osprey that may be nesting in the vicinity of the subject parcel. Special Condition No. 6 requires that the applicant submit, by March 1st of each year of construction and for the review and approval of the Executive Director, results of an osprey survey performed at a seasonally appropriate time period by a qualified biologist in consultation with the Department of Fish and Game stating whether or not the osprey nest located in the vicinity of the subject property is being actively used by the birds. If the nest is found to be active, then no construction or other site work that could disturb the osprey may occur from March 1 until August 15.~~

~~**Therefore,** Tthe Commission finds that as conditioned, the amended development will be sited and designed to prevent avoid impacts to that would significantly degrade the adjacent environmentally sensitive osprey habitat. and will be compatible with the continuance of that habitat.~~

The purpose of Special Condition No. 6 was to protect an osprey nest that was documented as active in 2005 approximately 300 feet southwest of the subject site at the time of the County's approval of the project. Because the sensitive bird species is known for its strong nest-site fidelity (breeding pairs usually return to the same site year after year to breed), staff concluded that the nest documented in 2005 has the potential to be actively used by birds again in the future, though the presence of the nest was never field verified. On February 29, 2008, after review of the February 21, 2008 staff report, the applicant informed staff that the subject osprey nest is no longer in existence, as the tree in which it was housed blew over in a windstorm approximately three years ago. Thus a visit was made to the former nest site on March 4, 2008 by Commission staff and the applicant, which confirmed that a large snag located approximately 300 feet southwest of the applicant's property was indeed blown over and no longer housed the osprey nest. Staff also received confirmation of this fact from Michael Richardson, the Humboldt County planner assigned to the project prior to its appeal to the Commission. Staff further consulted with Michael van Hattem of the California Department of Fish and Game, who was unaware of a documented nest in the vicinity of the subject parcel. Therefore, staff is deleting Special Condition No. 6 and modifying the related findings as shown above.

D. UTILITY LINES

- *Add the following text to Special Condition No. 7 on page 11:*

7. Revised Site Plan and Building Elevation & Floor Plans

A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and written approval, final building elevations and floor plans for the new residence and a revised site plan for the parcel. The revised site plan must demonstrate the following:

1. The new residence and yard area shall be confined within the approved building envelope required by the Open Space Restrictions detailed in Special Condition No. 8;
2. The residence shall be no larger than the approved 1,760-square-foot, 22-foot-high structure authorized by the permit;
3. The proposed public access sign at the driveway entrance shall be deleted.
4. The existing gate near the driveway entrance shall be deleted.

5. Utility lines and sewer lines shall not be routed through or over wetland or dune ESHA.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a further Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

Mr. Birks inquires as to whether or not the applicant proposes to connect the sewer system for the new residence to the sewer lift pump located at the southeastern edge of the parcel, which would necessitate installing a sewer line through the delineated wetland and ongoing removal of wetland vegetation to maintain a clear line. A site visit was made on March 4, 2008 with Commission staff and the applicant, which confirmed that the applicant plans to connect to an existing sewer pump located near the northeastern boundary of the parcel rather than the sewer lift pump at the southeastern edge of the parcel. Connecting to this pump will not necessitate routing sewer lines through any sensitive habitat areas. The applicant also stated that utility lines could be routed down the driveway, avoiding sensitive habitat areas and the need for removal of ESHA vegetation. Therefore, staff is revising Special Condition No. 7 as shown above to require that utility lines not be routed through ESHA and to ensure that utility and sewer lines do not impact sensitive habitat areas.

E. PUBLIC ACCESS EASEMENT ALIGNMENT

- *Add the following text to Special Condition No. 9 on page 12:*

9. Vertical Access Over Trail to Beach

PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, and in order to implement the applicant's proposal, the applicant shall submit for the discretionary review and approval of the Executive Director, evidence that the applicant has executed and recorded an irrevocable offer to dedicate an easement for public vertical access in substantial compliance with the terms of the Project Description as proposed by the applicant in Exhibit No. 8 **and as modified by the applicant's letter dated March 5, 2008 with its attached exhibit (Exhibit No. 14) showing a revised easement alignment**, except as otherwise modified by these Special Conditions.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a further Commission amendment, approved pursuant to the provisions of 14 CCR §13166, to this Permit Amendment. This requirement shall be reflected in the provisions of the recorded offer.

- *Revise the text of Finding IV-6-A "Offer to Dedicate Public Access Facilities" on page 42 as follows:*

As proposed in the letter to Commission staff dated August 14, 2007 (Exhibit Nos. 8 and 4) **as modified by the letter and attached exhibit submitted to Commission staff on March 5, 2008**, the applicant is proposing to offer to dedicate a 10-foot-wide vertical easement for public access and passive recreational use from Peninsula Drive along an existing foot path across the property to the adjacent parcel owned by the Manila Community Services District (MCSD), which leads out to the open dunes and beach. As shown on Exhibit No. 4, which was submitted with the August 14, 2007 letter offering to dedicate the public access easement, the applicant is also proposing to post a sign at the driveway entrance that reads "Public Access, For pedestrian use only, No motor vehicles." The proposed easement alignment is centered along an existing footpath that cuts across the parcel in a generally southwesterly direction, as shown in Exhibit No. 4. According to the County staff report (Exhibit No. 12), the existing footpath on the subject property is an important linkage between Peninsula Drive and the MCSD easement, as it enables pedestrians to avoid a portion of a more or less parallel public access easement to the immediate south (which is recognized in the certified LCP) that is regularly flooded during the winter.

Mr. Birks notes that the proposed public easement as originally proposed would pass through an area of native vegetation on the site. In response, the applicant submitted to Commission staff, on March 5, 2008, a letter and associated exhibit, which propose extending the public easement an additional 30 feet westward before curving south in order to avoid the removal of native vegetation on site. Based on a site visit was made on March 4, 2008 with Commission staff, the applicant, the appellant, and Mr. Birks, the applicant's proposed change to the public access

easement alignment avoids routing the trail through an area of native vegetation and more closely follows the alignment of the well-worn pathway that exists on the property. Therefore, staff is revising Special Condition No. 9 as shown above to allow for the requested modification.

- *Add Attachment No. 2 as Exhibit No. 14 of the Staff Recommendation.*

RESPONSES TO ADDITIONAL COMMENTS

In addition to the changes requested above, Mr. Birks also made several other comments in his March 4, 2008 letter, which do not necessitate changes to the February 21, 2008 staff report. These include the following:

A. **Public Comment:**

Mr. Birks requests that the applicant post a hearing notice and site plan at the trailhead to give nearby property owners and trail users the opportunity to comment on the proposed project and staff recommendation. Staff believes that such action is not necessary or warranted, as the applicant has already met all legal noticing requirements. The applicant was subject to the public noticing requirements of the County during its review of the project, which includes posting a notice at the project site (the applicant claims multiple notices were torn down, along with “No Trespassing” signs). Furthermore, staff mailed the Commission’s hearing notice to all interested parties listed in the local record, including all who commented on the project at the local level.

B. **Public Access During Construction:**

Mr. Birks requests that construction fencing and public access detour signs be installed to keep the trail use “open” during construction activities. As explained in the February 21, 2008 staff report, although there is an unresolved question as to the existence of public prescriptive rights on the subject parcel, the applicant’s offer to dedicate an easement for public access protects any potential rights of public access acquired through use. However, because no prescriptive easement has been declared on the property by a court of law, there currently is no easement on the property that is open to the public. Special Condition No. 9 requires the applicant to provide evidence for the review and approval of the Executive Director that their offer to dedicate an easement for vertical public access over the property has been properly recorded prior to issuance of the coastal development permit amendment. However, a public accessway across the property will not actually be opened to the public until an entity accepts the applicant’s offer. Thus, there is no need for the detour signs requested by Mr. Birks.

C. **Driveway Materials:**

Mr. Birks requests that driveway materials be required to be “non-permeable” [sic] in perpetuity to prevent later asphaltting. Staff believes that such a condition is unnecessary due to the

requirements of Special Condition Nos. 4 and 16. Special Condition No. 4 requires the applicant to submit a drainage plan to ensure that drainage and runoff from the site do not adversely impact adjacent wetlands and sensitive habitats for the life of the project. The condition requires, among other things, that site runoff, including driveway runoff, shall be collected and directed away from the adjacent wetlands in a non-erosive manner into pervious areas of the site to achieve infiltration to the maximum extent practicable. Furthermore, Special Condition No. 16 requires that any future improvements to the single family house authorized by the permit, including, but not limited to, repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require a further amendment the permit or shall require an additional coastal development permit from the Commission or from the applicable certified local government. Therefore, the request to require the applicant to maintain the driveway as permeable in perpetuity is unnecessary, as existing conditions are adequate to protect wetland resources from the effects of increased impervious surfaces on the site.

D. Wetlands:

Mr. Birks questions the veracity of the Winzler & Kelly wetland delineation, specifically in the area near the proposed driveway entrance. This same question was raised by Mr. Birks at the local level, and Winzler & Kelly's response (dated May 5, 2005) is included on Page 8 of Exhibit No. 10 of the February 21, 2008 staff report. Essentially, the area in question was field checked, in response to the public comment, by the consultant's quality control staff, and it was found to be upland in nature. Misha Schwarz, Certified Professional Soil Scientist and department manager of Winzler & Kelly's environmental division, dug soil pits within and adjacent to the area in question, which was an area that had been previously graveled and used as an access road over the past decades. He found there to be no indicators of hydric soils or wetland hydrology in the area. Furthermore, the vegetation in the area was found to be a composite of wetland and non-wetland plants, though not specifically dominated by hydrophytic vegetation. Thus, Winzler & Kelly delineated the area as upland (see Page 8 of Exhibit No. 10 of the February 21, 2008 staff report).

Mr. Birks also inquires as to whether or not a retaining wall or culvert will be required to prevent wetland impacts and drainage problems resulting from driveway construction. The applicant has not proposed any culvert or retaining wall as part of this project. Therefore, no such development would be authorized under this coastal development permit, and adding a culvert or retaining wall to the project in the future would require a permit amendment. Furthermore, Special Condition Nos. 4 and 14 require the applicant to submit a drainage plan and County encroachment permit, respectively. The drainage plan is required to show that driveway runoff will be collected and directed away from the adjacent wetlands in a non-erosive manner into pervious areas of the site to achieve infiltration to the maximum extent practicable. Special Condition No. 14 requires that the applicant inform the Executive Director of any changes to the project required by the County's encroachment permit, and such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit.

Mr. Birks claims that there was a wetland delineation performed prior to the Winzler & Kelly delineation by MGW Biological Services, which he claims resulted in a different and more extensive wetland delineation, including the proposed driveway access area as being within the delineated wetland. This issue was also raised at the local level during project review by the County. Both the County (during its review of the project) and Commission staff (on March 4, 2008) requested that the applicant submit the results of any previous wetland delineations for the property. The applicant informed both the County and Commission staff that there were no other wetland studies conducted on the property. As Mr. Birks has not provided evidence of a previous, more extensive wetland delineation, and as the applicant's biological consultant visited the property on multiple occasions to verify the accuracy of the delineation (in response to public comment at the local level), staff believes that the Winzler & Kelly wetland delineation on file is an accurate representation of the extent of wetlands on the property.

March 4, 2008

California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501

RECEIVED

MAR 04 2008

CALIFORNIA
COASTAL COMMISSION

Re: A-1-HUM-05-041 Kable

Thank you to Coastal Commission staff and the applicant for making this a much better project than originally proposed. It better protects both public access and adjacent wetlands and ESHAs. However, additional conditions, outlined below, may be appropriate. Furthermore, the project as proposed still raises some questions that would best be sorted out before action is taken by the Commission. Accordingly, I request the hearing be continued to allow time for additional public comment and ensure that all matters are cleared up in a satisfactory way for all parties.

Request for Additional Conditions:

1. Public comment: Applicants should post hearing notice and site plan at trailhead and "storypole" proposed building and fencing. Adjacent property owners and trail users not on the notification list should have the opportunity to see and assess the impact and comment before action is taken by the Commission.
2. Public Access during Construction: Construction fencing and public access detour signs should be installed to keep trail use open and separate from building area.
3. Protection of Wetlands during Construction: Construction fencing should be placed around existing extent of wetland vegetation to isolate it from construction activities.
4. Driveway Materials: Driveway materials should be required to be non-permeable in perpetuity to prevent later asphaltting.
5. Fencing: Wood fencing should surround entire building envelope. Wood fencing was required by the County at the request of the public specifically to shield residence from trail users and should be required by the Commission for the same reason. Fencing should also be installed to the north to shield open area being restored. Cost of this could be split with adjacent property owner.
6. Trail Location: Actual trail alignment should follow the existing unaltered edge of wetland vegetation, rather than strictly as shown on the site plan, to prevent wetland vegetation from being removed. Native landscaping buffer to the north and west should vary in width accordingly.
7. Pressure Sewer Location: Pressure sewer line should be rerouted further south under the driveway, rather than just one foot from the property boundary to avoid causing damage or necessitating the removal of the existing mature Monterey cypress and other newly established trees, including willows, alders and wax myrtles, on the adjacent parcel. An arborist should be consulted to assess potential impacts and to help inform the exact placement of the line to avoid such damage. "Existing" sewer lift pump as shown on site plan is not there. Do the applicants intend to install one in this or another location? (Note: there is a sewer lift pump just south of the parcel at the edge of the salt marsh just west of the existing telephone pole. If this is where they ultimately plan to connect, this would require running the sewer line through heavily vegetated wetland--covered by tidal flows during the highest high tides. Mature willows, alders and other vegetation in wetland would be a problem for ps line connection in this area.)
8. Utility Line Location: Electric, Cable, Telephone and other utilities should be undergrounded from the nearest utility pole to the north to avoid removal of wetland vegetation or crossing adjacent parcel. As

ATTACHMENT 1

proposed, running lines from the existing pole at the edge of the salt marsh would require initial and ongoing removal of vegetation in the wetland to keep lines clear.

Unanswered Questions

In addition to the above proposed additional conditions, this proposal raises questions that I believe are relevant to not only this project but to subsequent proposals for development around Humboldt Bay and even the integrity of the process itself.

Enforceability of Special Conditions:

Will the many special conditions be enforceable over time? The conditions are very specific and extensive, but can such conditions (e.g. banning the use of rodenticides, low voltage lighting fixtures) be effectively enforced after initial construction given the project's relatively isolated location and the poor track record of enforcement of other zoning and health & safety codes in the area? I have been informed that an intern could be called to investigate complaints, but the effectiveness of this approach seems questionable at best and sets the stage for unnecessary conflicts with neighbors over what would be considered very minor violations in the adjacent residential settings. Given a lack of direct oversight after construction and a desire for neighborly relations, is it possible and even likely that the conditions will be violated and there will be no enforcement or corrective action, thereby ultimately resulting in potentially significant adverse effects on the adjacent wetlands and ESHAs?

Wetlands

The Winzler & Kelly wetland delineation quotes the CCC definition of wetland to be the "extent of mature willows." Does this mean to their trunks or to the extent of their branches? In this case, willows are sprawling and branched to the ground, but delineation excluded the extent of this vegetation from the wetland area. As per the requested condition above, could driveway and trail be routed in such a way to avoid removal of existing wetland vegetation?

Will grading and fill result in a different, higher elevation of the finished driveway at the entrance? This area, despite evidence of the presence of both seasonal standing water and wetland species, was subjectively excluded from the Winzler & Kelly delineation as being "often considered upland" because of previous graveling (now 6-8 inches below deposited organic matter). This area, at approximately the same elevation as the adjacent, delineated wetland, is currently about three feet (3') lower than the adjacent road and neighboring parcel. Will a retaining wall or culvert be required so as to prevent unnecessary impacts to the remaining wetland area and to prevent drainage problems for the neighboring parcel? Would this be included under this permit?

Relevant Information Not Submitted

My concern for the integrity of the process and of the ability of decision makers to make informed decisions causes me to raise this issue. There was another wetland delineation, the results of which have not been submitted by the applicant, performed by MGW Biological Services that appeared on the ground to result in a different, more extensive wetland delineation and appeared to include the proposed driveway access area in the wetland area. Wouldn't failing to require the applicant to submit this key information be a failure on the part of the Coastal Commission to base its decision on all relevant information, as required by its own regulations? Why, when flagging was placed on site by MGW which showed clearly the extent of both wetland and buffer areas, was that flagging immediately removed? Why would there be no resulting evidence from this wetlands delineation submitted by the applicant? The applicant claims no report was prepared and that Winzler & Kelly's is the best money can buy, but my understanding is that all relevant information **MUST** be submitted and to not do so is grounds for denial of the application. Wouldn't there likely have been at least a map and field notes resulting from this earlier delineation? Photos of the flagging exist and have been submitted by the public, along with photos of standing water in this and adjacent areas. Wouldn't this be important because it directly relates to the question of access to the proposed building site and whether that access would be *beside* wetlands in a

reduced buffer or *through* the wetland itself? Couldn't it be argued that if this area *is* wetlands, then there is no buffer available to reduce to provide access to the proposed building site? Would filling of wetlands to provide access be permitted? Wouldn't this bear directly on the applicant's assertion that denying the permit would amount to takings under the current local coastal program regulations? If the evidence not submitted by the applicant demonstrated that the area was indeed deemed wetlands by other professional biologists, rather than a reducible buffer area, would it result in a different analysis of the issue of takings and subsequent staff recommendations?

Precedent

Ultimately, would permitting this project set a precedent for filling either wetlands themselves or at least wetland buffers for driveways along the edge of Humboldt Bay for access to building sites outside buffers (or in this case building sites that can't fit outside buffers)? What will prevent the County from continuing to grant subdivisions and development permits at other sites at the edge of the Bay based on incorrect maps? What will keep thereby vested property owners from building whatever turns out to be necessary for development regardless of what actual conditions on the ground turn out to be? What will prevent applicants from not submitting relevant information if it is not in support of their goals and could result in an unfavorable regulatory decision?

Thank you for considering these concerns.

Signature on File

Carl G. Birks
1407 Peninsula Drive

Attachment: photo of standing water in driveway area outside delineated wetland area

Cc: Philip Kable, Applicant
Tina Christensen, Applicant
Gary Lester, Winzler & Kelly
Mike Seeber
Paul Cienfuegos
Aryay Kalaki, Coastal Coalition
Carol Vandemeer, Friends of the Dunes
Nora Winge
Simona Altman
Michael & Sharon Fennell
Erika Morris
Melanie Dabill
Marcia Bilderback
Jerry Martien
Dan & Nancy Ihara
Anthony Perrone
Ray & Rachel Grosveld
Manila Community Services District
Michael Richardson, Humboldt County Community Development Services



Fig. 1: Photo of Winzler & Kelly flagging showing relationship to standing water in driveway area to areas where there was no evidence found by the delineation of standing water and demonstrating method of excluding tree's branch areas from "extent of mature willows". Photo taken on January 28, 2006.

March 5, 2008

California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501
Attn: Melissa Kramer

RECEIVED

MAR 05 2008

CALIFORNIA
COASTAL COMMISSION

Re: A-1-HUM-05-41 Kable

Dear Ms. Kramer,

Pursuant to meeting with Bob Merrill and yourself on the site, you will find an attached map drawn by Omsberg and Associates that will refer to the new design for the 10-foot-wide public access easement. The prior easement entered from the driveway went west for appx 90 feet and then turned south, as indicated by the map the new easement will extend for appx another 30 feet. We are agreeable to this change and accept it as a condition of approval. If you should require additional information please feel free to contact me at anytime.

Sincerely,

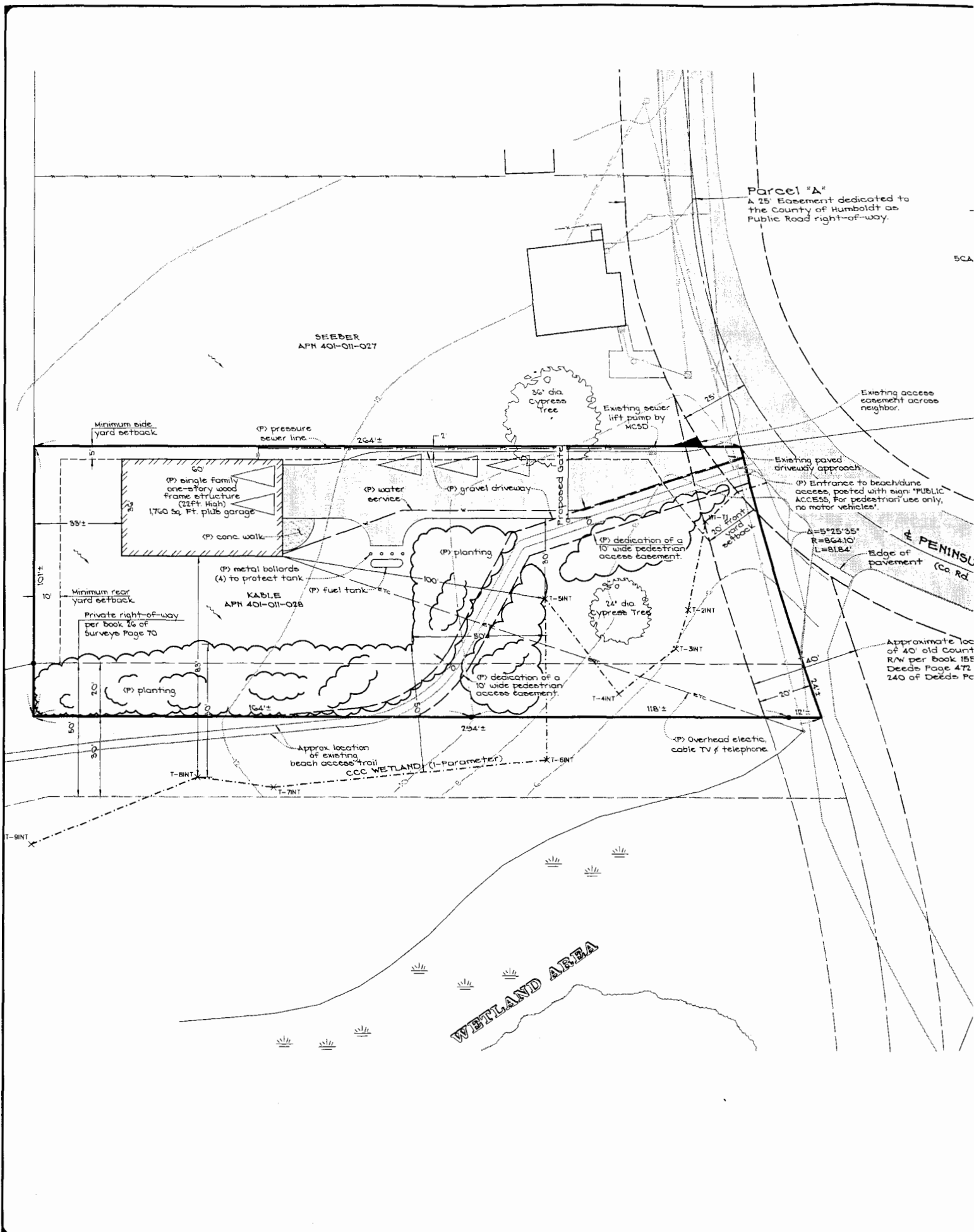
Signature on File

DIANA KABLE

Signature on File

Diana Kable

ATTACHMENT 2



indicated to
bolded as
f-way.

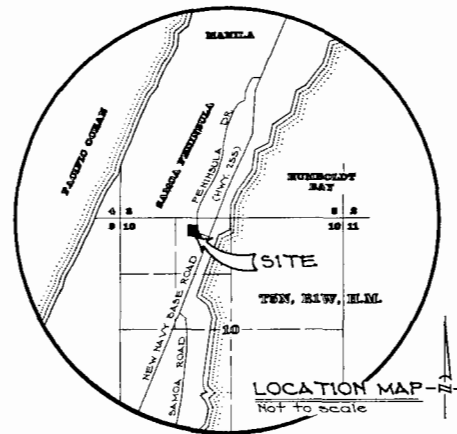


SCALE: 1" = 20'

UTILITIES

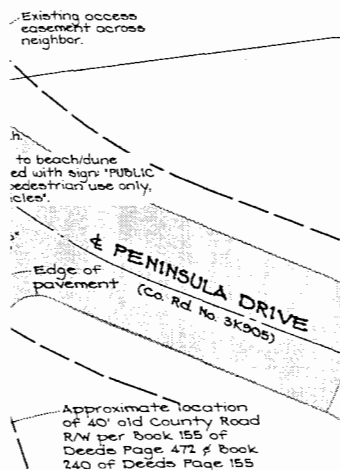
WATER & SEWER
GAS & ELECTRIC
TELEPHONE

Manila Community Services District
Pacific Gas & Electric Company
AT&T California



NOTES

- The property has a general plan designation of residential low-density (RL) and is currently zoned residential single-family (R-1) with a 5,000 square foot minimum parcel size, allowing mobile homes. The zoning designation also has combining zones identifying potential archaeological resource areas.
- Adjacent properties are zoned as following: the property to the west has a general plan designation of residential estate (RE), and is zoned residential single-family (R-1) allowing mobile homes, with combining zones identifying potential beach and dune areas. The property to the south has a general plan designation of natural resource (NR) and is currently zoned natural resource, with combining zones identifying potential coastal, wetland areas, beach and dune areas.
- The subject property is relatively flat. Contours shown are at 2 foot intervals and are based on a topographic survey performed by Omsberg & Company in February, 2003.
- Sewer and water services are provided by Manila Community Services District. PG&E supplies electricity and telephone service is provided by SBC Pacific Bell.
- The Peninsula Road centerline was re-aligned in the late 1980's to connect the road with Old Navy Base Road by California Department of Transportation (CalTrans) at that time Highway 255 was upgraded to current road configuration. The right-of-way that is parallel to the eastern property line (as shown), depicts the existing right-of-way that is not currently in use by CalTrans.
- Per F.I.R.M. Community-Panel # 060075 0775 C mapping, the site is shown to be subject to minimal flooding (Zone C).
- The property is mapped outside any Alquist-Priolo special studies zone, per Plate III, Seismic Safety Map, Humboldt Bay and Vicinity, North Sheet, June 1978.
- The property is indicated per Plate III, Seismic Safety Map, Humboldt Bay and Vicinity, North Sheet, June 1978 as having relatively stable slopes.
- No other hazardous areas, sensitive habitats, historic buildings or archaeological sites are known to exist on or adjacent to the property.
- The existing driveway on the Subject Parcel has been in existence at least since the mid 1980's that traversed the lot to the southwest.



LEGEND

SYMBOL	INDICATES	SYMBOL	INDICATES
•	Existing joint pole (power, phone & cable TV)	~	Direction of surface water run-off
---	Existing water line	---	Existing contours at 2' intervals
o	Existing water meter	•	Sanitary Sewer Panel
---	Existing pressure sewer line	---	Limit of wetlands as delineated by Winzler & Kelly, February 2005
⊞	Existing pressure sewer pump	---	Proposed pressure sewer line
⬆	Wetlands	---	Proposed water line
▶	Off-street parking locations		
☁	Proposed mitigation planting of native species in the upland area for a width of 20 feet (ie. Spruce, Pine, Huckleberry, Silk Tassel).		

OWNER / APPLICANT

Tina Christensen
2120 Campton Road
Eureka, CA 95503
(707) 445-8811

APN 401-011-028

OMSBURG & PRESTON
304 'N' Street
Eureka, California
95501
Telephone
(707) 443-8851
Fax: 443-0422
SURVEYORS PLANNERS ENGINEERS

DRAWN BY DATE
WJP 5/8/05
CHECKED BY DATE
APPROVED BY DATE

SITE PLAN EXHIBIT

TINA CHRISTENSEN
in the unincorporated area of Humboldt County
NW/4 SECTION 10, T5N, R1W, H.M.

SCALE
1" = 20'
JOB NO.
02-1354-1
SHEET 1 OF 1

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



F 10a

Filed:	August 18, 2005
49 th Day:	October 6, 2005
Hearing Opened:	September 14, 2005
Staff:	Melissa B. Kraemer
Staff Report:	February 21, 2008
Hearing Date:	March 7, 2008
Commission Action:	

STAFF REPORT: APPEAL**DE NOVO**

APPEAL NO.:	A-1-HUM-05-041
APPLICANT:	Phillip Kable
LOCAL GOVERNMENT:	County of Humboldt
DECISION:	Approval with Conditions
PROJECT LOCATION:	1401 Peninsula Drive, on the west side of Peninsula Drive, approximately 500 feet north from the southern intersection of Peninsula Drive with New Navy Base Road, in the Manila area of Humboldt County. (APN 401-011-028)
ORIGINAL PROJECT DESCRIPTION:	Divide a 1.19-acre parcel into two parcels of 0.59 acres ("Parcel 1") and 0.65 acres ("Parcel 2", the subject parcel). Parcel 1 (the adjacent parcel to the north of the subject parcel) is developed with an existing single-family residence, and Parcel 2, the subject property, is undeveloped. The subdivision approval was conditioned to require a 100-foot setback between the building site on Parcel 2 and adjacent wetlands
DESCRIPTION OF PERMIT MODIFICATION AS APPROVED BY COUNTY:	Modify a coastal development permit to allow: (1) reduction of the wetland setback from 100 feet to 15-60 feet; and (2) construction of an approximately 1,600 square-foot single-family residence with a maximum height of 20 feet above grade.

DESCRIPTION OF
REVISED PERMIT
MODIFICATION FOR
PURPOSES OF *DE NOVO*:

For the purposes of the Commission's *de novo* review, the applicant has amended the project description to (1) shift the proposed residence approximately 40 feet westward and 10 feet northward and modify its design (including narrowing the width) to increase the buffer between the house and the wetland to a minimum of ~83-100 feet (originally it was ~60 feet); (2) narrow the driveway to increase the buffer between the driveway and the wetland to a minimum of ~15-60 feet (from the original design of ~15-25 feet); (3) dedicate a 10-foot-wide public access easement across the property that connects with an existing beach access trail on the adjacent parcel; and (4) plant a vegetation buffer comprised of native, regionally appropriate species between all development and the wetland.

APPELLANT:

Michael Seeber

SUBSTANTIVE FILE
DOCUMENTS:

1) Humboldt County CDP-02-106M; &
2) Humboldt County Local Coastal Program

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

Staff recommends that the Commission approve with conditions the coastal development permit amendment for the proposed project. Staff believes that as conditioned, the amended development, as revised for purposes of the Commission's *de novo* hearing, is consistent with the Humboldt County certified LCP and the public access policies of the Coastal Act.

The project site is located on the North Spit (Samoa Peninsula) of Humboldt Bay, in the unincorporated community of Manila, on the west side of Peninsula Drive, approximately 500 feet north of the southern intersection of Peninsula Drive with New Navy Base Road, at 1401 Peninsula Drive (APN 401-011-28) in Humboldt County. The site is zoned Residential Single Family with an archaeological resources combining zone. Land to the north of the subject site is designated, zoned and developed for residential use. Land to the west of the site is zoned and planned for resource protection and includes coastal dune and dune forest habitats. The Manila Dunes Recreation Area is located to the north and west of the site. There has historically been some public use of footpaths and other areas of the southern portion of the property to connect to a single more definitive trail just to the south of the subject property that leads out to an adjacent parcel owned by the Manila Community Services District, which lies to the west of the property and leads west to the open dunes and beaches.

The southern portion of the 0.62-acre property contains a Palustrine shrub-scrub wetland dominated by willows. The bulk of the subject parcel, outside of the delineated wetland, consists

of level, sandy terrain sparsely vegetated with a mix of native and nonnative dune species. The land adjacent to the subject parcel to the west consists of open and forested dunes with scattered dune forest species.

At the Substantial Issue hearing in September 2005, the Commission continued the hearing, and since that time the applicant has provided considerable additional information including (1) an alternatives analysis and assessment of habitat values for establishing adequate wetland setback; (2) an environmentally sensitive habitat area assessment for coastal dunes on the property; and (3) an offer to dedicate a 10-foot-wide public access trail through the property that is equivalent in time, place, and manner to the existing prescriptive easement through the property.

The single family residence, as proposed, would be located a minimum of 83-100 feet from the delineated one parameter wetland (which is dominated by willows), and the proposed driveway would be located a minimum of 15-30 feet from the delineated wetland. Additionally, the single family residence, as proposed, would be located approximately 35 feet from coastal dune ESHA. Finally, the proposed single family residence would be located approximately 300 feet from an osprey nest that was documented as active in 2005.

The applicant has submitted various reports and correspondences which address the adequacy of the proposed wetland buffer to protect the wetland habitat. Additionally, the Commission's ecologist visited the property and is in agreement with the applicant's reduced wetland setbacks and, for the most part, the proposed mitigation recommendations. Staff recommends Special Condition No. 1, which requires a buffer fencing plan to separate the new development and activities associated with residential living from the ESHA and ESHA buffers. Staff also recommends Special Condition No. 2, which requires a landscaping plan for the wetland buffer area to screen the new development from the wetland ESHA. Furthermore, Special Condition No. 3, which restricts exterior lighting and materials to protect both sensitive habitat areas and visual resources. Additionally, Special Condition Nos. 4 and 5 are recommended, which require drainage and erosion and sediment control plans, respectively, to ensure drainage and runoff from the site do not adversely impact adjacent wetlands and sensitive habitats both during construction and for the life of the project. Finally, staff recommends Special Condition No. 8, which would require the applicant to record an open space deed restriction over an area that includes a minimum 50-foot-wide buffer area between the proposed residence and the wetland ESHA. Development would be precluded in this area except for certain incidental activities such as planting native plants, removing debris, and repairing utility lines.

In addition to wetland ESHA, coastal dune ESHA also occurs immediately adjacent to the western property boundary. Commission staff's ecologist has reviewed this proposal and has determined that in this case, a 50-foot buffer if supplemented with the installation of a minimum 5-foot-high solid board or wire fence along the outer edge of the buffer adjacent to the development area would be adequate to protect the coastal dune ESHA. Such a buffer area will help protect the dune ESHA from the direct effects of nearby disturbance, provide obstructions which help minimize the entry of domestic animals and humans to the ESHA, provide visual screening between species that are sensitive to human impacts, such as lighting, and reduce noise disturbances to wildlife species from the human development. The installation and use of the fence to enhance the buffer and the fact that runoff from the development will not be able to

reach the ESHA due to the permeable sandy soil conditions and the slight rise in elevation between the development and the ESHA makes a wider buffer unnecessary in this case. Therefore, staff recommends Special Condition No. 7 and 8. Special Condition No. 7 would require a revised site plan and final building elevations and floor plans, which would, among other things, require that the new residence and yard area shall be confined within the approved building envelope required by the Open Space Restrictions detailed in Special Condition No. 8 (see above).

Because the proposed development could disturb an active osprey nest and contribute to the flushing or abandonment of the nest by nesting birds, staff recommends Special Condition No. 6, which would require a survey of the osprey nest located approximately 300 feet to the south of the subject property and restrict construction activities from March 1 until August 15 that could disturb the sensitive bird species.

Although there is an unresolved question as to the existence of public prescriptive rights on the subject parcel, the applicant's offer to dedicate an easement for public access protects any potential rights of public access acquired through use. To ensure that the project is consistent with the public access policies of the Coastal Act and the certified LCP, staff recommends Special Condition Nos. 9 and 10. Special Condition No. 9 would require the applicant to provide evidence for the review and approval of the executive Director that their offer to dedicate an easement for vertical public access over the property has been properly recorded prior to issuance of the coastal development permit amendment. Special Condition No. 10 would protect any public rights of access that may exist over the property since public prescriptive rights have not been adjudicated by a court of law at this time.

Staff believes that as conditioned, the amended development, as revised for purposes of the Commission's *de novo* hearing, is consistent with the Humboldt County certified LCP and the public access policies of the Coastal Act.

The motion to adopt the staff recommendation of Approval with Conditions is found on Pages 5-6.

STAFF NOTES:

1. Standard of Review

The Coastal Commission effectively certified the County of Humboldt's LCP in 1982. Pursuant to Section 30603(b) of the Coastal Act, after effective certification of an LCP, the standard of review for all coastal permits and permit amendments for development located between the first public road and the sea is the standards of the certified LCP and the public access and recreation policies of the Coastal Act.

2. Procedure

On September 14, 2005, the Coastal Commission found that the appeal of the County of Humboldt approval of CDP-02-106M for the subject development raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Testimony may be taken from all interested persons at the *de novo* hearing.

3. Additional Information Submitted for *de novo* Review

For purposes of *de novo* review by the Commission, the applicant has submitted additional information since the County originally approved the project including (1) an alternatives analysis and assessment of habitat values for establishing adequate wetland setback; (2) an environmentally sensitive habitat area assessment for coastal dunes on the property; (3) information to evaluate the project's consistency with Section 30010 of the Coastal Act (takings analysis); and (4) an offer to dedicate a 10-foot-wide public access trail through the property that is equivalent in time, place, and manner to the existing prescriptive easement through the property.

The additional analyses submitted by the applicants for the *de novo* review address issues raised by the appeal and provide additional information concerning the project proposal that was not a part of the record when the County originally acted to approve the coastal development permit.

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

Motion:

I move that the Commission approve Coastal Development Permit Amendment No. A-1-HUM-05-041, subject to conditions.

Staff Recommendation of Approval:

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

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit amendment for the proposed amended development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Humboldt County LCP and the public access policies of the Coastal Act. Approval of the permit complies with the California

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

II. STANDARD CONDITIONS: See Appendix A.

III. SPECIAL CONDITIONS:

1. Buffer Fencing Plan

A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and written approval, a plan for fencing the habitat buffer open space area surrounding the coastal dune ESHA on the western edge of the property and the delineated one-parameter wetland along the southern portion of the property required by Special Condition No. 8. The buffer fencing plan shall separate the new development and activities associated with residential living from the ESHA and ESHA buffers.

- 1). The plan shall demonstrate that
 - (a) The fence shall be a minimum of five (5) feet tall and shall be made of solid wooden board or wire;
 - (b) The fence shall be established along the development side of the portion of the required open space area west and south of the driveway gate as shown on Exhibit No. 6; and
 - (c) The fence shall be installed prior to occupancy of the residence.
- 2). The plan shall include, at a minimum, the following components:
 - (a) A site plan showing the location of the fence relative to property lines, the open space area, and other features of the site;
 - (b) A detailed illustration showing the fence design and height;
 - (c) A list of fence materials;
 - (d) A schedule for installation of the fence; and

- (e) A plan for maintaining the buffer fence over the life of the project to ensure that it will have the intended benefit of protecting the sensitive wetland and dunes habitats adjacent to the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a further Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Landscaping Plan**

- A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit the Executive Director, for review and written approval, a plan for (1) landscaping the buffer area to screen the new development from the wetland ESHA and (2) any other residential landscaping to be used on the property. The plan shall be prepared by a qualified botanist or licensed landscape architect.
 - 1). The plan shall demonstrate that
 - (a) All planting within the buffer area shall be completed within 60 days after completion of construction;
 - (b) Only those plants native to coastal dune habitats of Humboldt Bay shall be used.
 - (c) The portion of the buffer area south of the building envelope, west of the driveway gate, and north of the offered public access easement (as shown on Exhibit No. 6) shall be planted at a minimum with tree and shrub species installed in a non-linear arrangement on 5-foot to 10-foot centers, as appropriate. Herbaceous plantings may also be used interstitially between tree and shrub plantings if desired;
 - (d) All plantings within the buffer area shall be planted and maintained so as not to encroach into the offered public access easement;
 - (e) All plantings within the buffer area shall be maintained in good condition throughout the life of the project to ensure continued compliance with the approved final landscape plan. If any of the plants to be planted according to the plan die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1st of the next spring season in-kind or with another native species common to coastal dunes habitats of Humboldt Bay;

- (f) All proposed plantings shall be obtained from local genetic stocks within Humboldt County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be planted or allowed to naturalize or persist on the parcel. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property; and
 - (g) Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.
- 2). The plan shall include, at a minimum, the following components:
 - (a) A final landscape site plan depicting the species, size, and location of all plant materials to be planted on the property, any irrigation system, delineation of the approved development, and all other landscape features; and
 - (b) A schedule for the planting of the landscaping.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a further Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Exterior Lighting & Materials Standards

All exterior lights, including any lights attached to the rear and sides of the buildings oriented toward the wetland and dune environmentally sensitive habitat areas adjoining the project parcel (to the south and west respectively) shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel or into the ESHA buffer areas. In addition, to minimize glare, no reflective glass, exterior finishings, roofing, or roof-mounted structures are authorized by this permit.

4. Drainage Plan

- A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and written approval, a plan for ensuring that drainage from the site does not adversely impact adjacent wetlands and sensitive habitats.
- 1). The plan shall demonstrate that
- (a) Site runoff, including roof gutters, shall be collected and directed away from the adjacent wetlands in a non-erosive manner into pervious areas of the site (*i.e.* undeveloped areas, landscaped areas) to achieve infiltration to the maximum extent practicable; and
 - (b) The release rate of stormwater runoff to adjacent wetlands shall not exceed the natural rate of stormwater runoff for a 50-year storm of 10-minute duration; and
 - (c) Stormwater outfalls, culverts, gutters, and the like shall be dissipated and, where feasible, screened.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Erosion & Runoff Control Plan

- A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and written approval, a plan to control erosion and runoff during project construction to protect adjacent wetlands and sensitive habitats.
- 1). The plan shall include, at a minimum, the following components:
- (a) Design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction;
 - (b) Soils grading activities shall be restricted to the dry-season between April 15 and October 31;
 - (c) A physical barrier consisting of silt fencing and/or bales of straw placed end-to-end shall be installed downslope of any construction

areas. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period;

- (d) Vegetation at the site shall be maintained to the maximum extent possible. Topsoil shall be stockpiled and reused as ground cover after excavation work has been completed. Any disturbed areas shall be replanted with noninvasive native plants obtained from local genetic stock immediately following project completion, and covered by jute netting, coir logs, and rice straw;
- (e) Areas disturbed during construction, grading, etc. within the approved wetland buffer area shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area; and
- (f) Development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from grading areas and areas heavily used during construction, and, where feasible, avoidance of grading during the rainy season (November 1 to April 15).

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a further Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Protection of Osprey Nest

PRIOR TO MARCH 1ST OF EACH YEAR OF CONSTRUCTION, the applicant shall submit to the Executive Director, for review and written approval, results of an osprey survey performed at a seasonally appropriate time period by a qualified biologist in consultation with the California Department of Fish and Game stating whether or not the osprey nest located approximately 300 feet to the south of the subject property is being actively used by the birds. If the nest is found not to be active, then no further restrictions apply. If the nest is found to be active, then no construction or other site work that could disturb the osprey may occur from March 1 until August 15.

7. Revised Site Plan and Building Elevation & Floor Plans

- A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, for review and written approval, final building elevations and floor plans for the new residence

and a revised site plan for the parcel. The revised site plan must demonstrate the following:

1. The new residence and yard area shall be confined within the approved building envelope required by the Open Space Restrictions detailed in Special Condition No. 8;
 2. The residence shall be no larger than the approved 1,760-square-foot, 22-foot-high structure authorized by the permit;
 3. The proposed public access sign at the driveway entrance shall be deleted.
 4. The existing gate near the driveway entrance shall be deleted.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a further Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Habitat Buffer Open Space Area Restrictions

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area generally depicted on Exhibit No. 6, which includes all areas of the subject parcel south of the approved driveway and south and west of the approved building envelope for the authorized 1,760-square foot residence and assorted development, except for:
- 1). Removal of non-native vegetation; planting and maintenance of required screening ESHA buffer pursuant to Special Condition No. 2; installation of erosion control measures installed pursuant to Special Condition No. 5; and erection of protective fencing pursuant to Special Condition No. 1; and
 - 2). The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: planting of native vegetation to improve the habitat value, planting and maintenance of additional ESHA buffer landscaping, maintenance of utility lines, removal of debris and unauthorized structures, and the installation and maintenance of public access improvements.
- B. **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-HUM-05-041**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the

subject property affected by this condition, as generally described above and shown on Exhibit No. 6 attached to this staff report.

9. Vertical Access Over Trail to Beach

PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, and in order to implement the applicant's proposal, the applicant shall submit for the discretionary review and approval of the Executive Director, evidence that the applicant has executed and recorded an irrevocable offer to dedicate an easement for public vertical access in substantial compliance with the terms of the Project Description as proposed by the applicant in Exhibit No. 8, except as otherwise modified by these Special Conditions.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a further Commission amendment, approved pursuant to the provisions of 14 CCR §13166, to this Permit Amendment. This requirement shall be reflected in the provisions of the recorded offer.

10. Public Rights

The Coastal Commission's approval of this permit amendment shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit amendment as evidence of a waiver of any public rights that may exist on the property. In addition, by acceptance of this permit amendment, the applicant acknowledges that the voluntary offers to dedicate public access do not abrogate the County's or the Commission's abilities under the certified LCP and/or the Coastal Act to consider the effects of future development of the property on public access and the possible need to require additional public access on the property in the future.

11. Public Access Easement Signage

PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the applicant shall submit a written agreement acknowledging the ability of the entity accepting the offer to dedicate a public access easement to erect a sign on the applicant's property in conformance with the terms of this special condition. The sign authorized in writing by the applicant prior to issuance of the coastal development permit shall be located in close proximity to and be visible from Peninsula Drive and shall prominently display that the trail is available for public access use. The sign authorized in writing by the applicant prior to issuance of the coastal development permit shall be installed at such time as the offered accessway is accepted and opened for public access use.

12. Conditions Imposed By Local Government

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

13. Area of Archaeological Significance

- A. If an area of historic or prehistoric cultural resources or human remains are discovered during the course of the project, all construction shall cease and shall not recommence except as provided in subsection (2) hereof, and a qualified cultural resource specialist shall analyze the significance of the find.
- B. A permittee seeking to recommence construction following discovery of the cultural deposits shall submit an archaeological plan for the review and approval of the Executive Director.
 - 1). If the Executive Director approves the archaeological plan and determines that the archaeological plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
 - 2). If the Executive Director approves the archaeological plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

14. Humboldt County Encroachment Permit

PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director a copy of Encroachment Permit issued by Humboldt County Public Works Department for the construction of the proposed driveway, which is partially located within areas of County right-of-way, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the County. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

15. Deed Restriction

PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the

entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

16. Future Development Restriction

This permit is only for the development described in Coastal Development Permit Amendment No. A-1-HUM-05-041. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit Amendment No. A-1-HUM-05-041. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require a further amendment to Permit No. A-1-HUM-05-041 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government

17. County Development Plan

A. **PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit three (3) copies of a revised Development Plan that has been reviewed and approved by the Director of the Planning Division. The plan shall be drawn to scale and shall give detailed specifications as to the development and improvement of the site and shall include the following site development details:

- 1). Mapping:
 - (a) Topography of the land in 2-foot contours.
 - (b) The building site and four independently accessible parking places on the subject parcel outside of the required setback areas.
 - (c) The habitat buffer open space area as shown on Exhibit No. 6 as required by Special Condition No. 8 of Coastal Commission CDP No. A-1-HUM-05-041 and the wetlands shown as “non-buildable.”
 - (d) Plantings consistent with the approved landscaping plan.
 - (e) The osprey nest to the south of the property.

- (f) A 10-foot-wide public accessway and wood fencing in the location shown on the approved Exhibit No. 6 of Coastal Commission CDP No. A-1-HUM-05-041.

B. Notes to be placed on the Development Plan include the following:

- 1). “All flammable vegetation and fuels caused by site development and construction, road and driveway construction, and fuel modification shall be disposed of by chipping, burying, burning or removal to a landfill site approved by the County.”
- 2). “No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area generally depicted on Exhibit No. 6 of Coastal Commission CDP No. A-1-HUM-05-041, which includes all areas of the subject parcel south of the approved driveway and south and west of the approved building envelope for the authorized 1,760-square foot residence and assorted development, except for:
 - (a) Removal of non-native vegetation; planting and maintenance of required screening ESHA buffer pursuant to Special Condition No. 2 of Coastal Commission CDP No. A-1-HUM-05-041; installation of erosion control measures installed pursuant to Special Condition No. 5 of Coastal Commission CDP No. A-1-HUM-05-041; and erection of protective fencing pursuant to Special Condition No. 1 of Coastal Commission CDP No. A-1-HUM-05-041; and
 - (b) The following development, if approved by the Coastal Commission as an amendment to CDP No. A-1-HUM-05-041: planting of native vegetation to improve the habitat value, planting and maintenance of additional ESHA buffer landscaping, maintenance of utility lines, removal of debris and unauthorized structures, and the installation and maintenance of public access improvements.”
- 3). “The project site is not located within an area where known cultural resources have been located. However, as there exists the possibility that undiscovered cultural resources may be encountered during construction activities, the following mitigation measures are required:
 - (a) If an area of historic or prehistoric cultural resources or human remains are discovered during the course of the project, all construction shall cease and shall not recommence except as provided in subsection (b.ii) hereof, and a qualified cultural resource specialist shall analyze the significance of the find.

- (b) A permittee seeking to recommence construction following discovery of the cultural deposits shall submit an archaeological plan for the review and approval of the Executive Director of the Coastal Commission.
 - i). If the Executive Director approves the archaeological plan and determines that the archaeological plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
 - ii). If the Executive Director approves the archaeological plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to CDP No. A-1-HUM-05-041 is approved by the Commission."
- 4). "Prior to March 1st of each year of construction, the applicant shall submit to the Executive Director, for review and written approval, results of an osprey survey performed at a seasonally appropriate time period by a qualified biologist stating whether or not the osprey nest located approximately 300 feet to the southwest of the subject property is being actively used by the birds. If the nest is found not to be active, then no further restrictions apply. If the nest is found to be active, then no construction or other site work that could disturb the osprey may occur from March 1 until August 15."
- 5). "Landscaping on the subject parcel shall conform to the following provisions:
 - (a) All planting within the buffer area as seen on Exhibit No. 6 of Coastal Commission CDP No. A-1-HUM-05-041 shall be completed within 60 days after completion of construction;
 - (b) Only those plants native to coastal dune habitats of Humboldt Bay shall be used.
 - (c) The portion of the buffer area south of the building envelope, west of the driveway gate, and north of the offered public access easement (as shown generally on Exhibit No. 6) shall be planted at a minimum with tree and shrub species installed in a non-linear arrangement on 5-foot to 10-foot centers, as appropriate. Herbaceous plantings may also be used interstitially between tree and shrub plantings if desired;
 - (d) All plantings within the buffer area shall be planted and maintained so as not to encroach into the offered public access easement;

- (e) All plantings within the buffer area shall be maintained in good condition throughout the life of the project to ensure continued compliance with the approved final landscape plan. If any of the plants to be planted according to the plan die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1st of the next spring season in-kind or with another native species common to coastal dunes habitats of Humboldt Bay;
 - (f) All proposed plantings shall be obtained from local genetic stocks within Humboldt County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be planted or allowed to naturalize or persist on the parcel. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property; and
 - (g) Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used."
- C. The applicant shall inform the Executive Director of any changes to the project required by the Planning Director. Such changes shall not be incorporated into the project until the applicant obtains a further Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS & DECLARATIONS

The Commission hereby finds and declares the following:

1. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated September 1, 2005.

2. Project Setting

The project site is located on the North Spit (Samoa Peninsula) of Humboldt Bay, in the unincorporated community of Manila, on the west side of Peninsula Drive, approximately 500 feet north of the southern intersection of Peninsula Drive with New Navy Base Road, at 1401 Peninsula Drive (APN 401-011-28) in Humboldt County (see Exhibit Nos. 1, 2, and 3).

The subject property is a relatively flat area (2-3% slope) and is approximately 101 feet x 290 feet, comprising approximately 0.62 acres. Access to the site is via Peninsula Drive, a County-maintained roadway. Water and sewer services are provided by the Manila Community Services District. The site is located within the County's urban limit line.

The site is designated Residential Single Family (RL) in the Humboldt Bay Area Plan (HBAP) segment of the certified Humboldt County LCP, and is zoned Residential Single Family (RS-5) with an archaeological resources (A) combining zone. The RL designation is applied in urban areas of the County where topography, access, utilities and public services make the area suitable for low-density residential development. Land to the north of the subject site is designated, zoned and developed for residential use. Land to the west of the site is zoned and planned for resource protection and includes coastal dune and dune forest habitats. The Manila Dunes Recreation Area is located to the north and west of the site. There has historically been some public use of footpaths and other areas of the southern portion of the property to connect to a single more definitive trail just to the south of the subject property that leads out to an adjacent parcel owned by the Manila Community Services District, which lies to the west of the property and leads west to the open dunes and beaches.

Winzler and Kelly Consulting Engineers prepared a wetland delineation dated February 2005 and determined that the subject property (APN 401-011-028) and the adjacent property to the south (APN 401-011-023) contain palustrine wetlands adjacent to the entire length of the parcel and extending across the southeast corner of the site (see Exhibit No. 10). According to the wetland delineation, vegetation at and adjacent to the site includes Arroyo willow (*Salix lasiolepis*), Slough sedge (*Carex obnupta*), Hairy willow-herb (*Epilobium ciliatum*), California blackberry (*Rubus ursinus*), and Common horsetail (*Equisetum arvense*).

The bulk of the subject parcel, outside of the delineated wetland, consists of level, sandy terrain sparsely vegetated with a mix of native and nonnative dune species such as Beach buckwheat (*Eriogonum latifolium*), Goldenrod (*Solidago spathulata*), Beach strawberry (*Fragaria chiloensis*), Beach evening primrose (*Camissonia cheiranthifolia*), Ripgut brome (*Bromus diandrus*), Sweet vernal grass (*Anthoxanthum odoratum*), Hairy cat's-ear (*Hypochaeris radicata*), and others.

The land adjacent to the subject parcel to the west consists of open and forested dunes with scattered dune forest species such as Beach pine (*Pinus contorta* ssp. *contorta*), Douglas-fir (*Pseudotsuga menziesii*), bearberry (*Arctostaphylos uva-ursi*), silk-tassel (*Garrya elliptica*), wax myrtle (*Morella californica*), and others. This land is planned and zoned for resource protection, and various public trails bisect the area.

3. Project Background

In September 2003, the Humboldt County Planning Commission approved a subdivision and coastal development permit (County Permit No. CDP-02-106) to divide a 1.19-acre parcel into two parcels of 0.59 acres ("Parcel 1") and 0.65 acres ("Parcel 2", the subject parcel) (see Exhibit No. 13). Parcel 1 (the adjacent parcel to the north of the subject parcel) is developed with an existing single-family residence, and Parcel 2, the subject property, is undeveloped. The subdivision approval was conditioned to require a 100-foot setback between the building site on Parcel 2 and adjacent wetlands, as well as other standard requirements for development in the coastal zone. In the County's review and approval of the subdivision, the location of the adjacent wetlands was based on the resource inventory maps of the County's LCP rather than on a site-specific wetland delineation. Following the recordation of the subdivision, a site-specific wetland delineation was prepared that determined the extent of the wetlands on and adjacent to Parcel 2 was more extensive than as shown on the County's resource inventory maps. As a result, it was determined that there was not adequate area at the site to provide a 100-foot setback between the building site and the delineated wetland.

On July 21, 2005, the Humboldt County Planning Commission conditionally approved a coastal development permit modification (CDP-02-106M) to allow for the following: (1) reduction of the wetland setback from 100 feet to 15-50 feet; and (2) construction of an approximately 1,600-square-foot single-family residence with a maximum height of 20 feet above grade. The approved permit imposed several special conditions including (a) a landscaping plan be prepared for the wetland buffer setback area consistent with the recommendations of the wetland delineation (prepared by Winzler and Kelly dated February 2005) and the approved plot plan, and that the landscaping be maintained in a clean and healthy condition; and (b) placing and maintaining construction fencing along the wetland buffer plantings prior to, and during, project construction. See Exhibit No. 12 for more details.

The County's approval of the coastal development permit modification was appealed to the Coastal Commission August 18, 2005 (Exhibit No. 11), and on September 14, 2005 the Coastal Commission found that the appeal raised a substantial issue with respect to the consistency of the project as approved by the County with the wetland protection provisions of certified LCP, including HBAP Policy 3.30(B)(6) and Coastal Zoning Regulations Sections 313-125.7, 313-125.8, and 312-39.15.

3. Permit Modification Description & Modifications

As approved by the County under CDP-02-106M, the coastal development permit modification involved modifying the permit's terms and conditions to allow the following: (1) reduction of the wetland setback from 100 feet to 15-60 feet; and (2) construction of an approximately 1,600-square-foot single-family residence with a maximum height of 20 feet above grade. For the purposes of the Commission's *de novo* review, the applicant submitted additional information after the County originally approved the project including (1) an alternatives analysis and assessment of habitat values for establishing adequate wetland setback (Exhibit No. 7); (2) an environmentally sensitive habitat area assessment for coastal dunes on the property (Exhibit No. 7); (3) information to evaluate the project's consistency with Section 30010 of the Coastal Act (takings analysis); and (4) an offer to dedicate a 10-foot-wide public access trail through the

property that is equivalent in time, place, and manner to the existing prescriptive easement through the property (Exhibit No. 8).

As currently proposed (see Exhibit No. 4), the project has been amended from the original approval (see Exhibit Nos. 5 and 12) to (1) shift the proposed residence approximately 40 feet westward and 10 feet northward and modify its design (including narrowing the width) to increase the buffer between the house and the wetland to a minimum of ~83-100 feet (originally it was ~60 feet); (2) narrow the driveway to increase the buffer between the driveway and the wetland to a minimum of ~15-60 feet (from the original design of ~15-25 feet); (3) plant a vegetation buffer comprised of native, regionally appropriate species between all development and the wetland; and (4) record an offer to dedicate a 10-foot-wide public access easement across the property that connects with an existing beach access trail on the adjacent parcel (compare Exhibit Nos. 4 and 5 for proposed modifications). The proposed offer to dedicate the public access easement and the conditions under which the offer would be recorded and public access use allowed are further discussed in Finding No. 6 (Public Access).

4. Planning & Locating New Development

Coastal Act Section 30250(a) states, in part, the following:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30250(a) of the Coastal Act states that new development shall be located in or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The subject property is located within a developed residential area zoned Residential Single-Family with 5,000-square-foot minimum parcel sizes, where 3-7 residential units per acre is a principally permitted use. Therefore, the proposed residential use would be located in a developed area planned for such use.

The subject parcel is located in an area served by the Manila Community Services District that would serve the proposed residence with municipal water and sewer service. Thus, the area has adequate services to accommodate the proposed residence.

The amended residential development would be located adjacent to a delineated wetland and sensitive dune habitat. As discussed in Finding No. 5 below, the amended development has been conditioned to minimize potential impacts to wetlands and other environmentally sensitive habitat areas.

The subject parcel is located in a designated archaeological combining zone indicating potential archaeological resources. As discussed in Finding No. 7 below, the amended development has been conditioned to minimize potential impacts to archaeological resources.

Therefore, the Commission finds that as conditioned, the amended development is consistent with Coastal Act Section 30250(a) in that it is located in a developed area, it has adequate water and sewer capability to accommodate it, and it will not cause significant adverse effects, either individually or cumulatively, on coastal resources.

5. Protection of Wetlands, Water Quality, & Environmentally Sensitive Habitat Areas

The single family residence, as proposed, would be located a minimum of 83-100 feet from the delineated one parameter wetland (which is dominated by willows), and the proposed driveway would be located a minimum of 15-30 feet from the delineated wetland. Additionally, the single family residence, as proposed, would be located approximately 35 feet from coastal dune ESHA, as detailed in Finding No. 5-B below. Finally, the proposed single family residence would be located approximately 300 feet from an osprey nest that was documented as active in 2005. Osprey (*Pandion haliaetus*) is listed as a Species of Concern by the Department of Fish and Game and meets the County LCP and Coastal Act definitions of ESHA (see Finding 5-C below).

LCP Policies and Standards:

Humboldt Bay Area Plan Policy 3.30 states the following, in applicable part, with regard to environmentally sensitive habitat areas:

*** 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.*

...

B. DEVELOPMENT POLICIES

...

1. Identification of Environmentally Sensitive Habitats

a. *Environmentally sensitive habitats within the Humboldt Bay Planning Area include:*

(1) *Wetlands and estuaries, including Humboldt Bay and the mouth of the Mad River.*

(2) *Vegetated dunes along the North Spit to the Mad River and along the South Spit.*

(3) *Rivers, creeks, gulches, sloughs and associated riparian habitats, including Mad River Slough, Ryan Slough, Eureka Slough, Freshwater Slough, Liscom Slough, Fay Slough, Elk River, Salmon Creek, and other streams.*

- (4) *Critical habitats for rare and endangered species listed on state or federal lists.*

...

6. Wetland Buffer

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

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

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

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

- b. *New development; except for:*

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

(2) *wells in rural areas; and*

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

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

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

...

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

- f. *All new development within the wetland buffer shall include the following mitigation measures: (emphasis added)*

(1) *Not more than 25% of the lot surface shall be effectively impervious.*

(2) *The release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.*

(3) *Storm water outfalls, culverts, gutters, and the like shall be dissipated.*

(4) *Septic systems or alternative waste disposal systems must meet standards of the Humboldt-Del Norte Health Department and the Regional Water Quality Control Board.*

(5) *Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area.*

(6) *Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).*

...

8. Coastal Streams, Riparian Vegetation And Marine Resources

*** *Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Use of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

*** 30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Humboldt County Zoning Regulations (CZR) Section 312-39.15 states the following with regard to wetland buffers:

39.15.1 *Development will be sited and designed to prevent impacts which would significantly degrade wetland habitat areas, and shall be compatible with the continuance of such habitat areas; and*

39.15.2 *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms shall be maintained, and where feasible, restored.*

CZR Section 313-125 states the following with regard to Wetland Buffer Areas:

125.1 **Purpose.** *The purpose of these regulations is to ensure that any development permitted in lands adjacent to coastal wetlands will not degrade the wetland and detract from its natural resource value, and will incorporate such features into the development site design without significant impact.*

...

125.5 **Definitions.** *Wetland buffer areas shall be defined as:*

125.5.1 *The area between a wetland and the nearest paved road or the forty (40)*

foot contour line (as determined from the 7.5-minute USGS contour maps), whichever is the shortest distance; or

125.5.2 *250 feet from the wetland, where the nearest paved road or forty foot (40') contour exceed this distance.*

125.5.3 *Transitional Agricultural Lands zoned AE are excluded from the wetland buffer.*

...

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

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

125.7.2 *Outside an urban limit line: The setback shall be between 100 and 200 feet, depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wetland habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland.*

125.7.3 *Reduction of Required Setback: In both urban and rural areas, setbacks of less than the distance specified in this section may be permitted only when:*

125.7.3.1 *The applicant for the proposed development demonstrates, to the satisfaction of the County, that a setback of less than the distance specified will not result in significant adverse impacts to the wetland habitat and will be compatible with the continuance of such habitats.*

125.7.3.2 *Any such reduction in development setback may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland habitat values. (emphasis added)*

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

125.9 ***Required Mitigation.*** *All development permitted within wetland buffer areas shall be required to include the following mitigation measures: (emphasis added)*

125.9.1 *Coverage of the lot or parcel with impervious surfaces shall not exceed twenty-five percent (25%) of the total lot area;*

- 125.9.2 *The release rate of stormwater runoff to adjacent wetlands shall not exceed the natural rate of stormwater runoff for a 50-year storm of 10-minute duration;*
- 125.9.3 *Stormwater outfalls, culverts, gutters, and the like, shall be dissipated, and where feasible, screened;*
- 125.9.4 *Areas disturbed during construction, grading, etc., within 100 feet of the boundary of the wetland shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area;*
- 125.9.5 *Development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from grading areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).*

Consistency Analysis:

A. Protection of Wetlands & Adequacy of Proposed Wetland Setback

Two types of wetlands were delineated in the 2005 delineation by Winzler & Kelly (Exhibit No. 10). A Palustrine Persistent Emergent Seasonally Flooded wetland, which has hydrophytic vegetation, hydric soils, and wetland hydrology, occurs at the base of the slope of a sand berm on the southeastern portion of the property and northern edge of the adjacent parcel to the south. This wetland is dominated by arroyo willow (*Salix lasiolepis*), slough sedge (*Carex obnupta*), hairy willow-herb (*Epilobium ciliatum*), California blackberry (*Rubus ursinus*), and common horsetail (*Equisetum arvense*). This three-parameter wetland is bordered along its northern edge by a strip of mature willow trees. This strip of willows was delineated as a one-parameter wetland in the Winzler & Kelly report, the boundary of which is shown on Exhibit No. 4. The one-parameter willow wetland is approximately 15-25 wide feet in most places. [Note: The three-parameter wetland boundary is not shown on the attached site plan map, Exhibit No. 4.]

The wetland delineation report describes the primary functions of the wetlands on the subject property as hydrological and biological. The wetlands are influenced by accumulated rainfall, surface runoff, and high groundwater. During high precipitation events the wetlands act like sponges to reduce flooding impacts. As a secondary function, the wetlands house invertebrates that are fed upon by birds and mammals. The willows provide cover and breeding habitat for birds and small mammals, and may serve as a migratory corridor. The upland edge of the delineated one-parameter wetland on the property “appears to have been impacted by historic, natural or man made sand movement” (Exhibit No. 10).

Per Policy 3.30(B)(6)(c) of the HBAP and Section 313-125.7.1 of the CZR, the prescribed wetland setback for development on the subject parcel, which is within the urban limit line, is to be 100 feet or the average setback of existing development immediately adjacent as determined

by the “string line method.” There is currently no existing residential or other type of development within 100 feet of the wetland (Peninsula Drive and New Navy Base Road lie immediately adjacent to the wetland to the east, and parcels to the west and south are undeveloped). Therefore, the appropriate wetland setback for the subject development should be 100 feet. However, CZR Section 313-125.7.3 allows for reduced wetland setbacks if it is demonstrated that the proposed reduced setback will not result in significant adverse impacts to the wetland habitat and will be compatible with its continuance. Furthermore, HBAP Policy 3.30(B)(6)(e) allows for reduced setbacks in situations when the prescribed buffer would prohibit development of the site for the principal use for which it is designated. In this case, the proposed single family residence is a principally permitted use for the parcel’s single-family residential planning and zoning.

There are several reasons to site development appropriately back from wetlands. Setback areas serve to protect wetlands from the direct effects of nearby disturbance. Furthermore, they can provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals. Additionally, setback areas provide obstructions which help minimize the entry of domestic animals and humans to wetlands. These undisturbed areas also provide visual screening between wetland species that are sensitive to human impacts, such as lighting. Finally, setback areas can also reduce noise disturbances to wetland species from human development.

As proposed, the single family residence would be located a minimum of 83 feet from the delineated one parameter wetland (willow strip) at one point (due to the irregular shape of the wetland, see Exhibit No. 4), and the proposed driveway would be located a minimum of 15 feet from the one-parameter wetland at one point. The delineated three-parameter wetland is located an additional 15-65 feet away from (to the south of) the proposed residence and driveway development (see Exhibit No. 4 for reference).

The local record contains and the applicant has submitted various reports and correspondences which address the adequacy of the proposed wetland buffer to protect the wetland habitat. These include an alternatives analysis and assessment of habitat values for establishing adequate wetland setback by Winzler & Kelly, dated February 16, 2006 (Exhibit No. 7) and an alternatives analysis for the placement and design of the proposed residence by Omsberg & Preston, dated December 20, 2006 (Exhibit No. 7).

The alternatives analysis prepared by Winzler & Kelly (Exhibit No. 7) addresses the adequacy of the proposed wetland setback in relation to the following factors: (1) resident and migratory species that inhabit or utilize the various affected wetlands; (2) resting, feeding, breeding, and nesting requirements of resident and migratory species; (3) susceptibility of documented species to site disturbance; (4) the species’ transitional habitat needs between the wetland and proposed development; and (5) qualitative and quantitative analysis of potential development disturbances. The analysis concludes that the proposed reduced setback is not likely to affect the existing wetland function for the following reasons:

- The riparian habitat, which would be closest to the proposed development, already is growing in what appears to be 5 to 6 feet of sand before any expected appearance of

groundwater, thereby minimizing the potential for impacts to the adjacent wetland relationship to groundwater.

- The subject site is entirely comprised of sand substrate; therefore all or most water runoff from the driveway or house site would be absorbed in the sand and not run directly into the adjacent wetlands.
- Because the adjacent riparian and salt marsh habitats currently are experiencing levels of bird species use, which do not seem to be adversely affected by the immediate highway functions (*i.e.*, proximity to New Navy Base Road noise and traffic), a residential house would not conceivably impact those species that occur in the wetland habitats.
- The proposed driveway, which will be as close as 15 feet from the wetland, is not expected to cause a significant impact to the existing wetland habitats because the entrance to the driveway is an existing access that is currently graveled, so the proposed extension and improvement of the driveway will not result in a land use that is significantly different from existing conditions.

The Winzler & Kelly analysis recommends the following mitigation measures for the proposed development on the parcel to minimize potential impacts on adjacent wetlands and ESHA: (1) retention of existing willow vegetation where at all possible; (2) no structures within the existing riparian and seasonal freshwater wetlands; (3) planting of native tree and shrub species to enhance the wetland buffer; (4) prohibiting unattended cat and dog house pets from roaming the adjoining wetland or coastal dune habitats; (5) prohibiting pets of any kind from being left unattended outside to disturb wildlife; and (6) prohibiting the installation of any unshielded light fixture on the property or the erection of any elevated light structure.

The Commission's ecologist, Dr. John Dixon, visited the property and is in agreement with the applicant's reduced wetland setbacks and, for the most part, the proposed mitigation recommendations. Dr. Dixon finds that the proposed development, and even allowing the residence and its yard to encroach to within 50 feet of the wetlands, with the incorporation of appropriate mitigation measures (discussed below), will not likely adversely affect wetland resources.

Regarding development of the driveway, such development is proposed to occur within 15 feet of the delineated one-parameter wetland. Due to the parcel's configuration in relation to Peninsula Drive and the presence of wetlands across nearly the entire eastern and southeastern edge of the parcel, the proposed driveway is located as far back from the delineated wetlands as possible. On average, the proposed driveway will be over 50 feet (15-100 feet) from the delineated one-parameter wetland (see Exhibit No. 4 for reference).

Winzler & Kelly, in a February 16, 2006 letter (Exhibit No. 7), analyzed the adequacy of the proposed driveway setback from the wetlands and found that the driveway placement "would not cause a significant impact to the existing habitat than that which is already present in the form of Peninsula Drive or the more substantial Highway 255 [New Navy Base Road], both of which

have crossed wetlands that were cleared and have remnant wetland habitats that still remain... [which] ...are in fine health, support a wide variety of species and would be readily tolerant of a single lane road or residential home” (Winzler & Kelly 2006, page 6). The letter further notes that entrance to the proposed driveway is an existing access road that was rocked in 1964 to provide construction vehicles access to the installation sites of the high tension wires.

Despite the Winzler & Kelly conclusion, the Commission recognizes that paving a driveway (10-foot wide at entrance and increasing to approximately 25-foot wide at the new residence), which will be sited as close as 15 feet from the wetland, has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources. As stated above, Policy 3.30(B)(8) of the certified HBAP requires that the biological productivity and quality of coastal waters and wetlands be maintained and, where feasible, restored by minimizing the adverse effects of waste water discharges and entrainment, controlling runoff, maintaining natural vegetation buffers, and other means.

As discussed above, the Winzler & Kelly analysis recommends various mitigation measures to minimize the proposed development’s potential impacts on adjacent wetlands and ESHA. Although these mitigation measures generally are appropriate, they do not go far enough or are not specific enough to ensure protection of wetland resources on the site. For example, the proposed planting of native tree and shrub species to enhance the wetland buffer is appropriate, but it does not specify exactly where the plants are to be installed or that the species to be planted should be regionally appropriate and habitat specific. As another example, although the mitigation recommendations include a measure to prohibit “unattended cat and dog house pets from roaming the adjoining wetland or coastal dune habitats,” no specific measures are recommended to ensure that normal residential-associated activities and impacts are kept out of the sensitive habitats and associated setback areas. Furthermore, the proposed mitigation measures do not include those listed in HBAP Policy 3.30(B)(6)(f), which are designed to protect wetlands and water quality.

The Winzler & Kelly buffer recommendations do not take into account the need to provide for a buffer as well from the coastal dune ESHA that exists adjacent to the western boundary of the subject property. As discussed in Finding 5-B (Protection of Coastal Dune ESHA and Adequacy of the Proposed Setback), the Commission has determined that a 50 foot buffer needs to be provided between the coastal dune habitat and the proposed residential development. Adjusting the site plan to provide for such a coastal dune habitat has the effect of reducing the available area for residential development and making it infeasible to provide as large a wetland buffer as recommended by Winzler & Kelly. However, Dr. Dixon believes that a 50-foot buffer established (see Exhibit No. 6) between the edge of the delineated one-parameter wetland and the proposed single family residence and associated yard area would be sufficient at this particular site. Only incidental development will be allowed within this buffer area, such as the public easement over the existing trail (see Finding No. 6 below) and native plant landscaping necessary to enhance the effectiveness of buffer. Dr. Dixon also recommends that a 5-foot-high solid board or wire fence be installed between the proposed residence and its yards and the buffer area. The purpose of establishing the 50-foot buffer and fence is to ensure that the residence

itself and all yard development and activities associated with residential living are maintained an adequate distance away from the wetlands to ensure their protection. This buffer area will help protect wetlands from the direct effects of nearby disturbance, provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals, provide obstructions which help minimize the entry of domestic animals and humans to wetlands, provide visual screening between wetland species that are sensitive to human impacts, such as lighting, and reduce noise disturbances to wetland species from human development.

Therefore, to ensure that residential development does not encroach into the wetland ESHA or the recommended 50-foot buffer area, the Commission attaches Special Condition No. 8. Among other things, this condition requires the recordation of an open space deed restriction over all areas within 50 feet of the exterior boundary of delineated wetlands and all areas south of the proposed driveway, as generally depicted on Exhibit No. 6. The area of the property unaffected by the open space deed restriction (except for the driveway) becomes a building envelope within which the authorized 1,760-square-foot residence and associated yards and other residential development must be located. The deed restriction must be submitted for the review and approval of the Executive Director prior to recordation. The deed restriction would prohibit all development in the affected area except for the removal of non-native vegetation; planting and maintenance of required landscaping; installation of erosion control measures; erection of protective fencing; planting of native vegetation to improve the habitat value; maintenance of utility lines; removal of debris and unauthorized structures; and the installation and maintenance of public access improvements. The Commission notes that the requirement of Special Condition No. 15 to record a deed restriction will ensure that both the applicant and future purchasers of the property are notified of the prohibitions on development within the Martin Creek ESHA and buffer area.

Special Condition No. 7 requires the submittal of final design plans, including site, floor plan, and building elevations, that demonstrate that all of the residential improvements except the driveway will be located within the building envelope and outside of the open space area. Special Condition No. 1 requires the applicant to erect a minimum 5-foot-high solid board or wire fence around the margins of the open space area as shown on Exhibit No. 6. Special Condition No. 2 requires that the applicant submit, prior to issuance of the permit for the review and approval of the Executive Director, a landscaping plan for the wetland buffer area that substantially conforms to the applicant's proposed planting as seen on Exhibit Nos. 4 and 6, but which also includes the following specifications: (1) only native trees and shrubs of local genetic stock that are appropriate to northern coastal dunes habitats shall be used; and (2) fencing as directed in Special Condition No. 1 above shall be erected between the proposed development and the plantings. These requirements will provide an effective wetland buffer that will be enhanced with native vegetation and be free from residential activities and associated disturbance.

The Commission finds that the ESHA located adjacent to the site could be adversely affected if non-native, invasive plant species were introduced in general landscaping at the site. Introduced invasive exotic plant species could physically spread into the ESHA and displace native wetland vegetation to the south or native dune vegetation to the west, thereby disrupting the values and

functions of the adjacent ESHAs. The seeds of exotic invasive plants could also be spread to nearby ESHA by wind dispersal or by birds and other wildlife. The applicant is not proposing any landscaping as part of the proposed project. However, to ensure that the ESHA near the site is not significantly degraded by any future landscaping that would contain invasive exotic species, the Commission attaches Special Condition No. 2 that requires only native and/or non-invasive plant species be planted at the site. In addition, Special Condition No. 15 requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property which would ensure that all future owners of the property are aware of the landscaping restriction.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, gophers, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to pose significant primary and secondary risks to non-target wildlife present in urban and urban/wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential significant adverse cumulative impact to environmentally sensitive wildlife species, the Commission attaches Special Condition No. 2 prohibiting the use of specified rodenticides on the property governed by CDP No. A-1-HUM-05-041. The required recordation of a deed restriction identifying all applicable special conditions attached to the permit will provide notice to future owners of the terms and limitations placed on the use of the property.

The Commission notes that future minor incidental development normally associated with single family residences such as additions to the residence, construction of outbuildings, decks and patios, or installation of landscaped areas could be sited and designed in a manner that could compromise the value of the buffer and have potentially adverse impacts on the environmentally sensitive habitat area. Many of these kinds of development are normally exempt from the need to obtain a coastal development permit under Section 30610(a) of the Coastal Act. Thus, the Commission would not normally be able to review such development to ensure that impacts to sensitive habitat are avoided. To avoid such impacts to coastal resources from the development of otherwise exempt additions to existing homes, as discussed above, Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of Regulations (CCR). Section 13250(b)(6) specifically authorizes the Commission to require a permit for additions to existing single family residences that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. As noted above, certain additions or improvements to the approved residence could involve a risk of adverse impacts to the ESHA on the site. Therefore, in accordance with provisions of Section 13250 (b)(6) of Title 14 of the CCR, the Commission attaches Special Condition No. 16 which requires a coastal development permit or a permit amendment for all additions and improvements to the residence on the subject parcel that might otherwise be exempt from coastal permit requirements. This condition will allow future development to be reviewed by the

Commission to ensure that future improvements will not be sited or designed in a manner that would result in adverse impacts to the ESHA on the site. Special Condition No. 15 also requires recordation of a deed restriction to ensure that all future owners of the property are aware of the requirement to obtain a permit for development that would otherwise be exempt. This requirement will reduce the potential for future landowners to make improvements to the residence without first obtaining a permit as required by this condition.

If not restricted, exterior lighting associated with the proposed development could adversely affect nocturnal wildlife using the wetland habitats. For example, many species avoid areas with excessive lighting, and some species simply stop reproducing if habitat destruction from overly bright lights becomes too severe. Furthermore, as discussed in more detail below in Finding No. 8, exterior lighting associated with the proposed development also could adversely affect visual resources in the area if the lighting were allowed to shine skyward and beyond the boundaries of the parcel. The glow of lighting emanating above the subject property would be visible from public vantage points. Such lighting would not be compatible with the character of the area, as the Manila area has relatively minimal lighting. To reduce the impacts of exterior lighting associated with the proposed development on coastal resources, the Commission therefore attaches Special Condition No. 3, which requires that all exterior light be the minimum necessary for the safe ingress, egress, and use of the structures and be low-wattage, non-reflective, shielded, and have a directional cast downward. These limitations on the lighting will ensure that the project, as conditioned, will not cast a skyward glow that would be harmful to wildlife using the nearby sensitive habitats and incompatible with the rural character of the area. As discussed above, Special Condition No. 15 requires the applicant to record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property, including these lighting restrictions to protect biological and visual resources.

As discussed above, the proposed development will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons, including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters and wetlands, reduce optimum populations of marine organisms, and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource protection policies of the certified LCP, the Commission attaches Special Condition No. 4. The condition requires the applicant to submit a drainage plan for review and approval of the Executive Director prior to the issuance of the coastal development permit. The drainage plan shall demonstrate that the runoff from the site, including roof gutters, is collected and directed away from the ESHA in a non-erosive manner into pervious areas on the site to achieve infiltration to the maximum extent practicable. Section 313-125.9 of the certified Coastal Zoning Regulations require various mitigation measures in wetland buffer areas including (1) coverage of the lot or parcel with impervious surfaces shall not exceed 25 percent of the total lot area; (2) the release rate of stormwater runoff to adjacent wetlands shall not exceed the natural rate of stormwater runoff for a 50-year storm of 10-minute duration; (3) stormwater outfalls, culverts, gutters, and the like, shall be dissipated, and where feasible, screened; (4) areas disturbed during construction, grading, etc., within 100 feet of the boundary of the wetland shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area; and (5) development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from grading areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April). Therefore, the Commission requires Special Condition Nos. 4 and 5. Special Condition No. 4 requires the applicant to submit a drainage plan for the Executive Director's review and approval that demonstrates that drainage from the site will not adversely impact adjacent wetlands and sensitive habitats. Special Condition No. 5 requires the applicant to submit an erosion and runoff control plan for the construction phase of the project that requires, in part, (1) design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction; (2) soil grading activities shall be limited to the dry season; (3) a physical barrier consisting of silt fencing and/or bales of straw shall be erected downslope of any construction areas; (4) vegetation on the site shall be maintained to the maximum extent possible. These two conditions also incorporate the mitigation measures listed in CZR Section 313-125.9.

As noted above, Policy 3.30(B)(6)(c) of the HBAP and Section 313-125.7.1 of the CZR would normally require a wetland setback for development of 100 feet in this case. However, CZR Section 313-125.7.3 allows for reduced wetland setbacks if it is demonstrated that the proposed reduced setback will not result in significant adverse impacts to the wetland habitat and will be compatible with its continuance. Furthermore, HBAP Policy 3.30(B)(6)(e) allows for reduced setbacks in situations when the prescribed buffer would prohibit development of the site for the principal use for which it is designated. Thus, a reduced wetland setback may be allowed if (1) a buffer less than 100 feet will not result in significant adverse impacts to the wetland pursuant to Section 313-125.7.1 of the CZR and (2) a buffer of 100 feet would prohibit development of the site for the principally permitted residential use for which it is designated pursuant to Section 3.30(B)(6)(e) of the HBAP. Based on the determination of Dr. Dixon that a wetland setback of 50 feet would be adequate to protect the wetlands if native vegetation were planted in the buffer as proposed by the applicant and if a 5-foot-high fence were installed between the buffer and the development, the Commission finds that with the requirements of Special Conditions 8, 2, and 1

above requiring an open space deed restriction over the 50-foot area between the residential development and the wetland area, the installation of buffer plantings, and the installation of a fence along the margin of the buffer, respectively, the reduced wetland setback to be provided by the project as conditioned will avoid significant adverse impacts to the wetlands and is consistent with Section 313-125.7.1 of the CZR. In addition, the Commission finds that a reduced wetland setback is consistent with Section 3.30(B)(6)(e) of the HBAP for the following reasons. First, the proposed single-family residence is a principally permitted use for the parcel's single-family residential land use plan designation. Second, the development will still retain the maximum setback feasible as (a) the need to provide the required coastal dunes ESHA setback precludes use of the most westerly 50-foot width of the parcel, (b) the driveway must connect the residence to Peninsula Drive to function and the driveway is located as far away from the wetland area as possible, and (c) the small building envelope to be provided to accommodate the modest 1,760-square-foot house and minimal yard area cannot reasonably be reduced in size. Therefore, the Commission finds that the required wetland setback is consistent with the wetland setback requirements of the certified LCP.

Therefore, for all of the reasons discussed above, the Commission finds that the proposed development, as conditioned, is consistent with the wetland and water quality protection policies of the certified LCP, including the provisions of HBAP Policy 3.30 and CZR Sections 312-39.15 and 313-125.

B. Protection of Coastal Dune ESHA & Adequacy of Proposed Setback

Policy 3.30(B)(1) of the HBAP lists "*vegetated dunes along the North Spit...*" as a type of environmentally sensitive habitat area (ESHA). Furthermore, HBAP Policy 3.30 incorporates Coastal Act Section 30240 (cited above), which requires that ESHA be protected against any significant disruption of habitat values, and development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade the ESHA and shall be compatible with its continuance. The subject parcel is situated immediately adjacent to a public recreation area with public easements traversing coastal dune habitats that extend westward to the beach and northward to additional open coastal dunes.

"Coastal dunes" is a general name for a unique ecosystem that is scattered throughout coastal California and locally occurs along an approximately 26-mile narrow strip of coastline in the Humboldt Bay area. In general, sand dunes are formed from sediments washed away by annual rains from the erosive soils of the Franciscan Assemblage. The Mad and Eel Rivers carry these sediments to the ocean, thereby feeding the sediments into the dunes of the Humboldt Bay region via longshore transport, summer ocean swells, and predominant northwesterly winds (Miller 1997). In winter, large storm waves continue the dune building cycle by scouring the beach and washing sediments back out to sea. The net effect is the continual building and movement of dunes. This dynamic process has created a variety of dune habitats within a narrow stretch of coastline.

Typically the dune system begins above the beach with the foredune, a ridge of sand that forms parallel with the beach above the mean high tide. Behind the foredune is a series of longitudinal dune ridges and swales oriented parallel to the prevailing winds. Collectively, the foredune,

dune ridges, and swales are referred to as the nearshore dunes. East of the nearshore dunes is a deflation plain that grades into large parabolic moving dunes or sand sheets. Older dunes, located east of the moving dunes, consist of stabilized parabolas, ridges, and depressions that support coastal coniferous forest on the uplands and deciduous freshwater swamp or marsh in the low lying wetlands.

Coastal dunes support not only a diversity of habitats, but also a high diversity of species and vegetation types, many of which are rare or endangered. Numerous rare plant species, including the federally and state endangered Humboldt Bay wallflower (*Erysimum menziesii* ssp. *eurekaense*), the federally and state endangered Beach layia (*Layia carnosa*), the California Native Plant Society-listed Dark-eyed gilia (*Gilia millefoliata*), and the CNPS-listed Pink sand verbena (*Abronia umbellata* ssp. *breviflora*), among others, all have documented occurrences on the dunes of the North Spit. Furthermore, there are various plant communities that are rare and unique to these coastal dunes. The Native Foredune Grassland, which is a globally endangered community dominated by the native dunegrass (*Leymus mollis*), occurs on the primary foredunes where the species is adapted to the intense salt spray and sand deposition that occurs in this habitat. This plant community has been displaced throughout most of its range by the nonnative European beachgrass (*Ammophila arenaria*), which is prevalent across the dunes of the North Spit and beyond. Dune mat is another rare community of plants that occurs on semi-stable dune ridges behind the foredunes. Indigenous dune species such as Beach pea (*Lathyrus littoralis*), Beach buckwheat (*Eriogonum latifolium*), Seaside daisy (*Erigeron glaucus*), Dune goldenrod (*Solidago spathulata*), and other flowering plants provide a spectacular floral display each spring. The dune mat community is also home to the rare and endangered plants mentioned above. Native solitary bees (e.g., leaf-cutter bee, *Megachile wheeleri*; silver bee, *Habropoda miserabilis*; and others) create burrows in the sand and are essential pollinators that maintain this community. A variety of other invertebrates (including many specially adapted for this environment) and vertebrates (such as Porcupine, Gray fox *Urocyon cinereoargenteus*; Striped skunk, *Mephitis mephitis*; and various others) occur here. Dune mat has become extremely rare in the Pacific Northwest and in many parts of California due to the spread of European beachgrass, Iceplant (*Carpobrotus* spp.), Yellow bush lupine (*Lupinus arboreus*), and other aggressive nonnative species. The dune swale community occurs in the nearshore dunes in depressions between ridges. These seasonal freshwater wetlands form in winter when loose sand blows away and the water table rises, allowing plants to colonize. First algae and then rushes (*Juncus* spp.) and sedges (*Carex* spp.) occur with many associated herbs such as Springbank clover (*Trifolium wormskioldii*), Pacific silverweed (*Potentilla anserina* ssp. *pacifica*), Northern willow-herb (*Epilobium ciliatum*), and others. Hooker's willow (*Salix hookeri*) and Beach pine (*Pinus contorta* ssp. *contorta*) follow, ultimately creating wooded swales that attract many species of birds and mammals. Additionally, swales provide the seasonal water needed for many amphibian species, including Red-legged frogs (*Rana aurora aurora*) and Pacific chorus frogs (*Hyla regilla*).

East of the dune mat, dune swale, and moving dune communities lie the forested dunes, which occur on older stabilized dunes. The dune forest is an incredibly lush and productive environment, with over 300 species of mushrooms, lichens, and mosses alone. The forest canopy is dominated by Sitka spruce (*Picea sitchensis*) and Beach pine, with lesser Grand fir (*Abies grandis*), Douglas-fir (*Pseudotsuga menziesii*), and Madrone (*Arbutus menziesii*). The

understory varies from dense stands of Huckleberry (*Vaccinium ovatum*) and Salal (*Gaultheria shallon*), to more open woodlands with a groundcover of Bearberry (*Arctostaphylos uva-ursi*), Reindeer lichen (*Cladonia pacifica*), and the showy Calypso orchid (*Calypso bulbosa*), Rein orchid (*Piperia* spp.), and Hooded ladies' tresses (*Spiranthes romanzoffiana*). The largest mammals of the forest are Gray fox, but there are many smaller mammals including the rare White-footed vole (*Arborimus albipes*).

The North Spit is a relatively mature dune system that contains a diversity of landforms. The coastal dunes of this area are in and of themselves unique, as the key components needed to build a dune system include a source of sand, a shoreline perpendicular to the prevailing winds, and a low landscape over which dunes can migrate. In addition, plant species that are adapted to survive the drying winds, shifting sands, and salt spray are needed to help shape and build the dunes. Many dune systems on the Pacific coast have already been destroyed by industrial and residential development, and others are threatened by recreational impacts, such as the use of off-road vehicles.

The County, recognizing the uniqueness and values of coastal dunes, designated "*vegetated dunes along the North Spit*" as a type of ESHA in its certified LCP. The LCP maps "dune habitat" generally on resource protection maps in the certified Humboldt Bay Area Plan but otherwise gives no definition as to what constitutes "vegetated dune ESHA." Furthermore, the certified Coastal Zoning Regulations (Section 313-143) define "environmentally sensitive habitat areas" according to Coastal Act Section 30107.5: "*Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*" Pursuant to this definition of ESHA, the Coastal Commission has considered coastal dune habitat to include not just vegetated dunes but even unvegetated dune areas to be dune ESHA. The definition given in the CZR goes on to list examples of ESHA, one of which is "indigenous dune plant habitat."

The project site itself is former sandy dune habitat that was completely removed by grading prior to passage of the Coastal Initiative, presumably to create construction access for power line installation and road construction or to create a level area for future building. As a result, although the ground is sandy, the site is lacking in topography, and is comprised of a sparse mix of indigenous and nonnative dune species. Current vegetation on the site includes the native species Beach buckwheat, Dune goldenrod, Beach strawberry (*Fragaria chiloensis*), Beach evening primrose (*Camissonia cheiranthifolia*), Sand mat (*Cardionema ramosissimum*), and other species, as well as various nonnative grasses and herbs (see Exhibit No. 7, letter from Winzler & Kelley dated March 15, 2007). None of these species constitute rare plant ESHA. Although the sparse vegetation on the site is predominantly indigenous dune vegetation, the Commission's ecologist, Dr. John Dixon, visited the property and believes that due to the site's highly disturbed nature and lack of dune form, the footprint of the amended development, as proposed, would not directly impact coastal dune ESHA.

Immediately west of the subject property, however, coastal dune ESHA begins and extends westward, northwestward, and southwestward to the Pacific Ocean. The parcel immediately to the west is owned and managed for public recreational use by the Manila Community Services

District. Various trails bisect the parcel and lead out through the open and forested dune habitats to the beach. The dunes in this area are much less disturbed than the graded former sand dunes on the subject parcel, and they still maintain a diversity of topography and habitats characteristic of the coastal dune ecosystem described above.

Vegetation characteristic of the forested dune habitat type occurs immediately adjacent to the western boundary of the subject parcel. Tree and shrub species such as Beach pine, Douglas-fir, Sitka spruce, Grand fir, Silk-tassel (*Garrya elliptica*), Wax myrtle (*Morella californica*), Bearberry, and others characterize the area. As mentioned above, the dune forest community is, in general, incredibly lush and productive and is home to over 300 species of mushrooms, lichen, and mosses. Furthermore, according to Miller (1997):

“The forested dunes of the North Spit are unique among all north coast forests, with their own assemblage of plant species, fungi, lichens, birds and mammals. These forests have been likened to biological islands due to their isolation and relative small size. The forest supports a high diversity of tree and shrub species, giving it a high structural diversity. In addition to this structural diversity, the existence of a variety of adjacent habitats, including riparian and other wetland habitats with high productivity of invertebrate prey source, produces a high diversity of bird species within the forest complex. Common species include yellow-rumped warblers, chestnut-backed chickadee, winter wren, mourning dove, red crossbill, wrentit, song sparrow, common flicker, Bewick's wren and black phoebe....The association of bear-berry and reindeer lichen is a unique and interesting feature of these forests.”

There are many bases for designating forested dunes and other components of coastal dunes as environmentally sensitive regardless of the presence of rare or endangered species such as the endangered Humboldt Bay wallflower or Beach layia. As discussed above, Section 313-143 of the certified CZR states that “Environmentally Sensitive Habitat Areas” are “*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*” Specifically, “indigenous dune plant habitat” is listed as an example of ESHA under Section 313-143. As further discussed above, coastal dunes themselves are in and of themselves unique, as the key ingredients needed to build a dune system include a source of sand, a shoreline perpendicular to the prevailing winds, and a low landscape over which dunes can migrate. Coastal dunes are complex, unique, and varied in habitats and are home to a rich array of indigenous plant and animal species and other organisms. Thus, coastal dune habitat is both rare and especially valuable because of its special nature and role in an ecosystem.

Coastal dunes are easily disturbed and degraded by human activities and developments and have in fact been destroyed by development over large areas of the state. Coastal dunes once were widespread all along the west coast, but through the combined impacts of development, off-highway vehicles, and the invasion of nonnative species, only relatively small, fragmented patches of intact coastal dune habitat remain today. [The Lanphere Dunes Unit of the Humboldt Bay National Wildlife Refuge, located approximately one to two miles north of the project site, is the largest remaining stand of pristine coastal dunes in the Pacific Northwest.] Compared to

its natural distribution and abundance, coastal dunes are in decline, and their decline is due to destruction by human activities. Unfortunately for the habitat type, coastal dunes occupy a narrow strip of land adjacent to the ocean, areas that are prized for development. California's dunes were formed over thousands of years, yet today, dune erosion is outstripping sand deposition as dams trap river sediments, depleting the sand supply, and coastal protective structures, such as seawalls, disrupt the natural recycling of sand from sandbar to beach. Coastal development has disturbed dunes at many points along the coast. Off-road vehicles, foot traffic, and horses can damage dune plants, loosening the sands and leaving the dunes vulnerable to wind erosion and blowouts. Besides being in decline, coastal dunes provide important ecological functions, as discussed above. Even disturbed or degraded coastal dunes may provide essential habitat for breeding birds and other animals, they may contribute to the local diversity of vegetation, and they may themselves be a rare habitat type inherently deserving of protection wherever they are found. Of course, if an area of coastal dunes is home to listed species, the presumption is that the habitat is ESHA in the absence of compelling evidence to the contrary.

Therefore, the Commission finds that the coastal dune habitat that borders the western edge of the subject parcel constitutes ESHA as defined by Section 313-143 of the certified Humboldt County Implementation Plan (Coastal Zoning Regulations) and Section 30107.5 of the Coastal Act, as this habitat is both rare and especially valuable because of its special nature and role in an ecosystem and could be easily disturbed or degraded by human activities and developments.

Policies 3.1 and 3.7 of the certified LCP require that development in areas adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade these areas, and be compatible with the continuance of the habitat areas. Typically, to ensure compliance with these policies, development (other than from resource dependent uses) must be located outside of all environmentally sensitive habitat areas. Further, development adjacent to an ESHA must provide a setback or buffer between the ESHA and the development of an adequate size to prevent impacts that would degrade the resources. The width of such buffers would vary depending on the type of ESHA and on the type of development, topography of the site, and the sensitivity of the resources to disturbance.

The proposed project would involve development of a single family residence approximately 33 feet from the dune forest habitat on the adjacent parcel to the west. Commission staff's ecologist has reviewed this proposal and has determined that at this particular site, a 50-foot buffer if supplemented with the installation of a minimum 5-foot-high solid board or wire fence along the outer edge of the buffer adjacent to the development area would be adequate to protect the coastal dune ESHA. Such a buffer area will help protect the dune ESHA from the direct effects of nearby disturbance, provide obstructions which help minimize the entry of domestic animals and humans to the ESHA, provide visual screening between species that are sensitive to human impacts, such as lighting, and reduce noise disturbances to wildlife species from the human development. The installation and use of the fence to enhance the buffer and the fact that runoff from the development will not be able to reach the ESHA due to the permeable sandy soil conditions and the slight rise in elevation between the development and the ESHA makes a wider buffer unnecessary in this case.

Therefore, the Commission imposes Special Condition Nos. 8, 1, and 7. Special Condition No. 8 requires the applicant to record an open space deed restriction over an area that includes a minimum 50-foot-wide buffer area between the proposed residence and the coastal dune ESHA beginning at the western property boundary. Development will be precluded in this area except for certain incidental activities such as planting native plants, removing debris, and repairing utility lines. Special Condition No. 1 requires the applicant to erect a minimum five-foot-high solid board or wire fence a minimum of 50-feet from the western property boundary as shown on Exhibit No. 6. In addition, Special Condition No. 7 requires the applicant to submit a revised site plan showing the home site shifted eastward at least 17 feet to a building envelope that is outside of the required open space area to ensure that a minimum 50-foot dune ESHA setback will be maintained.

Therefore, for all of the reasons discussed above, the Commission finds that the amended development, as conditioned, is consistent with the ESHA protection policies of the certified LCP, including the provisions of HBAP Policy 3.30 and CZR Section 313-143 as they relate to the protection of environmentally sensitive coastal dune habitat.

C. Protection of Osprey Nest

The proposed development would be located approximately 300 feet from an osprey nest that was documented as active in 2005. Osprey (*Pandion haliaetus*) is listed as a Species of Concern by the California Department of Fish and Game and meets the County LCP and Coastal Act definitions of ESHA, as the species is especially valuable because of its special nature and its habitat is easily disturbed or degraded by human activities and development. The species is known for its strong nest-site fidelity; breeding pairs usually return to the same site year after year to breed. Therefore, it is reasonable to conclude that the nest documented in 2005 approximately 300 feet southwest of the subject site has the potential to be actively used by birds again in the future. Nesting pairs of osprey defend the area around their nest and raise one brood per year.

Poole (1989, as cited on the CDFG website <https://r1.dfg.ca.gov/portal/itp/WildlifeSpecies/Osprey/tabid/620/Default.aspx>) noted that osprey is particularly sensitive to abrupt or irregular disturbances when eggs or young are in the nest and remain alert to subtle differences in human behavior. Disturbance during the courtship period may cause abandonment of nest territories, and activities that flush an adult from the nest during incubation may result in nest abandonment. They are most sensitive to disturbance during courtship, incubation, and when young are on the nest.

Individual osprey pairs apparently vary in their ability to tolerate human disturbance. Some research indicates that tolerance to human activities depends upon the timing and frequency of the activities and on the degree of habituation that individual pairs develop to them. Ospreys initiating nesting in or near an area frequented by humans may be more tolerant of subsequent human activities than those unaccustomed to humans. Again, human activities that are initiated during incubation and early nesting are probably most disturbing to ospreys. Disturbance during this critical period can cause adults to leave the nest frequently or for extended periods of time, which can be fatal to embryos and nestlings. Some studies recommend that human activities

within 660 feet (201 meters) of any active osprey nest be restricted from April 1 to October 1 (Washington Department of Fish and Wildlife <http://wdfw.wa.gov/archives/pdf/94026031.pdf>). In consultations with Commission staff, California Department of Fish and Game staff have indicated that in the Humboldt Bay area, human activities near active osprey nests should be restricted from March 1 to August 15.

The Commission recognizes that the proposed development could disturb an active osprey nest and contribute to the flushing or abandonment of the nest by nesting birds, which in turn could impact the viability of eggs or offspring in the nest. Construction noises such as hammering, power tools, heavy equipment, air compressors, etc. could be disruptive enough to disturb the birds. Therefore, the Commission finds that Special Condition No. 6 is necessary to ensure the protection of any osprey that may be nesting in the vicinity of the subject parcel. Special Condition No. 6 requires that the applicant submit, by March 1st of each year of construction and for the review and approval of the Executive Director, results of an osprey survey performed at a seasonally appropriate time period by a qualified biologist in consultation with the Department of Fish and Game stating whether or not the osprey nest located in the vicinity of the subject property is being actively used by the birds. If the nest is found to be active, then no construction or other site work that could disturb the osprey may occur from March 1 until August 15.

The Commission finds that as conditioned, the amended development will be sited and designed to prevent impacts that would significantly degrade the adjacent environmentally sensitive osprey habitat and will be compatible with the continuance of that habitat.

Conclusion

For all of the reasons discussed above, the Commission finds that the amended project, as conditioned, is consistent with the wetland, water quality, and ESHA protection policies of the certified LCP.

6. Public Access

Summary of LCP and Coastal Act Policies:

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of the Coastal Act as well as the certified LCP. Coastal Act Sections 30210, 30211, 30212, and 30214 (which are codified in Section 3.50(B) of the certified HBAP) require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 of the Coastal Act states the following:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states the following:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states the following, in applicable part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
 - (1) *It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
 - (2) *Adequate access exists nearby, or,*
 - (3) *Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30214 of the Coastal Act states the following:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
 - (1) *Topographic and geologic site characteristics.*
 - (2) *The capacity of the site to sustain use and at what level of intensity.*
 - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
 - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*
- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private*

organizations which would minimize management costs and encourage the use of volunteer programs.

Furthermore, Humboldt Bay Area Plan Policy 3.50(B)(2) states the following, in applicable part, with regard to public access and prescriptive rights:

2. *Prescriptive Rights*

- a. *An initial survey of accessways is included in this Area Plan. This plan does not determine whether implied dedication or prescriptive rights exist. The Plan is made without prejudice to the existence or absence of such rights.*
- b. *Where potential public prescriptive rights of access to be the shoreline are affected by new developments, the applicant shall either:*
 - (1) *Site and design the project to maintain the accessway, or*
 - (2) *Provide an equivalent accessway to the same designation including dedication of an access easement as described in Section 3.50B3 or*
 - (3) *Demonstrate that either the State of California has quitclaimed any interest it may have in the accessway or a court of competent jurisdiction has determined that prescriptive rights do not exist along the accessway.*

CZR Section 313-95.3 states the following, in applicable part, with regard to access protection:

95.3.1 Purpose. *The purpose of these regulations is to insure that development permitted by the County and located within the County's Coastal Zone does not interfere with public access acquired through use. The County, through the administration of these requirements, is not determining whether implied dedication or prescriptive rights exist.* [Emphasis added.]

95.3.2 Applicability. *The Public Access Protection shall apply to lands located between the first public road and the sea.*

95.3.3 Protection of the Accessway. *Where, pursuant to the applicable review process in Chapter 2, Procedures, of these regulations, there is substantial evidence of historic public use of the accessway, and the proposed development would interfere with such public use, the following shall apply:*

95.3.3.1 *The proposed development shall be sited and designed so as not to block or interfere with the use of such accessway;*

95.3.3.2 *An equivalent accessway shall be provided, including dedication of an easement as described in the Access Dedication Sections of this Code, if the applicable Resource Protection Impact Findings of Chapter 2, Procedures, Supplemental Findings (312-2.19), are made. (Equivalent accessway means public access of equivalent type, intensity, and area of use to the same destination.)* [Emphasis added.]

...

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special

conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

Consistency Analysis:

A. Offer to Dedicate Public Access Facilities

As proposed in the letter to Commission staff dated August 14, 2007 (Exhibit Nos. 8 and 4), the applicant is proposing to offer to dedicate a 10-foot-wide vertical easement for public access and passive recreational use from Peninsula Drive along an existing foot path across the property to the adjacent parcel owned by the Manila Community Services District (MCSD), which leads out to the open dunes and beach. As shown on Exhibit No. 4, which was submitted with the August 14, 2007 letter offering to dedicate the public access easement, the applicant is also proposing to post a sign at the driveway entrance that reads "Public Access, For pedestrian use only, No motor vehicles." The proposed easement alignment is centered along an existing footpath that cuts across the parcel in a generally southwesterly direction, as shown in Exhibit No. 4. According to the County staff report (Exhibit No. 12), the existing footpath on the subject property is an important linkage between Peninsula Drive and the MCSD easement, as it enables pedestrians to avoid a portion of a more or less parallel public access easement to the immediate south (which is recognized in the certified LCP) that is regularly flooded during the winter.

The applicant's proposal expressly proves that the offer to dedicate the easement would be submitted for the discretionary review and approval of the Executive Director prior to recordation and prior to issuance of the coastal development permit. The vertical public accessway would thus be offered for dedication in a manner consistent with the standards typically applied by the Commission, including the following eight dedication and recordation procedures:

- (1) The offer to dedicate would be recorded as "irrevocable offer to dedicate" against the property in a form and content deemed acceptable to the Executive Director of the Coastal Commission;
- (2) The recorded document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property;
- (3) The recorded document shall include legal descriptions of both the entire project site and the area of dedication;
- (4) The document shall be recorded free of prior liens and any other encumbrances which the Executive Director of the California Coastal Commission determines may affect the interest being conveyed;
- (5) The offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording;

- (6) The offer to dedicate shall require that any future development that is proposed to be located either in whole or in part within the areas described in the recorded offers to dedicate shall require a Commission amendment, approved pursuant to the provisions of 14 CCR Sec 13166;
- (7) The offer to dedicate shall be submitted for the review and approval of the Executive Director of the Commission prior to recordation and prior to issuance of the coastal development permit; and
- (8) Upon the opening of the vertical access easement for public use, an acknowledgement sign or monument will be erected on the property by the accepting public entity or private association, in a visible location, which shall provide that the applicant has dedicated the subject property for public use.

To approve the proposed permit modification, the Commission must find the project as amended to be consistent with the public access policies outlined in Section 30210, 30211, 30212, and 30214 of the Coastal Act and HBAP Policy 3.50(B)(2) and CZR Section 313-95.3 of the certified Humboldt County LCP, as listed above. The project's consistency with each of these policies is described below.

B. Consistency with Sections 30211 and 30214 of the Coastal Act, Humboldt Bay Area Plan Policy 3.50(B)(2), and CZR Section 313-95.3

Section 30211 of the Coastal Act states, in part, that *"development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization."* Applicants for coastal development permits which involve development between the first public road and the sea must demonstrate that their proposed developments are consistent with the Coastal Act, including the requirements of Sections 30211 and 30214 of the Coastal Act. Section 30214 indicates that public access shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case. Similarly, Policy 3.50(B)(2) of the HBAP and Section 313-95.3 of the CZR are intended to insure that new development does not interfere with public prescriptive rights. The policies require in part that where potential public prescriptive rights of access to the shoreline are affected by new development, the applicant shall either site and design the project to maintain the accessway, provide an equivalent accessway, or demonstrate either that the State of California has relinquished legal claim to any interest it may have in the accessway or that prescriptive rights do not exist along the accessway.

In implementing these policies, the Commission must consider whether a proposed development will interfere with or adversely affect an area over which the public has potentially obtained rights of access to the sea. The Commission considers whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use only if the Commission finds the proposed amended development will interfere with an impliedly dedicated public use.

Because the authority to make a final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues use the same analysis as the courts. Essentially, the Commission considers whether there is substantial evidence indicating that the requisite elements of an implied dedication are present. The Commission also considers whether the applicant has demonstrated that the law prevents the area from being impliedly dedicated, even if the requisite elements of implied dedication have otherwise been met.

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

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long-delayed assertion of rights. The rule establishes a statute of limitations, after which the owner cannot assert formal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

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

- (1) The public has used the land for a period of five years or more as if it were public land;
- (2) Without asking for or receiving permission from the owners;
- (3) With the actual or presumed knowledge of the owner;
- (4) Without significant objection or *bona fide* attempts by the owner to prevent or halt the use; and
- (5) The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with 30211, the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission must ensure that proposed development would not interfere with any prescriptive rights which may exist.

In the present case, the applicant has proposed public access as part of the amended project. The applicant elected to grant such access to eliminate the potential that proposed development

would interfere with any public access rights which may exist. Consequently, the Commission will evaluate whether the amended project as proposed would interfere with potential prescriptive rights of public access that might exist on the property. If the proposed amended project would not interfere with any potential prescriptive rights of public access that might exist, the amended project would be consistent with Section 30211 of the Coastal Act because any potential public rights of access to the sea acquired through use would be protected. Therefore, if the Commission determines that the proposed amended development would not interfere with potential prescriptive rights of public access that might exist on the property, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because regardless of the outcome of the investigation, the Commission could find the amended project consistent with Section 30211.

The project site occupies an area of mostly stabilized coastal dunes. The property is crossed by a well-worn footpath. The footpath and other less permanent footpaths extend from Peninsula Drive across the southern portion of the property and connect to a single more definitive trail just to the south of the subject property that leads out to an adjacent parcel with access to ocean beaches and dunes that is managed for recreational use by a public agency (Manila Community Services District). While these features indicate that some access use has occurred across the parcel and out to the open dunes and beaches to the west, the period in which the access use has occurred, the casual or continuous pattern of access use, and the degree to which such use has been substantial is not fully known.

The local record contains letters from individual community members stating that the trails on the southern portion of the property have been used for decades by many people to access the trail on the Manila Community Services District parcel. In addition, an access trail across the southern portion of the property is identified in the Access Inventory of the County's certified Land Use Plan (Humboldt Bay Area Plan), but the HBAP then notes that this access has been deleted from the inventory since it crosses through sensitive habitat areas, and there are adequate access points nearby.

In addition to this information, the Commission staff also examined aerial photographs from 1990 and 2001. All of the photographs examined from this period show evidence of a trail through the subject parcel connecting with the more extensive trail system on adjacent parcels that lead out to the ocean beach and dunes. Thus, the evidence derived from the aerial photography analysis suggests the potential prescriptive use of the pathway to the beach.

Although this information suggests a period of use in the past, the evidence does not by itself establish potential prescriptive rights of public access. For example, the information does not show the extent of public use or whether the public use was adverse or without the permission of the property owner.

There are some limitations that prevent property from being impliedly dedicated, even if the requisite elements of implied dedication have otherwise been met. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, he must either affirmatively prove he has granted the public a license to use his property or demonstrate that he made a bona fide attempt to prevent public use. Thus, persons

using the property with the owner's "license" (*e.g.*, permission) are not considered to be a "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to accrue. If only a limited and definable number of persons have used the land, those persons may be able to claim a personal easement but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

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

Section 1008 of the Civil Code provides that no use by any person or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription if the owner of such property posts at each entrance to the property or at intervals of not more than 200 feet along the boundary a sign reading substantially as follows: "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code."

There is no evidence in the title documents that a Notice of Permissive Use has ever been recorded against the subject property consistent with Section 813 of the Civil Code or posted on the subject property in a manner consistent with Section 1008 of the Civil Code.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose on shoreline properties than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean its bays, and inlets, unless there has been a written, irrevocable offer of dedication or unless a government entity has improved, cleaned, maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1,000 yards of the sea; therefore the required five-year period of use need not have occurred prior to March of 1972 in order to establish public rights in the property.

The available preliminary evidence suggests the potential existence of prescriptive rights of access over "random, non-specific walking trails used over the southerly portion of the property" (May 4, 2006 letter from applicant). Even so, it is not clear that the use has been prescriptive. These random trails all seem to extend from Peninsula Drive through the southerly portion of the property and connect to a single more definitive trail just to the south of the subject property that leads out to the Manila Community Services District property which provides trail access to the ocean beach and dunes. As noted previously, Public Resources Code Section 30211 prohibits development that would interfere with the public's right of access to the sea where acquired through use. As an alternative to denial, however, the Commission may condition its approval on the development being modified or relocated to preclude the interference with the public's

right of access to the sea. This is because the Commission has no power to extinguish existing public rights, even though it may authorize development which affects the exercise of those rights.

A full assessment of the degree to which the criteria for implied dedication has been met in this case could only be made after a more intensive investigation of the issue has been performed. A survey of potential users of the site would provide very helpful information to augment the information about use supplied in unsolicited petitions and letters regarding use of the various random trails through the southern portion of the property. However, although there is an unresolved question as to the existence of public prescriptive rights over each of the existing trails on the southern part of the property, the Commission finds that in this case the applicant's offer to dedicate an easement for public access across the property within the easement area would serve to protect any existing public access rights that would be blocked by the proposed development.

Section 30214 of the Coastal Act directs the Commission to implement the public access policies of the Act in a manner which balance various public and private needs. This section applies to all the public access policies, including those dealing with rights acquired through use. Applying Section 30214 to the subject project proposal, the Commission must evaluate the extent to which the proposed public access is equivalent in time, place, and manner to the public use that has been made of the site in the past. If the Commission determines that the proposed access is in fact equivalent in time, place, and manner to the access use made of the site in the past, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because regardless of the outcome of the investigation, the Commission could find the project consistent with Section 30211. If an investigation indicated substantial evidence of an implied dedication exists, the proposed project would not interfere with such public rights because the trail easement that would be offered for dedication on the subject property is equivalent in time, place, and manner to those portions of the trails which will be blocked by the proposed residence. If an investigation indicated that substantial evidence of an implied dedication was lacking, the Commission could still find that the applicant's offer to dedicate an easement for public access would not interfere with the public's right of access where acquired through use and would be consistent with Section 30211.

The amended project includes a proposed offer to dedicate an easement of vertical public access across the southerly portion of the property from Peninsula Drive to the existing dunes and beach access trail on the adjacent parcel. This proposed easement covers a worn footpath. Although the proposed development would displace or block access to the other random trails that cut through the southerly portion of the property before connecting with the trail on the adjoining property to the south, the trail easement that would be offered for dedication on the subject property provides equivalent public access as those portions of the existing trails on the southern portion of the property that would be blocked by the development. The proposed access is equivalent in time, place, and manner because the trail easement would serve the same purpose as each of the existing random trails of providing a connection from Peninsula Drive across the southern portion of the subject property to the single more definitive trail just to the south of the subject property that leads to the Manila Community Services District property providing access to the ocean beaches and dunes. In addition, the area offered under the proposed offer to

dedicate is the most critical portion of the area where potential implied dedication may have occurred, as it provides the most easily accessible point from the public road and coincides with the most prominent of the footpaths that exist on the property. Furthermore, the proposed 10-foot-wide easement would encompass a trail width that would be at least as wide as any of the existing trails on the southern portion of the property.

Thus, the Commission finds that the applicant's offer to dedicate an easement for public access across the property is equivalent in time, place, and manner to the potential prescriptive rights of public access provided by the existing random trails through the southern half of the subject property.

The Commission also notes that the applicant has identified a building site located at least 70 feet to the north of the proposed trail easement. The proposed amended development includes the construction of a driveway to serve the property, yet this amended development would not conflict with the proposed easement for vertical access. The existing metal gate that currently is at the entrance to the driveway will be removed, and this removal will be reflected on the revised plans required pursuant to Special Condition No. 7. Therefore, the proposed amended development would not conflict "with the public's right of access to the sea where acquired through use or legislative authorization." Therefore, the Commission finds that the amended project is consistent with Coastal Act Section 30211.

As shown on Exhibit No. 4 submitted with the August 14, 2007 letter offering to dedicate the public access easement, the applicant is proposing to post a sign at the driveway entrance that reads "Public access, For pedestrian use only, No motor vehicles." However, it is the accepting entity, rather than the applicant, who has the authority to erect a sign on the property once the easement is opened for public use. Accordingly, the Commission requires in Special Condition Nos. 7 and 11 that the applicant delete the proposed sign from the project plans and instead expressly acknowledge in writing the ability of the accepting entity to erect a sign or monument on the property once the access easement is opened for public use.

Thus, with the proposed offer of dedication, the amended development, as conditioned, would not adversely affect any potential prescriptive rights of public access that may exist. Therefore, the Commission need not perform an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because, regardless of the outcome of the investigation, the Commission could find the project as conditioned consistent with Section 30211 of the Coastal Act, LUP Policy 3.50(B)(2), and Coastal Zoning Regulations Section 313-95.3, as any public rights of access to the sea acquired through use would be protected consistent with these provisions. To ensure that the proposed recordation of an offer to dedicate an easement of vertical public access is recorded as proposed, the Commission attaches Special Condition No. 9. This condition requires the applicant to submit, prior to issuance of the permit and for the review and approval of the Executive Director, evidence that the applicant has executed and recorded an offer to dedicate an easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant. In addition, the special condition requires that any future development that is proposed to be located, either in whole or in part, within the area described in the recorded offer of dedication shall require a Commission amendment to ensure the Commission will be able to review the effects of the proposed development on public access

and the project's continued consistency with the public access policies of the Coastal Act. Therefore, as conditioned, the Commission finds that the amended development is consistent with Coastal Act Section 30211.

C. Consistency with Section 30212

Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast need not be provided in new development projects where (1) it would be inconsistent with the protection of fragile coastal resources; or (2) adequate access exists nearby. However, the Commission notes that Section 30212 of the Coastal Act is a separate section of the Act from Section 30211, the policy that states that development shall not interfere with the public's right of access to the sea when acquired through use. The limitations on the provision of new access imposed by Section 30212 do not prescribe Section 30211. Even if public prescriptive rights of access have accrued over trails that pass through environmentally sensitive habitat areas or in areas near other public access, Section 30211 requires the development not be allowed to interfere with those rights.

The offered easement does not go through any ESHA or archaeological resource area but it does come near a delineated wetland, varying in distance back from the wetland from approximately 1 foot to 45 feet. The offered trail easement would not be inconsistent with the protection of the wetland resources, however, as the trail is largely separated from the wetlands by existing and/or proposed native shrubs and trees, and the trail will serve merely as a corridor through which the public will pass through to get to the beaches and dunes. As a result, the human presence along the trail will be minimal and will not have significant adverse effects on the wetlands.

Therefore, the Commission finds that the offer to dedicate a public access easement proposed by the applicant is consistent with Section 30212 of the Coastal Act, as the access will be provided consistent with the protection of coastal resources and adequate access does not exist nearby.

D. Consistency with Section 30210

Section 30210 of the Coastal Act states that maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with the public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. As proposed by the applicant, and as further conditioned below by Special Condition No. 10, the development will protect the public's right of access where acquired through use, both now and into the future. At such time as a qualified public agency or non-profit organization accepts the proposed offered accessway easement and opens the accessway pursuant to a management plan approved by the Executive Director, any needed improvements for public access such as signage could be provided. As discussed above, the applicant is proposing to post a sign at the driveway entrance that reads "Public Access, For pedestrian use only, No motor vehicles." To ensure that the proposed sign is installed in the future to effectively mark the accessway, the Commission attaches Special Condition No. 11. This condition requires that the sign be installed by the time the approved entity that accepts the accessway opens it for public use. As the amended development, as conditioned, would protect public access and facilitate the future installation of signage to appropriately mark the public

accessway, the Commission finds that the amended project, as conditioned, is consistent with Section 30210 of the Coastal Act.

E. Conclusion

To ensure that the project as amended will not interfere with any implied dedication of access which may have occurred, both now and into the future, the Commission attaches Special Condition Nos. 9 and 10.

Special Condition No. 9 requires the applicant to provide evidence for the review and approval of the executive Director that their offer to dedicate an easement for vertical public access over the property has been properly recorded prior to issuance of the coastal development permit amendment.

Special Condition No. 10 protects the public's rights of access over the property since public prescriptive rights have not been adjudicated by a court of law at this time. Special Condition No. 10 states that by acceptance of the permit amendment, the applicant agrees that the issuance of the permit amendment and the completion of the development does not prejudice any subsequent assertion of any public rights of access to the shoreline (prescriptive rights), and that approval by the Commission of this permit shall not be used or construed, prior to the settlement of any claims of public rights, to interfere with the rights of public access to the shoreline acquired through use which may exist on the property.

In conclusion, although there is an unresolved question as to the existence of public prescriptive rights, the applicant's offer to dedicate an easement for public access protects any potential rights of public access acquired through use. The proposed amendment, as conditioned, is consistent with Section 30211 of the Coastal Act, HBAP Policy 3.50(B)(2), and CZR Section 313.95-3 because, whether or not existing use of the site for coastal access constitutes a public prescriptive right, for the reasons stated above, the Commission finds that the proposed amended development would not interfere with any potential prescriptive rights of public access that may exist.

7. Protection of Archaeological Resources

The subject site is zoned with an archaeological resources combining zone under the County's LCP based on the potential presence of archaeological resources.

LCP Policies and Standards:

Humboldt Bay Area Plan Policy 3.18 states the following with respect to archaeological and paleontological resources:

*** Where new development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

A. *PLANNED USES*

The Native American Wiyot tribe, part of the Algonkian family, once occupied the Humboldt Bay area. The Humboldt County Department of Public Works has identified 117 known archaeological sites in this planning area. The Wiyots depended heavily upon the resources of Humboldt Bay, and their heritage is an important resource within the Humboldt Bay area. Areas with great archaeological and paleontological values have been identified within the planning area, as identified with the Humboldt County Public Works, Natural Resource Division. (emphasis added)

B. *DEVELOPMENT POLICIES*

1. *Reasonable mitigation measures may include but are not limited to:*
 - a. *Changing building and construction sites and/or road locations to avoid sensitive areas.*
 - b. *Providing protective cover for sites that cannot be avoided.*
 - c. *Where appropriate and with the approval of all parties concerned, provide for the removal or transfer of culturally significant material by a professional archaeologist or geologist.*

CZR Section 313-16. states the following, in applicable part, with regard to “A” Combining Zone designations:

313-16.1 A: *ARCHAEOLOGICAL RESOURCE AREA OUTSIDE SHELTER COVE*

16.1.1 **Purpose.** *The purpose of these regulations is to provide for reasonable mitigation measures where development would have an adverse impact upon archaeological and paleontological resources.*

16.1.2 **Applicability.** *These regulations shall apply to lands designated “A” on the Zoning Maps, except for the Shelter Cove area, which includes areas with great archaeological and paleontological value as identified by the State Historic Preservation Officer. (Also see, the section “Archaeological Resource Area Regulations for Shelter Cove”.) [emphasis added]*

...

16.1.4 **Required Mitigation.** *Measures to mitigate adverse environmental effects of development within Archaeological Resource Areas shall include, but are not limited to, the following:*

16.1.4.1 *Relocate planned structures and roads to avoid or mitigate impacts on archaeological sites;*

16.1.4.2 *Provide protective cover for sites that cannot be avoided;*

16.1.4.3 *Where appropriate, and providing all parties concerned approve, the removal or transfer of culturally significant material by a professional archaeologist shall be permitted.*

16.1.5 Additional Requirements for the Protection of Native American Graves, Burial Grounds, Cemeteries and Ceremonial Sites. *Notwithstanding the other provisions of this Chapter, whenever a development will involve activities which may adversely affect Native American graves, cemeteries, burial grounds, or ceremonial sites, the County will follow or impose the following requirements:*

16.1.5.1 Consultation With Indian Associations: *Prior to final approval or authorization of such development, the County shall consult with representatives of the Northwest Information Center of the California Archaeological Inventory (NICCAI), Department of Anthropology, Sonoma State University, and the Native American Heritage Commission (NAHC) and any known interested Native Americans. Such consultation will be directed to the questions of whether the project or operation will adversely affect Indian graves, cemeteries, burial grounds, or ceremonial sites, and whether there are reasonable alternative means of accomplishing the project or operation which would not adversely affect such graves, cemeteries, burial grounds or ceremonial sites.*

16.1.5.2 Required Mitigation Action: *Based upon the information and recommendations received during the review (see, subsection 16.1.5.1), the project application shall be acted on in a manner that provides the best feasible protection to cultural sites.*

Consistency Analysis:

Although the subject site is zoned with an archaeological resources combining zone under the County's LCP, the North Coast Information Center did not identify any known archaeological sites in the area, according to the County staff report (Exhibit No. 12). Therefore, no cultural resources investigation was conducted for the project site for the County's approval of CDP-02-106M. Nevertheless, it is known (and stated in the certified LCP) that many Wiyot settlements were situated along Humboldt Bay and along the banks of many of the streams and sloughs in the area, and it is possible that the project area may contain buried archaeological deposits or features. To ensure that the proposed project does not adversely affect archaeological resources, the Commission attaches Special Condition No. 13, which requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease, and a qualified cultural resource specialist must analyze the significance of the find. To recommence construction following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes recommended by the cultural resource specialist are *de minimis* in nature and scope, or whether an amendment to this permit is required because the Executive Director determines that the changes recommended by the cultural resource specialist are not *de minimis* in nature and scope.

Therefore, the Commission finds that the proposed project, as conditioned, would not result in adverse impacts to archaeological resources and is consistent with Policy 3.18 of the Humboldt Bay Area Plan and Section 313-16 of the Coastal Zoning Regulations.

8. Protection of Visual Resources

LCP Policies and Standards:

Humboldt Bay Area Plan Policy 3.40 states the following, in applicable part, with regard to visual resource protection:

*** 30251. *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.* (emphasis added)

B. DEVELOPMENT POLICIES

1. Physical Scale and Visual Compatibility

No development shall be approved that is not compatible with the physical scale of development as designated in the Area Plan and zoning for the subject parcel;...

Consistency Analysis:

The proposed development is not located in a designated highly scenic area or coastal view area. Neither the property nor the adjacent stretch of Peninsula Drive afford views to the ocean or scenic coastal areas, and the approved site for the residence will be only minimally visible from Peninsula Drive due to existing vegetation and vegetation that will be planted pursuant to Special Condition No. 2 to enhance the wetland buffer. The residence would be visible, however, from the required public access easement. Finally, as the subject property is more or less flat, the proposal does not involve the alteration of natural land forms.

The proposed development is compatible with the physical scale of development as designated in the land use plan and zoning for the subject parcel. The single family residence is proposed to be a maximum of 22 feet high, which is well below the maximum structure height of 35 feet as allowed by the RS zone designation. Furthermore, the house is proposed to be approximately 1,760 square feet in size, which is compatible in terms of “bulk” with houses in the surrounding area. However, as no design plans for the house currently are on file (none were included in the local record), there is no way to ensure that the final design of the new residence will indeed be compatible with the physical scale of the development of the surrounding area, as is required by the LCP. Therefore, the Commission attaches Special Condition No. 7, which requires that the applicant submit, prior to issuance of the permit for the review and approval of the Executive Director, final design plans for the new residence, which demonstrate that the house design is

consistent with the authorized size of the development and thereby compatible with the physical scale of surrounding development.

Furthermore, as explained in Finding No. 5 above, the project has been conditioned to restrict exterior lighting standards (Special Condition No. 3), which will further minimize any potential impacts of increased lighting in the area not only on biological resources, but on visual resources as well. Moreover, to ensure that the proposed development does not result in increased glare as viewed from the public access easement, Special Condition No. 3 also prohibits the use of reflective glass, exterior finishings, roofing, or roof-mounted structures.

Therefore, for all of the above reasons, the Commission finds that the project, as conditioned, will be sited and designed to protect views to and along the ocean and scenic coastal areas, minimize the alteration of natural land forms, and be compatible with the character of the surrounding area consistent with HBAP Policy 3.40.

9. California Environmental Quality Act (CEQA)

The County of Humboldt acted as the lead agency for this project for purposes of CEQA review. The County prepared a Mitigated Negative Declaration for the development and adopted the document on May 25, 2005 following public comment.

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

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified Humboldt County LCP and the public access and recreation policies of the Coastal Act, the proposed project has been conditioned to be found consistent with the certified Humboldt County LCP and the public access and recreation policies of the Coastal Act. Mitigation measures, which will minimize all adverse environmental impacts, have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Assessors Map
4. Proposed Site Plan
5. County-approved Site Plan
6. Open space area / building envelope
7. Alternatives Analysis and ESHA Setback Reduction Assessments
8. Proposed Offer to Dedicate a 10-foot-wide Pedestrian Easement
9. Photographs of existing public access trail on southern portion of property
10. Excerpts from 2005 Wetland Delineation
11. Appeal (Michael Seeber)
12. Notice of Final Local Action & County Findings CDP-02-106M
13. Notice of Final Local Action & County Findings for CDP-02-106

APPENDIX A

Standard Conditions:

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

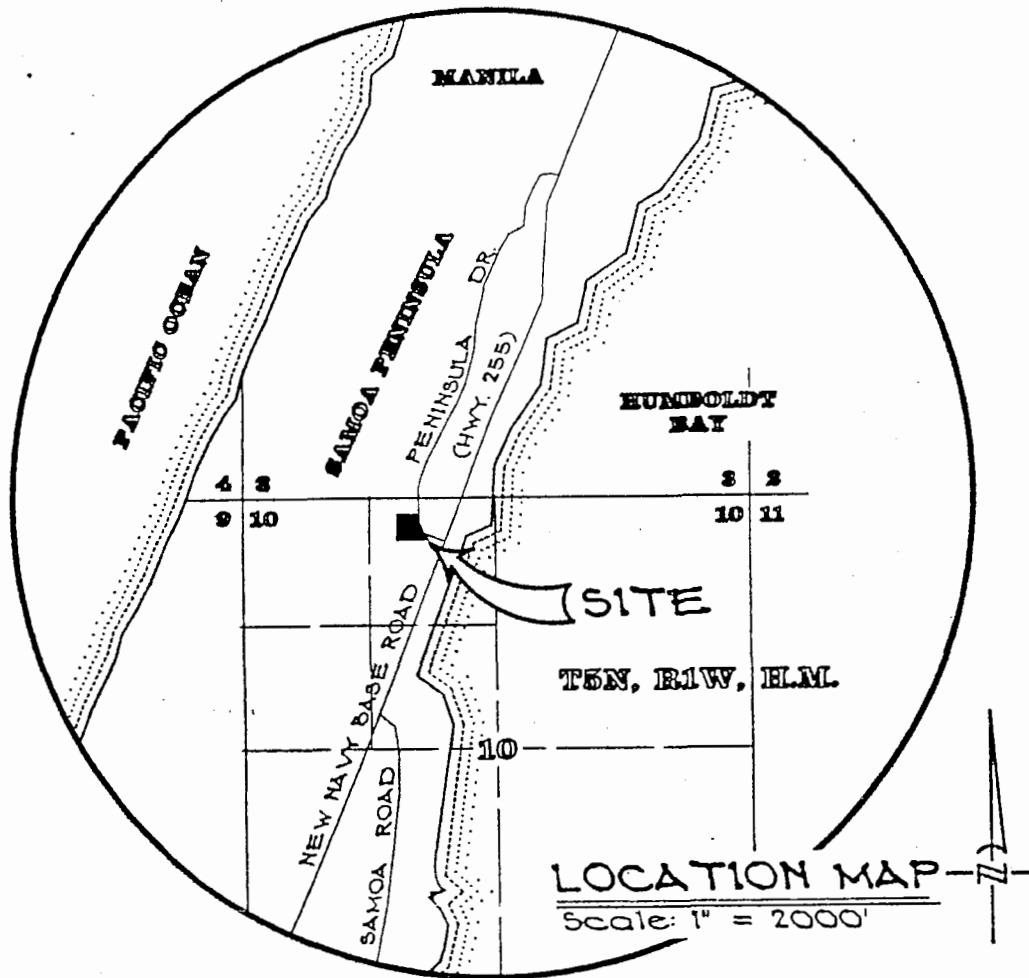


EXHIBIT NO. 2

APPLICATION NO.

A-1-HUM-05-041

KABLE

VICINITY MAP

401-01

A-1-HUM-05-041

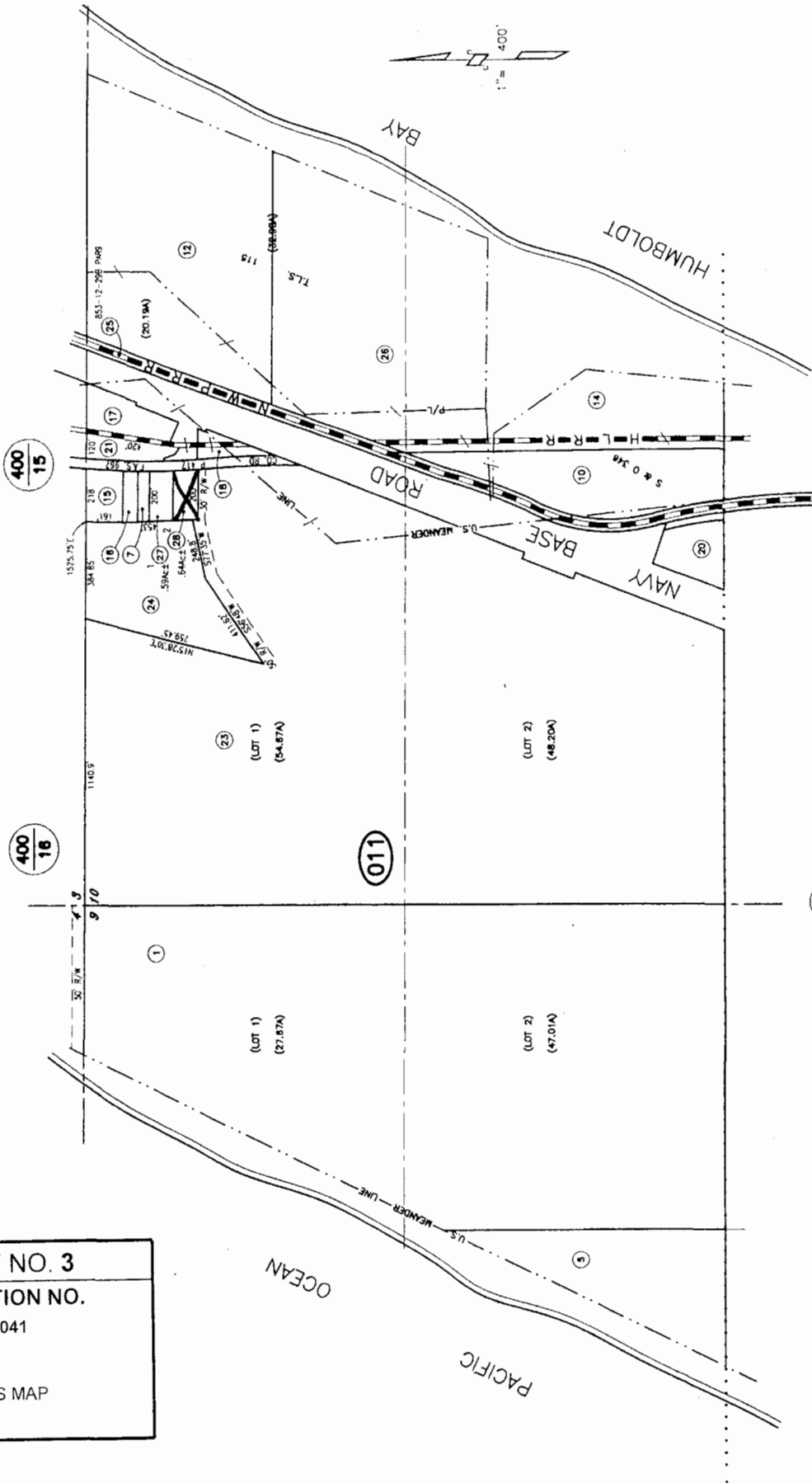
ASSESSOR'S MAP

2

1. THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY.
2. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN.
3. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.

Assessor's Map Bk.401, Pg.01
County of Humboldt, CA.

4 Sept 20, 2004



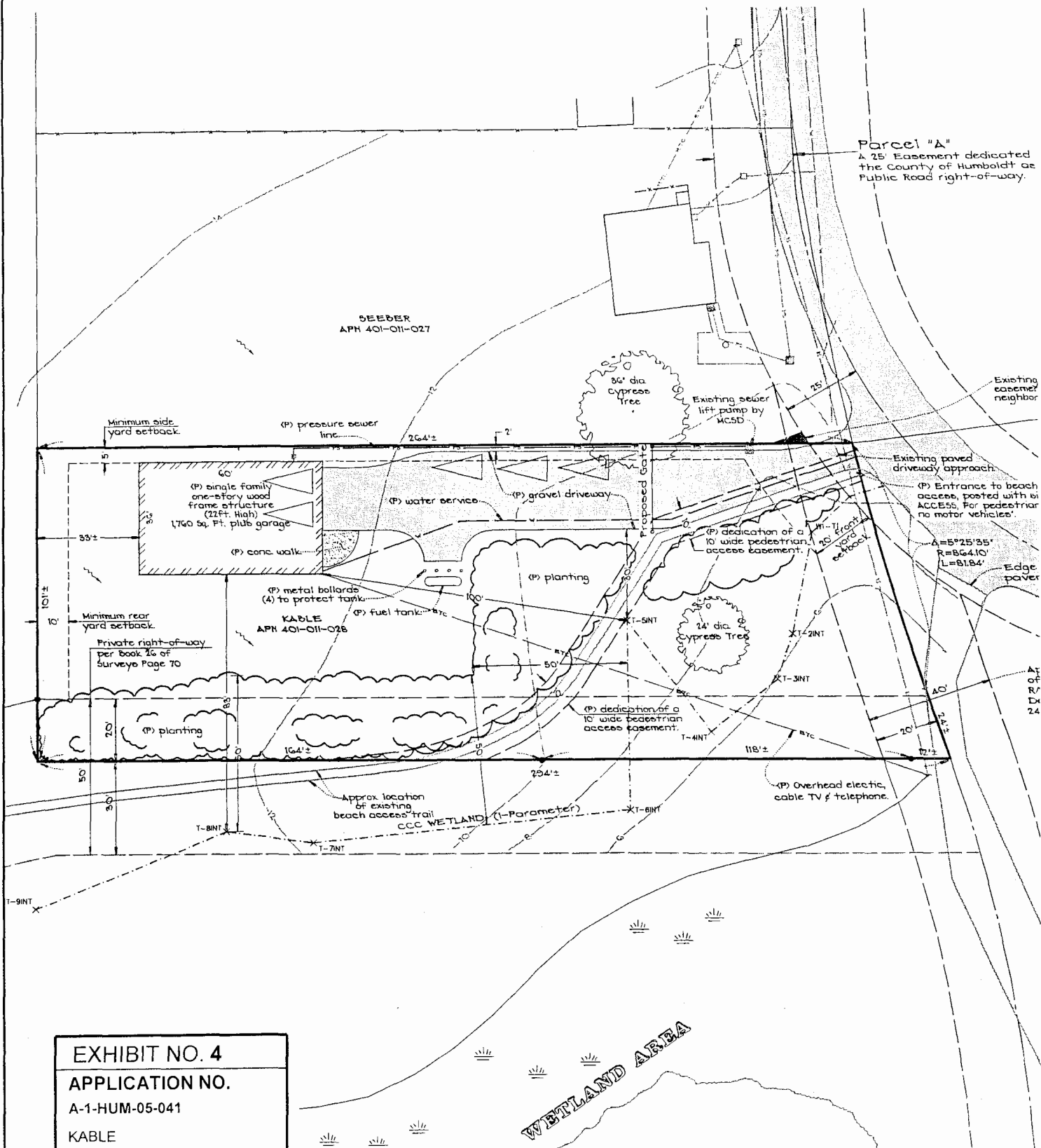
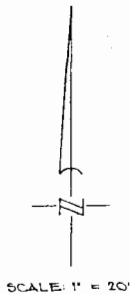


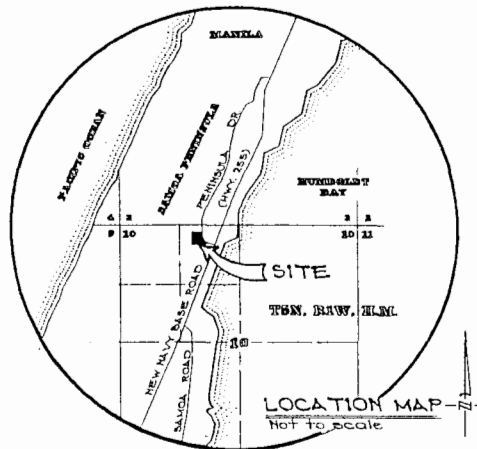
EXHIBIT NO. 4
APPLICATION NO.
 A-1-HUM-05-041
 KABLE
 REGIONAL LOCATION MAP
 (1 of 2)



UTILITIES

WATER & SEWER
GAS & ELECTRIC
TELEPHONE

Manila Community Services District
Pacific Gas & Electric Company
AT&T California



NOTES

- The property has a general plan designation of residential low-density (RL) and is currently zoned residential single-family (R-1) with a 5,000 square foot minimum parcel size, allowing mobile homes. The zoning designation also has combining zones identifying potential archaeological resource areas.
- Adjacent properties are zoned as following: the property to the west has a general plan designation of residential estate (RE), and is zoned residential single-family (R-1) allowing mobile homes, with combining zones identifying potential beach and dune areas. The property to the south has a general plan designation of natural resource (NR) and is currently zoned natural resource, with combining zones identifying potential coastal, wetland areas, beach and dune areas.
- The subject property is relatively flat. Contours shown are at 2 foot intervals and are based on a topographic survey performed by Omeberg & Company in February, 2003.
- Sewer and water services are provided by Manila Community Services District. PG&E supplies electricity and telephone service is provided by SBC Pacific Bell.
- The Peninsula Road centerline was re-aligned in the late 1980's to connect the road with Old Navy Base Road by California Department of Transportation (CalTrans) at that time Highway 255 was upgraded to current road configuration. The right-of-way that is parallel to the eastern property line (as shown), depicts the existing right-of-way that is not currently in use by CalTrans.
- Per P.I.R.M. Community-Panel # 060075 0775 C mapping, the site is shown to be subject to minimal flooding (Zone C).
- The property is mapped outside any Alquist-Priolo special studies zone, per Plate III, Seismic Safety Map, Humboldt Bay and Vicinity, North Sheet, June 1978.
- The property is indicated per Plate III, Seismic Safety Map, Humboldt Bay and Vicinity, North Sheet, June 1978 as having relatively stable slopes.
- No other hazardous areas, sensitive habitats, historic buildings or archaeological sites are known to exist on or adjacent to the property.
- The existing driveway on the Subject Parcel has been in existence at least since the mid 1980's that traversed the lot to the southwest.

DEED
CROSS

TO
PUBLIC
& ONLY

PENINSULA DRIVE
(Ca. Rd. No. 3K905)

approximate location
of old County Road
per Book 155 of
Page 472 of book
if Deeds Page 155

LEGEND

SYMBOL	INDICATES	SYMBOL	INDICATES
+	Existing joint pole (power, phone & cable TV)	---	Direction of surface water run-off
---	Existing water line	---	Existing contours at 2' intervals
o	Existing water meter	*	Sanitary Sewer Panel
---	Existing pressure sewer line	---	Limit of wetlands as delineated by Winzler & Kelly, February 2005
☐	Existing pressure sewer pump	---	Proposed pressure sewer line
▨	Wetlands	---	Proposed water line
△	Off-street parking locations		
☁	Proposed mitigation planting of native species in the upland area for a width of 20 feet. (i.e. Spruce, Pine, Huckleberry, Silk Tassel)		

OWNER / APPLICANT

Tina Christensen
2120 Campton Road
Eureka, CA 95503
(707) 445-8811

APN 401-011-028

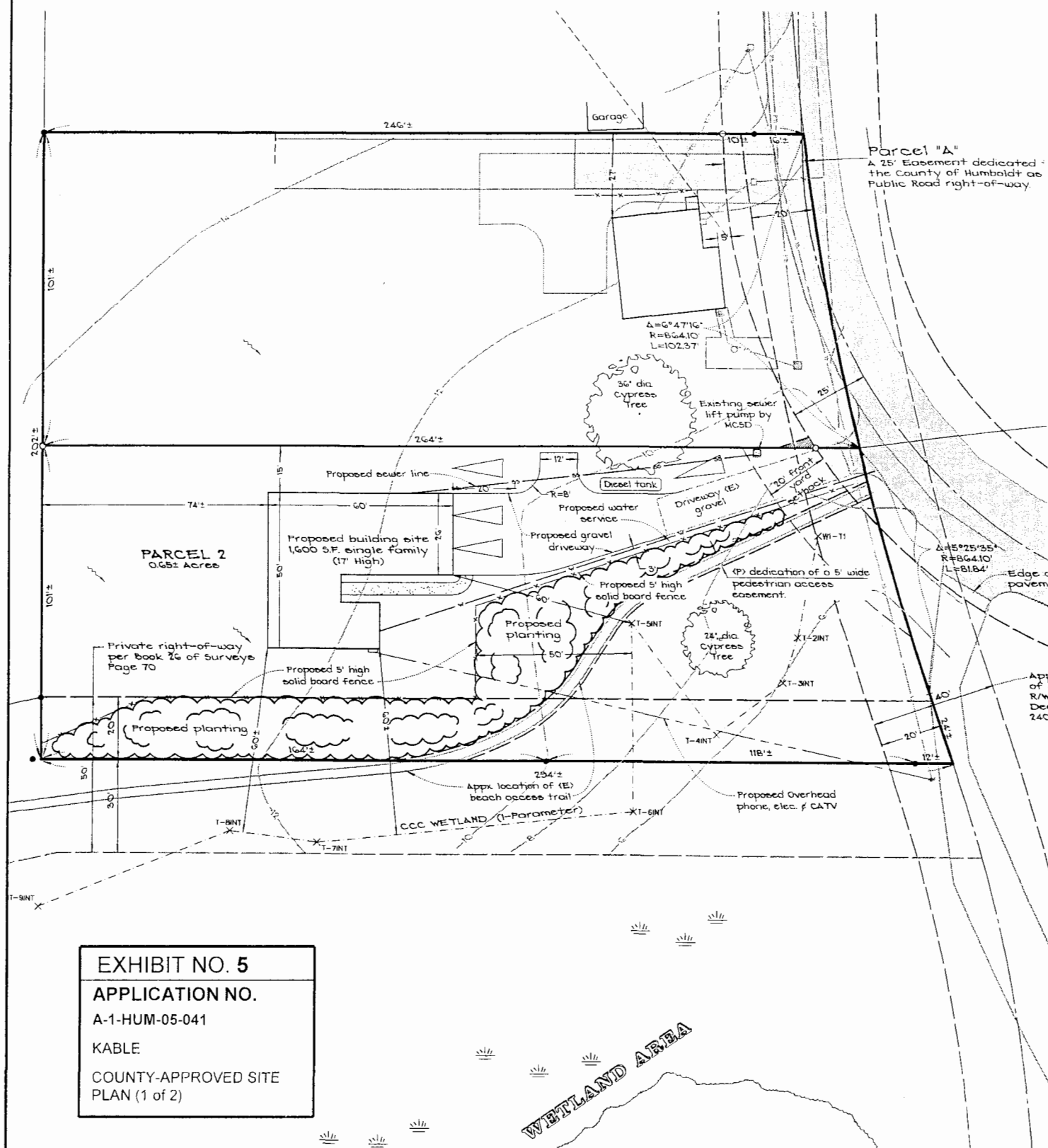


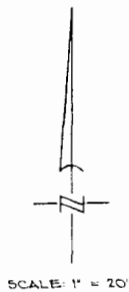
DRAWN BY: VJP
DATE: 5/18/05
CHECKED BY: DATE:
APPROVED BY: DATE:

SITE PLAN EXHIBIT
For
TINA CHRISTENSEN
in the unincorporated area of Humboldt County
NW/4 SECTION 10 T5N R1W HW

SCALE
1" = 20'
JOB NO.
02-1354-1
SHEET 01 OF 1

2 of 2

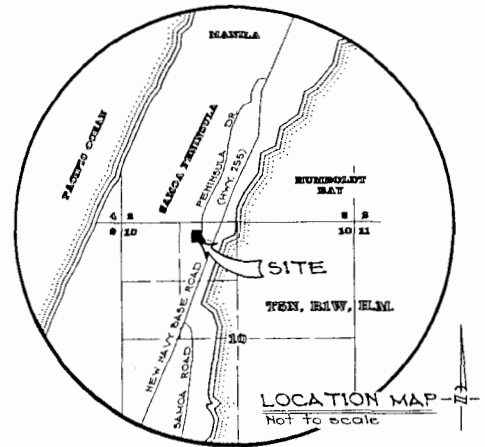




UTILITIES

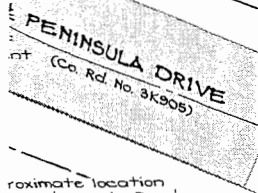
WATER & SEWER
GAS & ELECTRIC
TELEPHONE

Manila Community Services District
Pacific Gas & Electric Company
SBC



NOTES

- The property has a general plan designation of residential low-density (RL) and is currently zoned residential single-family (R-1) with a 5,000 square foot minimum parcel size, allowing mobile homes. The zoning designation also has combining zones identifying potential archaeological resource areas.
- Adjacent properties are zoned as follows: the property to the west has a general plan designation of residential estate (RE), and is zoned residential single-family (R-1) allowing mobile homes, with combining zones identifying potential beach and dune areas. The property to the south has a general plan designation of natural resource (NR) and is currently zoned natural resource, with combining zones identifying potential coastal, wetland areas, beach and dune areas.
- The subject property is relatively flat. Contours shown are at 2 foot intervals and are based on a topographic survey performed by Omsberg & Company in February, 2003.
- Sewer and water services are provided by Manila Community Services District. PG&E supplies electricity and telephone service is provided by SBC Pacific Bell.
- The Peninsula Road centerline was re-aligned in the late 1980's to connect the road with Old Navy Base Road by California Department of Transportation (CalTrans) at that time Highway 255 was upgraded to current road configuration. The right-of-way that is parallel to the eastern property line (as shown), depicts the existing right-of-way that is not currently in use by CalTrans.
- Per FIRM Community-Panel # 060075 0775 C mapping, the site is shown to be subject to minimal flooding (Zone C).
- The property is mapped outside any Alquist-Priolo special studies zone, per Plate III, Seismic Safety Map, Humboldt Bay and Vicinity, North Sheet, June 1978.
- The property is indicated per Plate III, Seismic Safety Map, Humboldt Bay and Vicinity, North Sheet, June 1978 as having relatively stable slopes.
- No other hazardous areas, sensitive habitats, historic buildings or archaeological sites are known to exist on or adjacent to the property.
- The existing driveway on the Subject Parcel has been in existence at least since the mid 1980's that traversed the lot to the southwest.



Approximate location
of old County Road
per Book 155 of
de Page 472 of book
of Deeds Page 155

LEGEND

SYMBOL	INDICATES	SYMBOL	INDICATES
+	Existing joint pole (power, phone & cable TV)	~	Direction of surface water run-off
---	Existing water line	--- 12 ---	Existing contours at 2' intervals
o	Existing water meter	■	Sanitary Sewer Panel
--- PD ---	Existing pressure sewer line	---	Limit of wetlands as delineated by Winzler & Kelley, February 2005
⊠	Existing pressure sewer pump	---	Proposed buffer
≡	Wetlands	---	Proposed sewer line
▶	Off-street parking locations	--- v ---	Proposed water line
☁	Proposed mitigation planting of native species in the upland area for a width of 20 feet. (ie. Spruce, Pine, Huckleberry, silk Tassel)		
--- x ---	Proposed 5' high solid board fence		

OWNER / APPLICANT
Tina Christensen
2120 Compton Road
Eureka, CA 95503
(707) 445-8811

APN 401-011-028

292



DRAWN BY DATE
V.P. 4/8/05
CHECKED BY DATE
APPROVED BY DATE

EXHIBIT 'A'
FOR
TINA CHRISTENSEN
in the unincorporated area of Humboldt County
NW1/4 SECTION 10, T5N, R1W, H.M.

SCALE
1" = 20'
JOB NO.
02-1054-1
SHEET 01
1 1

Area to be fenced according
to Buffer Fencing Plan of
Special Condition No. 1
(fencing along edge of building
envelope in this area)

Parcel "A"
A 25' Easement dedicated
to the County of Humboldt as
Public Road right-of-way.

Area subject to open
space restrictions per
Special Condition No. 8
(overall hatched area)

Areas to be landscaped for
wetland buffer enhancement
per specifications of Special
Condition No. 2
(cross hatched area)

Building
Envelope

Areas to be landscaped for
wetland buffer enhancement
per specifications of Special
Condition No. 2
(cross hatched area)

Area subject to open
space restrictions per
Special Condition No. 8
(overall hatched area)

Area subject to open
space restrictions per
Special Condition No. 8
(overall hatched area)

WETLAND AREA

EXHIBIT NO. 6

APPLICATION NO.

A-1-HUM-05-041

KABLE

OPEN SPACE AREA &
BUILDING ENVELOPE



WINZLER & KELLY
CONSULTING ENGINEERS

Ref: 10043-05001-11032

February 16, 2006

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

RECEIVED
JUN 08 2006
CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 7
APPLICATION NO. A-1-HUM-05-041 KABLE ALTERNATIVES ANALYSIS & ESHA SETBACK REDUCTION ASSESSMENTS (1 of 21)

**Re: Response to California Coastal Commission (CCC) Request for Information a
Biological Assessment for Coastal Development Permit (CDP) No. A-1-HUM-05-041
(Section 1 & Section 2)**

Dear Ms. Tauber:

The purpose of this letter report is to document the activities, results, and findings of a biological assessment undertaken in response to the request for information in Sections 1 and 2 of your letter of 9/27/05. Sections 3 and 4 of your letter are being addressed under a separate cover. The response to Sections 1 and 2 below will follow the list of information requested in the letter.

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

(1) Resident and migratory species that inhabit or utilize the various affected wetlands.

On April 27, June 20, November 16, and December 28, 2005, bird census surveys were conducted on the project parcel and adjacent habitats. The surveys were conducted by Winzler and Kelly senior biologist Gary Lester. The surveys were conducted off Highway 255 (New Navy Base Road) and Peninsula Drive in the south western portion of the town of Manila, located approximately 2.5 miles northwest of Eureka, CA. The census addressed both the adjacent wetlands and adjacent dune habitats (see following Section 2, Environmentally Sensitive Habitat Area Assessment (ESHA)-Coastal Dunes) to Assessor Parcel Number 401-011-028, 1401 Peninsula Drive Manila, California. It was determined that the wildlife species most readily surveyed were birds and that bird presence could provide a suitable means to assess existing habitat values. During the census it was determined that the presence of two California Department of Fish & Game (DFG) bird species of special concern, Osprey (*Pandion halieatus*) and Black-capped Chickadee (*Poecile atricapillus*), occurred in the study area. The Osprey was actually nesting approximately 300 feet from the subject property atop a Sitka spruce (*Picea sitchensis*) snag (the nest snag has since blown down). Although not actually located in the wetlands, the snag was adjacent to the salt marsh that is southwest of the parcel proposed for development. There appears to be no available nesting habitat for Osprey any longer in the vicinity. The snag, when not occupied by nesting Ospreys, was often used by other raptors, such

Ms. Tiffany S. Tauber

February 16, 2006

Page 2

as Red-tailed Hawk (*Buteo jamaicensis*), Peregrine Falcon (*Falco peregrinus*), Merlin (*Falco columbianus*), American Kestrel (*Falco sparverius*) and Sharp-shinned Hawk (*Accipiter striatus*) as a hunting or rest perch. A resident population of Black-capped Chickadees frequents the forested habitats, primarily the riparian. The adjacent coastal dune forest was frequently occupied by as many or more of the detected species. A total of over seventy different bird species were documented to occur in the study area. Assumed breeders in the area were those species designated as resident breeders and those that were designated as summer breeders. Migrant species were designated as summer-non-breeders. Other non-breeders were those species that were winter residents. The coastal forests, primarily willow riparian found on the North Spit, is considered one of the most important habitats for regional land bird migratory use (Dr. Stan Harris, Professor Emeritus, Humboldt State University, personal communication, January 10, 2006). Willow riparian habitat is present on the subject property, on the adjacent property to the south and across the street from the subject property on Peninsula Drive. The results of the census are shown in Appendix A.

(2) Resting, feeding, breeding and nesting requirements of resident and migratory species

The vegetative diversity of the study area habitats is the possible reason, that over such a short period of census study, so many different resident and migratory bird species were observed. Other likely considerations for site bird diversity are the close proximity of the Humboldt Bay estuary and the coastal habitat use by migrant birds of the Pacific Coast flyway. The adjacent riparian and well developed coastal dune forest would be the primary resting and feeding habitats used by the bird resident and migratory bird populations. The coastal dune forests, due to their substantial area of extent and layered stand structure would likely provide substantial breeding and nesting habitat. Due to the lack of habitat width (sometimes merely a tree canopy in width) and habitat structure (typically single canopy species height), the riparian habitats would lack any significant diversity of breeding or nesting use. The remnant coastal dune mat habitat found on the subject parcel and adjacent properties had no evidence of the above listed bird uses. The approximately seven acre salt marsh found south of the subject property also did not have any substantial bird use. The salt marsh habitats through out Humboldt Bay do not provide any significant bird habitat with the possible exception of the abundant seed crop produced by the non-native cord grass (Stan Harris, Prof. Emeritus, HSU, Pers. Comm, January 10, 2006).

(3) Susceptibility of documented species to site disturbance

The potential impacts due to site disturbance of the above mentioned DFG species of special concern and the remainder of those species documented to occur in Appendix A is considered to be extremely low. The greatest single threat to the bird use at the site is the pre-existing vehicle traffic on the adjacent public roads. Despite the vehicle traffic, including the vehicles traveling at speeds of up to 55 miles per hour on Hwy 255, foraging DFG Species of Concern, Black-capped Chickadees were observed 15 feet from the roadway and the Osprey nested 500 feet from Hwy

2421



Ms. Tiffany S. Tauber

February 16, 2006

Page 3

255. Riparian habitats found at the study site, in some cases only a single tree wide, were still being actively used by nearly all land birds observed. The proposed development that would occur in the open dune habitat would not remove any significant habitat used by any bird species. Possible temporary construction disturbance may occur to wildlife that would be using adjacent wetland habitats although the constant vehicle traffic appears to not have any effects on the birds that are using those adjacent habitats. No significant wildlife use was observed to occur in the proposed development site footprint which will occur outside any wetlands. Cats, especially so, and dogs seen in the subject study area may cause harm to the bird populations, but that was never observed.

(4) Identify the species transitional habitat needs between the wetlands and development

There is little or no transitional habitat present on the subject parcel. Species use the adjacent coastal dune forest and riparian habitats, but are not found using the proposed development site. Bird species are seen readily foraging and moving in the adjacent habitats to Hwy 255 and Peninsula Drive and simply fly across the developed roads and subject proposed development site to move from one habitat to another. The proposed development site is simply used as intervening space as the road right-of-ways are used by birds. Adjacent habitats will continue to be used by migratory and breeding species subsequent to any project site development as habitat cover used by species will not be altered. Evergreen leaf cover and dense vegetative growth present in the adjacent coastal dune forest will provide adequate transitional habitat needs as well as the dense riparian vegetative growth present in those adjacent habitats. Although not primarily evergreen, the riparian habitat develops leaf cover early in the year (February) and maintains substantial foliage cover through most of the migratory and breeding season which any species present will take full advantage of. The adjacent salt marsh habitat is heavily screened from the proposed development by existing riparian cover. Any species use of the salt marsh (documented as extremely low in this case and recognized as such by Dr. Stan Harris) would not be visibly impacted by a residential structure on the subject parcel.

(5) Qualitative and quantitative analysis of potential development disturbances

Possible developmental disturbance (construction activities and residential occupancy) to the adjacent wetland habitats could be construed from the expected temporary elevated construction and occupied residential noise levels, lighting or other factors that may result from building and occupying a new residential structure on site. The existing noise levels and adjacent lighting features to the subject property were examined.

An analysis of the existing ambient noise levels was obtained on the subject parcel and adjacent roadsides. Table 1 (following page) provides a summary of the results:

3 of 21

TABLE 1
NOISE MEASUREMENTS TAKEN FROM THE SUBJECT PROPERTY
AND ADJACENT VICINITY¹

Location	Average Noise Level (Day time)	Comments
Proposed house site	56.0 decibels (dBA)	Maximum levels-60.5 dBA (dog barking), minimum levels-47.1 dBA
Adjacent to existing neighbor	58.0 dBA	Maximum levels-61.9 dBA (car passing), minimum levels-50.6 dBA
Peninsula Drive road side in front of property	60.4 dBA	Maximum levels-77.6 dBA (public bus), minimum levels-57.1 dBA
Highway 255 road side	78.4 dBA	Maximum levels-90.5 dBA (truck passing), minimum levels-64.1 dBA

¹ One minute average measurements taken with Bruel & Kjaer 2225A Sound Level Meter. Measurements obtained 12/28-29/05, 1/04/06.

The greatest noise impacts to the existing ambient conditions are the close proximity of the county road (Peninsula Drive) and state highway (Highway 255). The adjacent riparian and salt marsh habitats are currently experiencing levels of noise that, although are intermittent, are at levels 40 to 50 dBA above the project site. Despite the highway noise levels of over 90 decibels the bird species use does not seem to be adversely affected. Mixed foraging flocks of passerines were commonly observed using the adjacent and noisy riparian habitats at all seasons. Existing on-site noise levels are the lowest average of those measured. The subject site proposed development site is currently impacted most significantly from off-site noise by an adjacent unattended barking dog. No residential noise associated with a new development would be expected to impact the habitat use which the species present have become accustomed by the adjacent existing traffic. A similar potential noise impact to wetland habitat occurs in Fairhaven next to the Eureka Municipal Airport. The riparian and brackish marsh habitat east and south of the airstrip is considered one of the most diverse and important habitats for migratory birds in the Humboldt Bay region. It is also found immediately opposite the Samoa Dragstrip located at the Eureka Airport. At no time in the over thirty years of bird watching that has taken place in the riparian opposite the Eureka Airstrip has there been a suggestion that excessive dragstrip noise is harming the adjacent wetland habitat.

4 of 21

Ms. Tiffany S. Tauber

February 16, 2006

Page 5

Although no quantitative lighting analysis was made, some lighting observations in the project vicinity were obtained. Night lighting exists from primarily outside residences in the project vicinity. An adjacent property (400' north) features a single unshielded yard light (estimated output of 8,000 lumens) elevated from a pole can be seen from as far away as Eureka (2 miles) and from Arcata (4 miles). The elevated light mentioned appears to remain on for approximately 11 hours each night (up to 14 hours in the winter) and illuminates much of the surrounding coastal dune forests in the project area. The most immediate house to the subject property maintains a pair of standard (100 watt) unshielded lights which illuminate the adjacent riparian habitat. Additional neighboring houses have standard high intensity security lighting (estimated 175 watt) which are screened by house walls and illuminate only a limited portion of the surrounding natural habitat. The adjacent riparian habitat is intermittently illuminated each night by every vehicle headlights passing on Highway 255 (indirectly) and Peninsula Drive (directly and indirectly). Regardless of the intensity, frequency and proximity to the lighting present on-site there does not appear to be a significant lack of bird use of the affected habitats during the day. Although not investigated, nocturnal species, such as Barn Owl (*Tyto alba*) and Great-horned Owl (*Bubo virginianus*), were observed roosting in the habitats adjacent to the subject parcel and would likely be found hunting the surrounding habitats at night and would likely breed since suitable nesting sites are available in the surrounding vicinity. A similar habitat situation occurs farther south on Highway 255 adjacent to the Eureka Municipal Airport in Fairhaven. Considered the most diverse migrant bird habitats in the Humboldt Bay region are the willow riparian found east and south of the Eureka Airport. A security light is present at all times above the airport parking area and another above the airport hangers. These lights fully illuminate the riparian habitats at all nights. No time in the over 30 years which these habitats have been investigated has there been any detrimental cause thought to exist from the airport lighting. The glare from daylight off the sparsely vegetated dune habitats is a factor but is one that the resident and migratory species have evolved with over a long period of time and additional standard lighting from a single family residence is not expected to be an impact to those species that occupy the adjacent habitats.

(6) Wetland buffer width and development affects to adjacent wetland functions

The width of the proposed wetland buffer of less than 100 feet is not expected to affect the existing wetland function. The riparian habitat which would be closest to the proposed development already is growing in what appears to be 5 to 6 feet of sand before any expected appearance of groundwater. Therefore any impacts to the adjacent wetland relationship to groundwater due to development (which is provided by public water and sewer) would not be expected. The subject site is entirely comprised of a sand substrate therefore all or most water run off from the driveway or house site will be absorbed in the sand and not run directly into the adjacent wetlands. Also because the adjacent riparian and salt marsh habitats are currently experiencing levels of bird species use which do not seem to be adversely affected by the immediate highway functions, a residential house would not conceivably impact those species

5 of 21

Ms. Tiffany S. Tauber

February 16, 2006

Page 6

which occur in the wetland habitats. The freshwater marsh and riparian habitat that occurs nearest the proposed access road to the property is currently adjacent to the Peninsula Drive right of way, existing constructed culvert drainage and long existing traffic. The immediately adjacent wetland habitats to the existing roadway do not indicate any adverse affects. A single access road which is being proposed adjacent to the existing wetland habitats would not cause a significant impact to the existing habitat than that which is already present in the form of Peninsula Drive or the more substantial Highway 255, both of which have crossed wetlands that were cleared and have remnant wetland habitats that still remain. Those remnant habitats are those that occur adjacent to the proposed development site. The adjacent remnant wetlands habitats are in fine health, support a wide variety of species and would be readily tolerant of a single lane road or residential home. The access road site had been the site of the previously constructed road (rocked in a short portion off Peninsula Drive but never apparently paved) to provide construction vehicles access to the installation sites of the high tension wires built in 1964.

2. Environmentally Sensitive Habitat Area Assessment-Coastal Dunes

(1) Plants and wildlife that occur in the adjacent dune habitat

A list of plant species found in the adjacent dune habitats and adjacent wetland habitats are provided in Appendix B. Seasonally appropriate surveys for the special status plant species known to occur in the region were conducted. No populations of Humboldt Bay wallflower (*Erysimum menziesii* ssp. *eurekaense*) and beach layia (*Layia carnosa*) were detected. In addition, no special status species such as dark eyed gilia (*Gilia millefoliata*), pink sand verbena (*Abronia umbellata* ssp. *breviflora*), Humboldt Bay owlslover (*Castilleja ambigua* ssp. *humboldtiensis*) and Pt. Reyes birdsbeak (*Cordylanthus maritimus* ssp. *palustris*), were located on-site or in the vicinity. A list of wildlife species is confined to those species of birds already mentioned which are listed in Appendix A. No species of mammals or invertebrates are included in the species list but no doubt occur in the area. All the expected species of mammals or invertebrate that occur in the vicinity are considered common and no special considerations are to be given. The plants which occur on the project site are also species of widespread distribution and not regionally or locally rare.

(2) Potential development impacts and disturbance to the ESHA

The potential impacts due to site disturbance of the adjacent dune ESHA is not considered significant. The on-site level sand habitat was the result of construction disturbance from 1964. The dune morphology and the vegetative cover present at that time were removed. The proposed development site current vegetation is comprised of primarily widely scattered grasses, perennial native herbs and non-native species. The vegetative cover in the proposed development site ranges from 0% to 10%. The upland

6421

Ms. Tiffany S. Tauber

February 16, 2006

Page 7

sand habitats that occupy the subject site are not considered ESHA due to their complete alteration from their natural condition. The bird and plant species documented to occur in Appendix A and B are considered wide ranging, tolerant of human disturbance and common. As discussed previously in the wetland impact section, all the species that would be expected to occur in the adjacent habitats have long occurred in close proximity to human development, roads, noise and lighting, without any apparent ill effect. The site was originally vegetated similarly to the adjacent coastal dune forest, but was cleared when the high tension power lines were installed to the pulp mills in 1964. All the sand grading which occurred in the original 1964 grading is as it is presently, but the site has vegetated sparsely where the graded sand is farthest from the wetlands and has vegetated densely with willows where the graded sand is adjacent to existing wetlands. The proposed house site is sparsely vegetated (cover approximately 0%-10%) by sand dune bluegrass (*Poa douglasii*), sand dune buckwheat (*Eriogonum latifolium*), golden rod (*Solidago spathulata*), beach strawberry (*Fragaria chiloensis*), beach evening primrose (*Camissonia cheiranthifolia*) and cardionema (*Cardionema ramossimum*). A non-native component of greater percent cover (estimated at 50%-60%) of ripgut grass (*Bromus diandrus*), sweet vernal grass (*Anthoxanthum oderatum*), perennial cat's ear (*Hypochaeris radicata*), pampus grass (*Cortaderia jubata*), quaking grass (*Briza major*) also occurs, in locations close to the frontage of the property. Shrub species within the survey area primarily consists of coyote brush (*Baccharis pilularis*), bear berry manzanita (*Acrostaphylos uva-ursi*), silktassel (*Garrya elliptica*), Oregon crab apple (*Malus fusca*) and wax myrtle (*Myrica californica*). Tree species which occur adjacent to the development site are dune willow (*Salix hookeriana*), Sitka spruce (*Picea sitchensis*), red alder (*Alnus rubra*), grand fir (*Abies grandis*) and shore pine (*Pinus contorta*). Non-native Monterey cypress (*Cupressus macrocarpa*) occur on site and just off site near the property frontage. Although the proposed setbacks are less than 100' from existing one parameter wetlands, the setbacks are provided so no wetland habitats are to be disturbed. Following are proposed mitigation measures that will help ensure that the development will not harm existing habitats and wildlife species found there, degrade the area and provide for a continuance of the dune habitat.

(3) Recommended Mitigation Measures

A setback from all delineated coastal commission wetlands will occur for road building and house site development. An average of 25 feet setback will occur from the one parameter wetland with as close approach of 15 feet at the road access from Peninsula Drive to 50 feet where the house is located at the rear of the parcel. The developer, contractor or land owner shall refrain from removing existing willow vegetation where at all possible. No structure shall be built within the existing riparian and seasonal freshwater wetlands found on the parcel. Planting of native tree and shrub species is recommended to enhance the existing wetland buffer. No unattended dog or cat pet shall

7 of 21



WINZLER & KELLY
CONSULTING ENGINEERS

Ms. Tiffany S. Tauber

February 16, 2006

Page 8

be left to roam the adjoining wetland or coastal dune habitats. Unattended pets of any kind will not be left outside to disturb wildlife. No unshielded light fixture will be installed on the property or any elevated light structure erected. There shall be walking access for public use of the adjacent dune habitats owned by the Manila Community Services District shall be provided and opportunity for public to visually observe any violations to the conditions above.

3.0 CONCLUSIONS

The existing parcel has limited access and room to allow for required CCC setbacks of 100' from existing wetlands or coastal dune ESHA. Therefore it is recommended that reduced setback be allowed to provide for adequate accommodation for the access road and house development. Existing conditions of enriched bird species use of stable wetland and dune habitats which are closely approached by roadway traffic, road noise and existing residential lighting suggests that a development of a residential house and access driveway would not be detrimental to those habitats or species that use them.

Date 2/16/06

Gary S. Lester

Senior Biologist

Winzler & Kelly, Consulting Engineers

Enclosures:

Appendix A-Bird Species List

Appendix B-Plant Species List

c: Ms. Tina Christensen and Philip Kable

Mr. Thomas Becker

8 of 21

9421

Appendix A
Bird Species List

Appendix A
Bird Species List
A-1-HUM-05-041

Scientific Name	Common name	Status
<i>Ardea herodias</i>	Great Blue Heron	Resident, breeder
<i>Ardea alba</i>	Great Egret	Resident, breeder
<i>Egretta thula</i>	Snowy Egret	Resident, breeder
<i>Butorides virescens</i>	Green Heron	Resident, breeder
<i>Cathartes aura</i>	Turkey Vulture	Resident, breeder
<i>Anas platyrhynchos</i>	Mallard	Resident, breeder
<i>Pandion haliaetus</i>	Osprey	Summer, breeder
<i>Circus cyaneus</i>	Northern Harrier	Resident, breeder
<i>Accipiter striatus</i>	Sharp-shinned Hawk	Winter, non-breeder
<i>Accipiter cooperii</i>	Cooper's Hawk	Resident, breeder
<i>Buteo lineatus</i>	Red-shouldered Hawk	Resident, breeder
<i>Buteo jamaicensis</i>	Red-tailed Hawk	Resident, breeder
<i>Falco sparverius</i>	American Kestrel	Resident, breeder
<i>Falco columbarius</i>	Merlin	Winter, non-breeder
<i>Falco peregrinus</i>	Peregrine Falcon	Resident, non-breeder
<i>Callipepla californica</i>	California Quail	Resident, breeder
<i>Pluvialis squatarola</i>	Black-bellied Plover	Winter, non-breeder
<i>Charadrius vociferus</i>	Killdeer	Resident, breeder
<i>Gallinago gallinago</i>	Wilson's Snipe	Winter, non-breeder
<i>Phalaropus fulicaria</i>	Red Phalarope	Winter, non-breeder
<i>Zenaidura macroura</i>	Mourning Dove	Resident, breeder
<i>Tyto alba</i>	Barn Owl	Resident, breeder
<i>Bubo virginianus</i>	Great Horned Owl	Resident, breeder
<i>Calypte anna</i>	Anna's Hummingbird	Resident, breeder
<i>Selasphorus sasin</i>	Allen's Hummingbird	Summer, resident
<i>Ceryle alcyon</i>	Belted Kingfisher	Resident, breeder
<i>Picoides pubescens</i>	Downy Woodpecker	Resident, breeder
<i>Colaptes auratus</i>	Northern Flicker	Resident, breeder
<i>Empidonax difficilis</i>	Pacific-slope Flycatcher	Summer, breeder
<i>Sayornis nigricans</i>	Black Phoebe	Resident, breeder
<i>Corvus brachyrhynchos</i>	American Crow	Resident, breeder
<i>Corvus corax</i>	Common Raven	Resident, breeder
<i>Tachycineta thalassina</i>	Violet-green Swallow	Summer, breeder
<i>Hirundo rustica</i>	Barn Swallow	Summer, breeder
<i>Poecile atricapillus</i>	Black-capped Chickadee	Resident, breeder
<i>Poecile rufescens</i>	Chestnut-backed Chickadee	Resident, breeder
<i>Psaltirparus minimus</i>	Bushtit	Resident, breeder
<i>Troglodytes troglodytes</i>	Winter Wren	Resident, breeder
<i>Cistothorus palustris</i>	Marsh Wren	Resident, breeder
<i>Regulus satrapa</i>	Golden-crowned Kinglet	Resident, breeder
<i>Regulus calendula</i>	Ruby-crowned Kinglet	Winter, non-breeder
<i>Catharus ustulatus</i>	Swainson's Thrush	Summer, breeder
<i>Catharus guttatus</i>	Hermit Thrush	Winter, non-breeder
<i>Turdus migratorius</i>	American Robin	Resident, breeder
<i>Chamaea fasciata</i>	Wrentit	Resident, breeder
<i>Bombycilla cedrorum</i>	Cedar Waxwing	Summer, breeder

10421

Appendix A
Bird Species List
A-1-HUM-05-041

Scientific Name	Common name	Status
<i>Sturnus vulgaris</i>	European Starling	Resident, breeder
<i>Vireo cassinii</i>	Cassin's Vireo	Summer, non-breeder
<i>Vireo huttoni</i>	Hutton's Vireo	Resident, breeder
<i>Vireo gilvus</i>	Warbling Vireo	Summer, breeder
<i>Vermivora celata</i>	Orange-crowned Warbler	Summer, breeder
<i>Vermivora ruficapilla</i>	Nashville Warbler	Summer, non-breeder
<i>Dendroica petechia</i>	Yellow Warbler	Summer, non-breeder
<i>Dendroica nigrescens</i>	Black-throated Gray Warbler	Summer, non breeder
<i>Dendroica coronata</i>	Yellow-rumped Warbler	Resident, breeder
<i>Dendroica townsendi</i>	Townsend's Warbler	Winter, non-breeder
<i>Dendroica occidentalis</i>	Hermit Warbler	Summer, non-breeder
<i>Oporornis tolmiei</i>	MacGillivray's Warbler	Summer, non-breeder
<i>Geothlypis trichas</i>	Common Yellowthroat	Summer, breeder
<i>Wilsonia pusilla</i>	Wilson's Warbler	Summer, breeder
<i>Icteria virens</i>	Yellow-breasted Chat	Summer, non-breeder
<i>Piranga ludoviciana</i>	Western Tanager	Summer, non-breeder
<i>Paserina amoena</i>	Lazuli Bunting	Summer, non-breeder
<i>Pheucticus melanocephalus</i>	Black-headed Grosbeak	Summer, breeder
<i>Passercullus sandwichensis</i>	Savannah Sparrow	Resident, breeder
<i>Pipilo erythrophthalmus</i>	Spotted Towhee	Winter, non-breeder
<i>Passerella iliaca</i>	Fox Sparrow	Winter, non-breeder
<i>Melospiza melodia</i>	Song Sparrow	Resident, breeder
<i>Melospiza lincolni</i>	Lincoln's Sparrow	Winter, non-breeder
<i>Zonotrichia atricapilla</i>	Golden-crowned Sparrow	Winter, non-breeder
<i>Zonotrichia leucophrys</i>	White-crowned Sparrow	Resident, breeder
<i>Junco hyemalis</i>	Dark-eyed Junco	Winter, non-breeder
<i>Agelaius phoeniceus</i>	Red-winged Blackbird	Resident, breeder
<i>Euphagus cyanocephalus</i>	Brewer's Blackbird	Resident, breeder
<i>Molothrus ater</i>	Brown-headed Cowbird	Summer, breeder
<i>Icterus bullockii</i>	Bullock's Oriole	Summer, breeder
<i>Carduelis pinus</i>	Pine Siskin	Resident, breeder
<i>Carduelis tristis</i>	American Goldfinch	Resident, breeder
<i>Carduelis psaltria</i>	Lesser Goldfinch	Resident, breeder
<i>Carpodacus purpureus</i>	Purple Finch	Resident, breeder
<i>Carpodacus mexicanus</i>	House Finch	Resident, breeder
<i>Passer domesticus</i>	House Sparrow	Non-native, breeder

11 of 21

12 of 21

Appendix B
Plant Species List
A-1-HUM-05-041

Appendix B

Plant Species List

A-1-HUM-05-041

Scientific Name	Common Name
<i>Abies grandis</i>	grand fir
<i>Achillea borealis</i>	yarrow
<i>Agrostis stolonifera</i>	red top
<i>Aira caryophyllea</i>	hair grass
<i>Aira praecox</i>	hair grass
<i>Allium triquetrum</i>	onion
<i>Alnus rubra</i>	red alder
<i>Alopecurus geniculatus</i>	water foxtail
<i>Anagallis arvensis</i>	red pimpernel
<i>Anaphalis margaritacea</i>	pearly everlasting
<i>Anthoxanthum odoratum</i>	sweet vernal grass
<i>Aphanes occidentalis</i>	aphanes
<i>Arctostaphylos uva-ursi</i>	bear berry
<i>Artemisia douglasiana</i>	mugwort
<i>Aster chilensis</i>	California aster
<i>Athyrium filix-femina</i>	lady fern
<i>Avena sativa</i>	wild oats
<i>Baccharis pilularis</i>	coyote brush
<i>Bellis perennis</i>	English daisy
<i>Brassica rapa</i>	wild mustard
<i>Briza maxima</i>	large quaking grass
<i>Briza minima</i>	small quaking grass
<i>Bromus diandrus</i>	ripgut grass
<i>Bromus hordeaceus</i>	soft chess
<i>Calandrinia ciliata</i>	red maids
<i>Camissonia cheiranthifolia</i>	beach evening-primrose
<i>Cardamine oligosperma</i>	bitter cress
<i>Cardionema ramosissimum</i>	cardionema
<i>Carex obnupta</i>	slough sedge
<i>Carex pansa</i>	sand sedge
<i>Cirsium vulgare</i>	bull thistle
<i>Claytonia parviflora</i>	spring beauty
<i>Claytonia perfoliata</i>	miner's lettuce

13421

Appendix B

Plant Species List A-1-HUM-05-041

Scientific Name	Common Name
<i>Conium maculatum</i>	poison hemlock
<i>Conyza canadensis</i>	horseweed
<i>Coronopus didymus</i>	wart cress
<i>Cortaderia selloana</i>	pampus grass
<i>Cotula coronopifolia</i>	brass buttons
<i>Crassula connata</i>	pygmy weed
<i>Cupressus macrocarpa</i>	Monterey cypress
<i>Cynosurus echinata</i>	dog-tail grass
<i>Cyperus eragrostis</i>	flat sedge
<i>Dactylis glomerata</i>	orchard grass
<i>Daucus carota</i>	wild carrot
<i>Daucus pusillus</i>	rattlesnake weed
<i>Deschampsia caespitosa</i>	tufted hair grass
<i>Dipsacus sylvestris</i>	teasel
<i>Epilobium ciliatum</i>	willow herb
<i>Equisetum arvense</i>	horsetail
<i>Erechtites glomerata</i>	Australian fireweed
<i>Erigeron glauca</i>	seaside daisy
<i>Eriogonum latifolium</i>	beach buckwheat
<i>Festuca arundinacea</i>	reed fescue
<i>Festuca rubra</i>	red fescue
<i>Fragaria chiloensis</i>	beach strawberry
<i>Gaultheria shallon</i>	sakal
<i>Garrya elliptica</i>	silk tassel
<i>Geranium molle</i>	crane's bill
<i>Gnaphalium chilense</i>	cudweed
<i>Gnaphalium ramoississimum</i>	cudweed
<i>Goodvera oblongifolia</i>	rattlesnake plantain
<i>Holcus lanatus</i>	velvet grass
<i>Hordeum marinum</i>	Mediterranean barley
<i>Hydrocotyle umbellata</i>	penny-wort
<i>Hypochoeris glabra</i>	annual cat's ear
<i>Hypochoeris radicata</i>	cat's ear
<i>Jaumea carnosa</i>	jaumea
<i>Juncus bufonius</i>	toad rush
<i>Juncus effusus</i>	soft rush
<i>Juncus ensifolius</i>	three-stamen rush
<i>Juncus leseuerii</i>	salt rush
<i>Juncus patens</i>	spreading rush
<i>Leucanthemum vulgare</i>	ox-eye daisy

14 of 21

Appendix B

Plant Species List

A-1-HUM-05-041

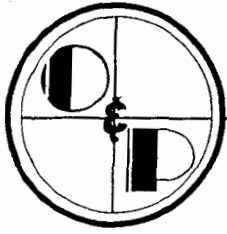
Scientific Name	Common Name
<i>Lolium perenne</i>	perennial rye grass
<i>Lonicera involucrata</i>	twin berry
<i>Lotus corniculatus</i>	bird's foot trefoil
<i>Lupinus arboreus</i>	yellow bush lupine
<i>Lupinus bicolor</i>	lupine
<i>Lysichiton americanum</i>	skunk cabbage
<i>Madia sativa</i>	tar weed
<i>Malus fusca</i>	Oregon crab apple
<i>Marah oreganus</i>	coastal man-root
<i>Medicago arabica</i>	bur clover
<i>Melianthus major</i>	honey bush
<i>Melilotus alba</i>	white sweet clover
<i>Mentha pulegium</i>	penny royal
<i>Myrica californica</i>	wax myrtle
<i>Oenanthe sarnentosa</i>	water parslsey
<i>Orthocarpus erianthus</i>	owl's clover
<i>Parentucellia viscosa</i>	parentucellia
<i>Phalaris canariensis</i>	canary grass
<i>Picea sitchensis</i>	Sitka spruce
<i>Picris echinoides</i>	ox-tongue
<i>Pinus contorta</i>	shore pine
<i>Plantago erecta</i>	plantain
<i>Plantago lanceolata</i>	English plantain
<i>Platystemon californicus</i>	cream cups
<i>Poa annua</i>	annual bluegrass
<i>Poa douglasii</i>	dune bluegrass
<i>Polygonum paronychium</i>	knot weed
<i>Polypogon monspeliensis</i>	rabbit's foot grass
<i>Polystichum munitum</i>	sword fern
<i>Potentilla anserina</i>	silverweed
<i>Pseudotsuga menziesii</i>	Douglas-fir
<i>Ranunculus repens</i>	buttercup
<i>Raphanus sativa</i>	wild radish
<i>Ribes sanguineum</i>	red-flowering currant
<i>Rubus discolor</i>	Himalaya berry
<i>Rubus spectabilis</i>	salmonberry
<i>Rubus ursinus</i>	California blackberry
<i>Rumex acetosella</i>	sheep sorrel
<i>Rumex crispus</i>	curly dock
<i>Salix hookeriana</i>	beach willow
<i>Salix lasiandra</i>	Pacific willow
<i>Salicornia virginiana</i>	pickle weed

Appendix B

Plant Species List A-1-HUM-05-041

Scientific Name	Common Name
<i>Sanicula arctopoides</i>	yellow mats
<i>Scirpus cernuus</i>	low bulrush
<i>Scirpus microcarpus</i>	small-headed bulrush
<i>Scrophularia californica</i>	figwort
<i>Senecio mikanioides</i>	German ivy
<i>Senecio vulgaris</i>	black groundsel
<i>Silene gallica</i>	campion
<i>Solanum nigrum</i>	black nightshade
<i>Solidago spathulata</i>	beach goldenrod
<i>Sonchus oleraceus</i>	sow-thistle
<i>Spartina densiflora</i>	cord grass
<i>Stachys ajugoides</i>	hedge nettle
<i>Toxicodendron diversilobum</i>	poison oak
<i>Trifolium repens</i>	white clover
<i>Typha latifolia</i>	cat tail
<i>Vaccinium ovatum</i>	black huckleberry
<i>Veronica americanum</i>	speedwell
<i>Vicia hirsuta</i>	vetch
<i>Vulpia bromoides</i>	six-week fescue
<i>Woodwardia fimbriata</i>	chain fern

16 of 21



OMSBERG & PRESTON

SURVEYORS

ENGINEERS

02-1354-1

December 20, 2006

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

RECEIVED

DEC 22 2006

CALIFORNIA
COASTAL COMMISSION

RE: Alternative Analysis for Placement and Design of Residence
Appeal No. A-1-HUM-05-041 (Kable)

Dear Ms. Tauber:

The purpose of this letter is clarification of the alternatives considered for the placement of a single family residence. Multiple options were considered before determining that the current design is the least disruptive option available for the construction of a single family residence for Philip Kable. Winzler and Kelly prepared a response to these issues in February which did not adequately discuss the proposals considered prior to finalization of the current home location. This addendum aims to address the outstanding issues from your letter dated October 3, 2006.

The current design will place the home in a manner which affords the wetland the most possible protection (see attached "Site Plan Exhibit"). The home has been moved towards the north and west property lines so that it meets the 100 foot setback requirement of HBAP Policy 3.30(B)(6)(c) to the extent of the wetland designated on the exhibit as T-5INT. Directly to the south of the proposed residence the wetland buffer will be a minimum of 83 feet. This will be the only area where a structure is placed less than 100 feet from the wetland. With the mitigation proposed by Winzler and Kelly, this will provide the same practical effect as the buffer prescribed in the Humboldt Bay Area Plan.

Between all development and the wetland, a buffer of native species will be planted to insulate the sensitive area from any potential impacts. As stated in the Winzler and Kelly response, the sandy characteristics of the soil will effectively filter any contaminants before they reach the wetland habitat:

The subject site is entirely comprised of a sand substrate, therefore all or most water run off from the driveway or house site will be absorbed in the sand and not run directly into the adjacent wetlands.

The proposed vegetation buffer, comprised of native species, will provide an additional layer of protection for the wetland. The species to be planted will consist of native trees and shrubs, such as dune willow, coast silk tassel, Sitka spruce and shore pine. A 5 foot tall board fence will delineate the edge of the native planting to ensure that the yard surrounding the house does not encroach into the wetland buffer planting. In addition, a public coastal access trail is being dedicated, over the existing trail, between the planting of native vegetation and the wetland which will act as an additional buffer.

The driveway will meet an average setback of 25 feet as recommended in the Winzler & Kelly response dated February 16, 2006. The residence will utilize an existing gravel driveway that was historically used for access to the PG & E towers west of the project. This existing access will be utilized for the first 65

170921

Ms. Tiffany Tauber
December 20, 2006
Page 2

feet from the public road. The gravel driveway will then be extended west toward the proposed residence another 66 feet. The relocation of the house has allowed the driveway to be narrowed and created a larger buffer area between the wetland and any gravel surface.

Multiple designs were considered, none of which afforded the same level of protection for the sensitive wetland habitat as the current proposal. Earlier designs placed both the residence and driveway closer to the wetland area. The original design proposed the pedestrian trail long the north property line. This was the design preferred by the applicant, but the trail was moved to a more user-friendly location south of the proposed residence. This provides an overall safer trail design and will improve coastal access.

On April 29, 2005 the Humboldt County Planning Commission approved the design shown on attached Exhibit 'A' which included the revised trail location. This design provided only a 60 foot setback to each of the wetland boundaries. The proposed residence on Exhibit 'A' was 50 feet wide on the north/south axis and maintained a 15 foot setback to the northerly property line. This was the preferred design of Mr. Kable, but he agreed to the updated design in order to provide a greater wetland buffer.

The current design proposes a modest 1,760 square foot house, with a width of only 36 feet. In addition the home has been placed 5 feet from the north property line, the minimum setback allowed in the Residential Single Family zone. This move toward the north property changes the previous 60 foot wetland setback to a setback of 83 feet.

The HPAB policy cited above allows for a "string line method" to determine an allowable setback reduction; however, in this case there are no other residences adjacent to this particular wetland. In such a case it seems reasonable that the responsible biologist should make a determination as to adequacy of the proposed wetland buffer. Eighty three (83) feet will provide an adequate buffer between the residence and the wetland, especially considering the substantial planting of native species.

The proposed design minimizes the encroachment into the wetland setback and includes extensive mitigation which will reduce any potential impacts to a less than significant level. The applicant has made every effort to comply with the applicable provisions of the Humboldt Bay Area Plan and it appears that the current proposal meets the intent of the Plan. Therefore, we respectfully request that you prepare a recommendation of approval and schedule the application for a de novo hearing before the Commission.

Thank you for your consideration in this matter.

Sincerely,

OMSBERG & PRESTON



Jesse Buffington
Planner/Project Manager

Attachments

cc: Tina Christensen, Thomas Becker

18421



WINZLER & KELLY
CONSULTING ENGINEERS

Ref: 10043-05001-11032

March 15, 2007

RECEIVED

MAR 16 2007

CALIFORNIA
COASTAL COMMISSION

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

**Re: Response to California Coastal Commission (CCC) Further Request for Information
Appeal No. A-1-HUM-05-041 (Kable)**

Dear Ms. Tauber:

The purpose of this letter is to respond to the request for information in Environmentally Sensitive Dune Habitat Areas (ESHA), Sections 1 through 4 of your letter of 2/22/07. The trail dedication section of your letter is being addressed under a separate cover by the applicant. The response to Sections 1-4 below will follow the list of information requested in the letter.

(1) Current vegetation found at the proposed house site.

The vegetation as described at the proposed house site in the previous Winzler & Kelly letter (dated February 16, 2006) is consistent with that found at the current proposed house site. A non-native component of greater percent cover (estimated at 50%-60%) of ripgut grass (*Bromus diandrus*), sweet vernal grass (*Anthoxanthum odoratum*), perennial cat's ear (*Hypochaeris radicata*), pampus grass (*Cortaderia jubata*), quaking grass (*Briza major*) occurs throughout the central portion of the property, especially in locations close to the Peninsula Road frontage. The proposed house site is sparsely vegetated by a native component (cover approximately 0%-10%) of sand dune bluegrass (*Poa douglasii*), sand dune buckwheat (*Eriogonum latifolium*), golden rod (*Solidago spathulata*), beach strawberry (*Fragaria chiloensis*), beach evening primrose (*Camissonia cheiranthifolia*) and cardionema (*Cardionema ramossimum*). The vegetation present is the type of species composition one would expect to encounter throughout the North Spit of Humboldt Bay where the sand dunes have been disturbed. The project location was altered by equipment grading in the early 1960's. Clearing and road construction was completed for utility installation and the natural habitat altered.

(2) Sensitive plant species present within or adjacent to the project site

No populations of the Federally Endangered Humboldt Bay wallflower (*Erysimum menziesii* ssp. *eurekaense*) and beach layia (*Layia carnosa*) were detected on or adjacent to the property. Efforts were made during the appropriate season to search for these species. In addition, no special status species such as dark eyed gilia (*Gilia millefoliata*), pink sand verbena (*Abronia umbellata* ssp. *breviflora*), Humboldt Bay owlslover (*Castilleja ambigua* ssp. *humboldtiensis*) and Pt. Reyes birdsbeak (*Cordylanthus maritimus* ssp. *palustris*), were located on-site or in the vicinity. I conducted these surveys myself. I am well versed in the fore-mentioned sensitive plant species



Ms. Tiffany Tauber

March 15, 2007

Page 2

and I have experienced all the above species in the recent decade in nearby North Spit habitats.

(3) Setback of the house site from the Environmentally Sensitive Dune Habitat.

The proposed house site would lie approximately 50 feet from existing undisturbed forested habitats. Adjacent graded sand dunes which comprise the entirety of this property and much of the neighboring properties with houses are not construed as environmentally sensitive dune habitats. If these sand substrates on the property that support indigenous dune plants species are considered ESHA, then there is no ESHA setback. The identified vegetated dune habitats (from the Humboldt Bay Area Plan, 1989) lie west of the proposed house site (attached Figure).

(4) Locate Environmentally Sensitive Dune habitats from development.

Please note the indicated Dune Habitats (from Humboldt Bay Area Plan of the Humboldt County Local Coastal Plan, 1989), on the attached Figure. The vegetated dune habitats recognized in the LCP are approximately 1,400' west of the subject property.

In conclusion, the existing parcel has limited access and room to allow for required CCC setbacks of 100' from existing wetlands or intact coastal habitats. If the entire sand substrate, whether disturbed or not, found within the North Spit located in the Manila area is considered ESHA for Dune Habitats, then only restricted development would be allowed by the Coastal Commission. Therefore to reiterate from the previous letter, it is recommended that reduced setback be allowed to provide for adequate accommodation for the access road and house development. Existing conditions of enriched bird species use of stable wetland and adjacent habitats which are closely approached by roadway traffic, road noise and existing residential lighting suggests that a development of a residential house and access driveway would not be detrimental to those habitats or species that use them.

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

Gary S. Lester

Senior Botanist

Winzler & Kelly Consulting Engineers

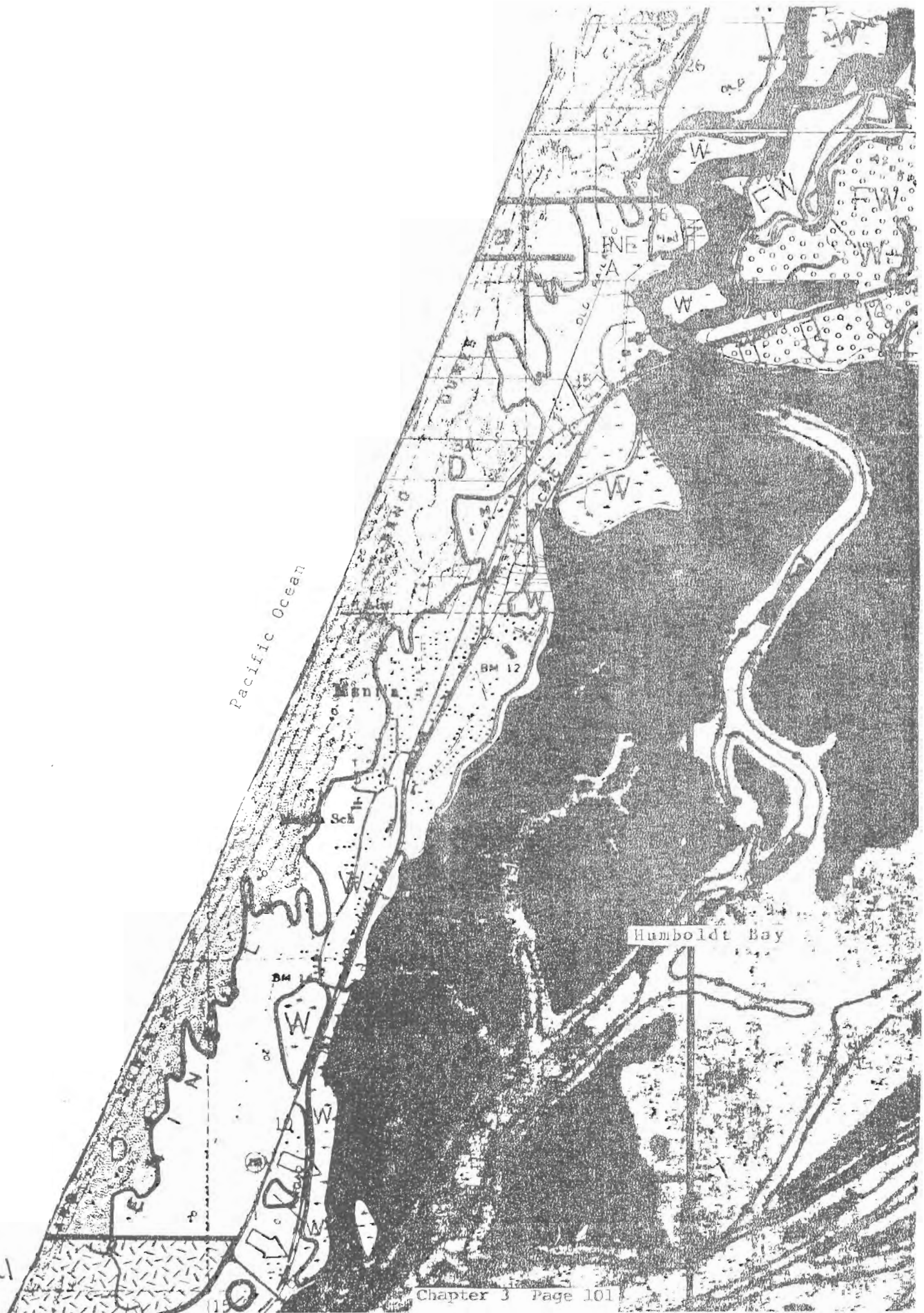
Enclosures:

Figure

c: Ms. Tina Christensen and Philip Kable

Mr. Thomas Becker

20 of 21



Map 21

PHILIP KABLE
DIANA CHRISTENSEN KABLE
2120 Campton Road
Eureka, CA 95503
(707) 445-8811

August 14, 2007

Mr. Robert S. Merrill
North Coast District Manager
California Coastal Commission
710 E Street
Suite 200
Eureka, CA 95501

RECEIVED

AUG 16 2007

CALIFORNIA
COASTAL COMMISSION

Re: Pedestrian Easement, Appeal No. A-1-HUM-05-041
Applicant: Philip Kable

EXHIBIT NO. 8
APPLICATION NO. A-1-HUM-05-041 - KABLE PROPOSED OFFER TO DEDICATE A 10-FOOT-WIDE PEDESTRIAN EASEMENT (1 of 2)

Dear Mr. Merrill:

On July 19, 2007, my attorney, Thomas Becker submitted to you a draft 10 foot wide pedestrian easement access over Humboldt County Assessor Parcel No. 401-011-03. The purpose of this letter is to clarify his letter and to add additional directions to you concerning the draft document.

First, as a technical matter, the permit referred to in Mr. Becker's letter is A-1-HUM-05-041, not the Humboldt County permit application number.

Second, the procedural steps to be followed concerning this offer of dedication are as follows:

- a. The applicant shall submit the proposed offer to dedicate an easement for the discretionary review and approval of the executive director prior to recordation and prior to issuance of the Coastal Development permit;
- b. The grant of easement to be approved by the Executive Director shall require that any future development that is proposed to be located either in whole or in part within the area described in the recorded easement shall require a Commission amendment to the subject Coastal Development

Mr. Robert S. Merrill
California Coastal Commission
Page 2
August 14, 2007

Permit (if approved);

c. The form of the grant of easement to be approved by the Executive Director shall include legal descriptions of the entire property as well as the area of dedication;

d. The grant of easement to be approved by the Executive Director shall be recorded free of prior liens and any other encumbrances which the Executive Director reasonably determines may affect the interest being conveyed;

e. The grant of easement to be approved by the Executive Director shall be recorded after approval but prior to issuance of subject Coastal Development Permit (if approved); and

f. If the offer to dedicate is acceptable to the Commissioner, we ask that a Letter of Intent to Accept Offer of Dedication be signed so we can inform the County that we have worked out these terms and conditions for the dedication.

Please feel free to call me with any questions or concerns.

Very truly yours,

Signature on File

Philip Kable

2 of 2

Figure 6. Trail heading south from the building site



EXHIBIT NO. 9

APPLICATION NO.

A-1-HUM-05-041 - KABLE

PHOTOGRAPHS OF EXISTING
PUBLIC ACCESS TRAIL ON
SOUTHERN PORTION OF
PROPERTY (1 of 2)

Figure 7. Trail heading southwest



2 of 2

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

February 2005

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

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

EXHIBIT NO. 10
APPLICATION NO. A-1-HUM-05-041 KABLE EXCERPTS FROM WETLAND DELINEATION (1 of 10)

I. SUMMARY

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

II. INTRODUCTION

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

III. DELINEATION PURPOSE

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

IV. WETLAND DELINEATION METHODOLOGY

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

A. Botanical Methodology

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

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

B. Soils Methodology

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

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

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

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

C. Hydrology Methodology

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

3 of 10

D. Wetland Determination

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

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

V. RESULTS OF WETLAND DELINEATION

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

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

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

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

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

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

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

VI. CONCLUSIONS

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

VII. RECOMMENDATIONS

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

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

VIII. SPECIAL TERMS AND CONDITIONS

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

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

6 of 10

IX. REFERENCES

Gretag Macbeth, 2000. Munsell Soil Color Charts.

Hickman, James, 1993. The Jepson Manual, University of California Press, Berkeley and Los Angeles, California.

Soil Survey Staff, 1999. Keys to Soil Taxonomy, 8th Edition, SMSS Technical Monograph No. 19, Blacksburg, Virginia.

United States Department of Agriculture, 1995. Changes in Hydric Soils of the United States. Federal Register, Vol. 60, No. 37, February 24.

USDA/NRCS, 1998. Field Indicators of Hydric Soils in the United States. United States Department of Agriculture, Natural Resources Conservation Service (USDA/NRCS).

United States Department of the Army Corps of Engineers, 1987. Wetlands Delineation Manual, Tech. Rep 4-87-11987.

U. S. Fish and Wildlife Service, 1988. National List of Plant Species that Occur in Wetlands, California (Region O). United States Department of the Interior, Bio. Rep. 88 (26.20).

U. S. Fish and Wildlife Service, 1979. Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS 79/31.

7410
6



WINZLER & KELLY
CONSULTING ENGINEERS

Ref: 10043-05001-11031

May 5, 2005

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

RECEIVED

AUG 25 2005

CALIFORNIA
COASTAL COMMISSION

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

Dear Mr. Richardson:

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

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

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

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

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

8 of 10

Mr. Michael Richardson

May 5, 2005

Page 2

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

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

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

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

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

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

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

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

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

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

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

9.410



WINZLER & KELLY
CONSULTING ENGINEERS

Mr. Michael Richardson

May 5, 2005

Page 3

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

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

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

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

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

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

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

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

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

Sincerely,
WINZLER & KELLY

Handwritten signature of Gary S. Lester in cursive script.
Gary S. Lester

10910

RECEIVED

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

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

A-1-HUM-05-041

AUG 18 2005

CALIFORNIA
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Humboldt

2. Brief description of development being appealed:

Residential single family home within 100' of wetland

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

APN 401-011-28

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

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

EXHIBIT NO. 11

APPLICATION NO.

A-1-HUM-05-041

KABLE

APPEAL (1 of 5)

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

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

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

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

6. Date of local government's decision: July 21, 2005

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

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Philip Kable
2031 Highway 36
Fortuna, CA 95540

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

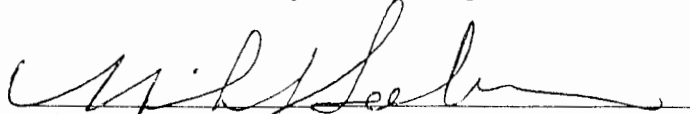
- | | | |
|---|--|--|
| (1) Paul Cienfuegos
1485 Peninsula Drive
Manila, CA 95521 | (6) Michael & Sharon Fennell
1480 Peninsula Drive
Manila, CA 95521 | (11) Carl Birks
1407 Peninsula Drive
Manila, CA 95521 |
| (2) Aryay Kalaki
Coastal Coalition
1520 Peninsula Drive
Manila, CA 95521 | (7) Erika Morris
1435 Peninsula Drive
Manila, CA 95521 | (12) Dan Ihara
231 Dean Ave.
Manila, CA 95521 |
| (3) Carol Vandermeer
Friends of the Dunes
Manila Community Center
Manila, CA 95521 | (8) Melanie Dabill
1435 Peninsula Drive
Manila, CA 95521 | (13) Anthony Perrone
1418 Peninsula Drive
Manila, CA 95521 |
| (4) Nora Winge
1767 Raineri Ln.
Manila, CA 95521 | (9) Marcia Bilderback
975 Bay Street
Eureka, CA 95501 | (14) Ray Grosveld
1454 B Peninsula Drive
Manila, CA 95521 |
| (5) Simona Altman
918 Creighton St.
Eureka, CA 95501 | (10) Jerry Martien
P.O. Box 1051
Manila, CA 95518 | (15) Rachel Graff
1454 B Peninsula Drive
Manila, CA 95521 |

295

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 08/16/05

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

Section VI. Agent Authorization

I/We hereby
authorize

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

Signature of Appellant(s)

Date: _____

395

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

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

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

(continued on Attachment 1)

495

Attachment 1

Section IV, continued from page 3:

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

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



PLANNING DIVISION
COMMUNITY DEVELOPMENT SERVICES

COUNTY OF HUMBOLDT

3015 H STREET

EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

Appealable Status: APPEALABLE

August 2, 2005

CALIFORNIA COASTAL COMMISSION

Eureka Office

P.O. Box 4908

Eureka, CA 95502-4908

Subject: Coastal Development Permit
Notice of Action Taken

Contact:

Applicant: Phillip Kable

Address: 2031 Hwy 36, Fortuna, CA 95540

Case No.: CDP-02-106M (filed 2/25/05)

File No.: APN 401-011-03 (Parcel #2)

Following a noticed public hearing, the Humboldt County
Planning Commission approved the referenced application on July 21, 2005.

Sincerely,

Michael Richardson, Senior Planner
Humboldt County Planning Division
Humboldt County Community Development Services

Attachments: Record of Action
Agenda Item Transmittal
Resolution
Conditions of Approval

EXHIBIT NO. 12
APPLICATION NO.
A-1-HUM-05-041 - KABLE
NOTICE OF FINAL LOCAL ACTION & COUNTY FINDINGS FOR PERMIT MODIFICATION CDP-02-106M (1 of 18)

Mc

KABLE, Phillip

APN 401-011-03 (Parcel 2)

Case No: CDP-02-106 M



PLANNING DIVISION
COMMUNITY DEVELOPMENT SERVICES

COUNTY OF HUMBOLDT

3015 H STREET

EUREKA, CALIF. 95501-4484

PHONE (707) 445-7541

DATE: April 11, 2005
TO: Humboldt County Planning Commission
FROM:  Kirk Girard, Director of Community Development Services
SUBJECT: **Kable** Coastal Development Permit Modification Manila area
Case No.: **CDP-02-106M** File No. APN 401-101-03 (Parcel #2)

The attached staff report was prepared for your consideration of the Kable coastal development permit modification and coastal development permit application at the public hearing on April 21, 2005. The staff report includes the following:

Table of Contents

Agenda Item Transmittal Form

Executive Summary

Maps

Vicinity Map

Zoning Map

Assessor Parcel Map

Project Proposal Map

Draft Record of Planning Commission Action

Attachments

Attachment 1: Recommended Conditions of Approval

Attachment 2: Staff Analysis of Required Findings

Attachment 3: Mitigated Negative Declaration

Attachment 4: Applicant's Evidence Supporting the Findings

Attachment 5: Referral Agency Comments

Attachment 6: Excerpts from Humboldt Bay Area Plan (HBAP) Coastal Access Provisions

2

3

5

6

7 insert

8

9

11

16

40

62

64

Please contact Michael Richardson at (707) 268-3723 if you have any questions about the scheduled public hearing item.

cc: Applicant, Owners, Referral Agencies

2 of 18

AGENDA ITEM TRANSMITTAL

TO: HUMBOLDT COUNTY PLANNING COMMISSION

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

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

Before you is the following:

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

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

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

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

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

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

APPLICANT

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

OWNER(S)

SAME

AGENT**ENVIRONMENTAL REVIEW:**

Environmental review is required.

MAJOR ISSUES:

☒ Wetland buffer setbacks.

STATE APPEAL STATUS:

☒ Project is appealable to the California Coastal Commission.

3 of 18

EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

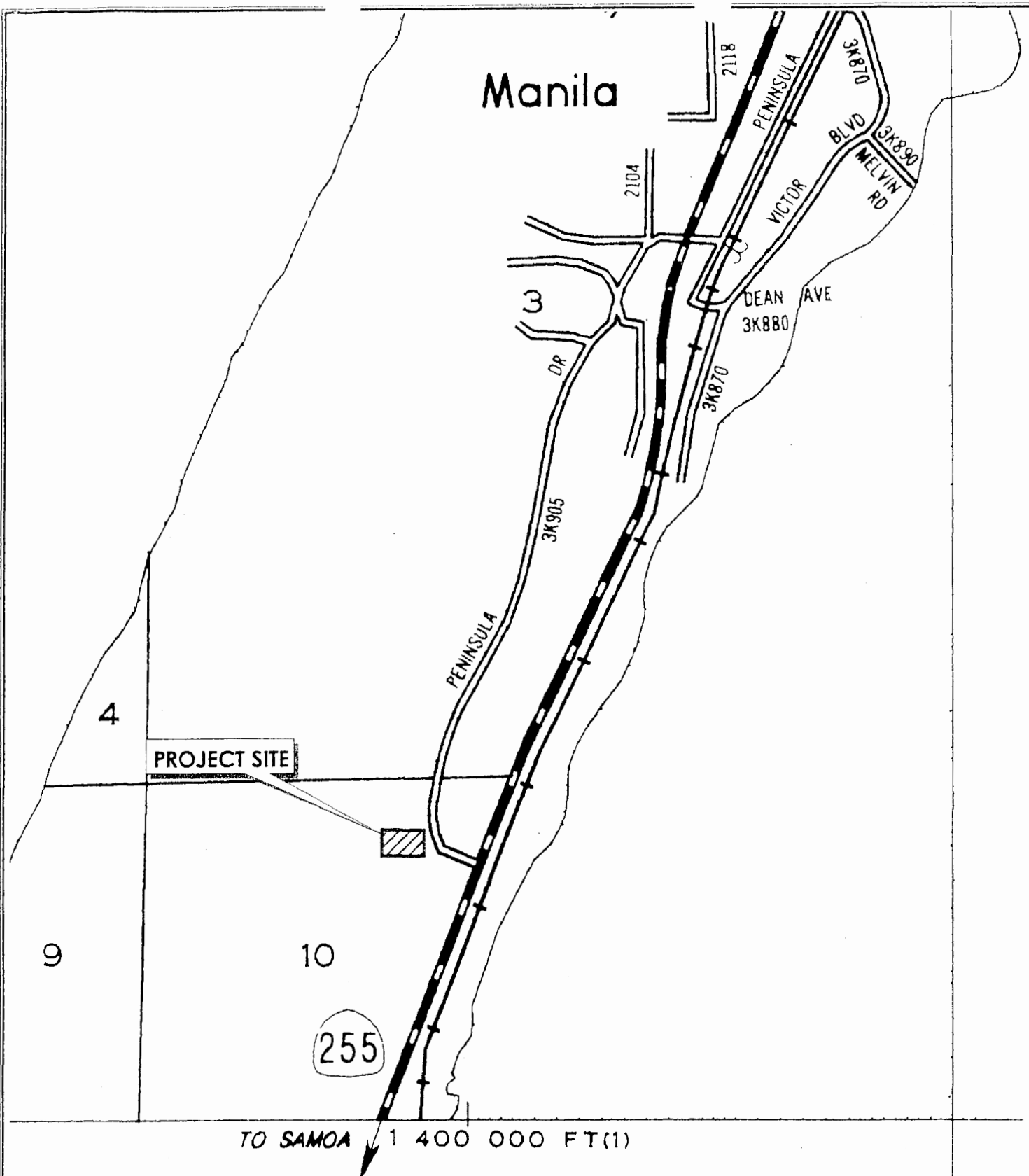
STAFF RECOMMENDATIONS:

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

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

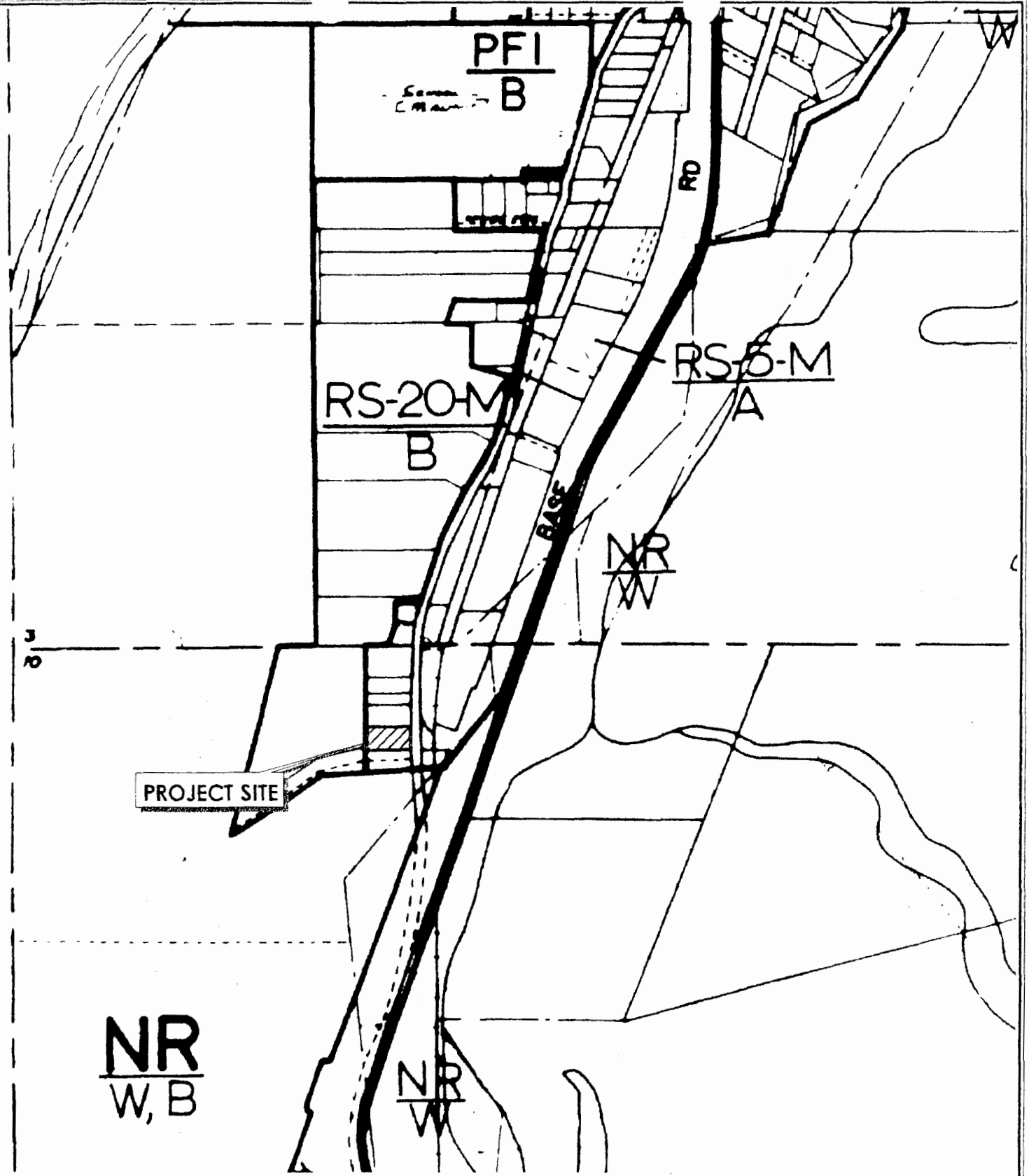
ALTERNATIVES: The Planning Commission could elect not to approve the project. This alternative should be implemented if your Commission is unable to make all of the required findings. Planning Division staff is confident that the required findings can be made. Consequently, planning staff does not recommend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

5918



LOCATION MAP
PROPOSED KABLE
COASTAL DEVELOPMENT PERMIT MODIFICATION
MANILA AREA
CDP-02-106M
APN: 401-011-28
SECTION 10 T5N R1W H B & M

Map is not drawn to scale.



ZONING MAP
PROPOSED KABLE
COASTAL DEVELOPMENT PERMIT MODIFICATION
MANILA AREA
CDP-02-106M
APN: 401-011-28
SECTION 10 T5N R1W H B & M



MAP NOT DRAWN TO SCALE

7918

16

T. C. A. 135-00

1" = 400'
LS 22 P 17



8 of 18



MAP IS NOT TO SCALE

7

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

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

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

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

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

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

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

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

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

Adopted after review and consideration of all the evidence on _____.

The motion was made by COMMISSIONER _____ and seconded by COMMISSIONER _____.

AYES: Commissioners:

NOES: Commissioners: NONE

ABSTAIN: Commissioners: NONE

ABSENT: Commissioners:

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

Kirk Girard, Director of Community Development Services

By: _____
SHARYN LODES, Clerk

Last Day to appeal to the Board of Supervisors: _____ (file Appeal with the Planning Division and Clerk of the Board.)

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

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

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

Conditions of Approval:

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

A. Mapping

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

B. Notes to be Placed on the Development Plan:

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

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

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

10918

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

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

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

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

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

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

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

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

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

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

11/9/18

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

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

Informational Notes:

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

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

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

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

12/4/18

ATTACHMENT 2
Staff Analysis of the Evidence Supporting the Required Findings

To approve this project, the Hearing Officer must determine that the applicant has submitted evidence in support of making **all** of the following required findings.

1. **General Plan Consistency:** The following table identifies the evidence which supports finding that the proposed subdivision is in conformance with all applicable policies and standards in Chapters 2-4 of the Framework Plan (FP) and Humboldt Bay Area Plan (HBAP).

Plan Section(s)	Summary of Applicable Goal, Policy or Standard	Evidence Which Supports Making the General Plan Conformance Finding
Land Use 2700 (FP), 5.30 (HBAP)	RL designation applies in urban areas suitable for one-family development. Density: one to six dwelling units per acre.	The proposed project is for construction of a single family home consistent with the allowed uses of the RL designation
Urban Limits: 2600 (FP), 3.21 (HBAP)	New development shall be located within existing developed areas or in areas with adequate public services.	The parcels will be served by community water and sewer provided by the Manila CSD.
Housing: 2400 (FP)	Housing shall be developed in conformity with the goals, policies and standards of the Humboldt County Housing Element.	The project will add a single family residential unit to the County's housing stock, which is consistent with Housing Element policies encouraging new housing construction.
Hazards: 3100-3203 (FP), 3.29 (HBAP)	New development shall minimize risk to life and property in areas of high geologic, flood and fire hazards.	The project site is located in an area of low slope instability, minimal flooding. The property is located in an area of low wildland fire hazard rating. The property is within Arcata Fire Protection District. The proposal raises no fire protection issues for the Fire District.

13 of 18

Plan Section(s)	Summary of Applicable Goal, Policy or Standard	Evidence Which Supports Making the General Plan Conformance Finding
Biological Resource Protection 3400-3604 (FP), 3.30 (HBAP)	To protect designated sensitive and critical resource habitats.	<p>The site lies to the north of a wetland located on APN 401-011-23, and designated Natural Resources under the Humboldt Bay Area Plan. Policies of the HBAP require that a development buffer of 100 feet be established from the wetland boundary.</p> <p>The original coastal development permit acknowledged the presence of this wetland and the required buffer, which was shown on the approved Tentative Map consistent with the wetland maps of the Humboldt Bay Area Plan on file with the Planning Division.</p> <p>The staff report for the project stated, "This buffer setback will limit development on Parcel 2 but adequate area exists for a single building site. This wetland buffer setback will be depicted on a Development Plan to be required as a condition of the subdivision."</p> <p>Based on the site specific wetland delineation submitted with this application, the wetland and required buffer areas occupy more area than what is shown on the wetland maps of the Humboldt Bay Area Plan, and what was shown on the approved tentative map. Accordingly, a reduction of the required setback is necessary to allow construction of a home on the parcel.</p> <p>This buffer setback will limit development on Parcel 2 but adequate area exists for a single building site. This new (reduced) wetland buffer setback will be depicted on a Development Plan to be required as a condition of approval for the project. The wetland buffer areas are required to be shown as "non-buildable".</p> <p><u>There exists an osprey nest adjacent to the site that could be impacted by the project. A site visit by staff on Tuesday, May 3 confirmed the proposed development is more than 300 feet from the nest, and visually buffered from the nest by a large conifer and a thicket of willows.</u></p> <p><u>According to a biologist's opinion on another project (the "Osprey Point" subdivision in the Cutten Area - File # 018-121-04), construction activity within 265' of an osprey nest (1/4 mile radius) should be limited to quiet activities during the time of year when chicks are present to avoid adversely impacting the ospreys. Outside that area, the biologist recommended no special requirements for new construction.</u></p> <p><u>Conditions of approval have been added to require the development conform to the requirements of the biological report that apply to the special treatment area. Alternatively the applicant may submit a biological report, subject to the review of the Planning Director, demonstrating limits on construction activity are not necessary to protect the osprey.</u></p>
Cultural Resource Protection 3500 (FP), 3.29.1 (HBAP)	New development shall protect cultural, archeological and paleontological resources.	The North Coast Information Center identified no historical resources and recommends no further study.

14918

Plan Section(s)	Summary of Applicable Goal, Policy or Standard	Evidence Which Supports Making the General Plan Conformance Finding
Visual Resource Protection 3540 (FP)	New development shall conserve and protect scenic and visual qualities of coastal areas.	The project will result in the construction of a single family home. The visual impacts of a single family home are not likely to be significant as there are other homes in the immediate vicinity, and the project will not impact any mapped coastal scenic or coastal view areas.
Access 3.50 (HBAP)	New development shall not interfere with the public's right of access to the shoreline.	<p>There has historically been some public use of a footpath across the front of the property to access an easement owned by the Manila Community Services District, which lies along the south of the property, and leads to the beach. According to verbal comments from two Manila residents, the footpath to the trail is an important linkage between the easement and Peninsula Drive as it enables pedestrians to avoid a portion of the easement that is regularly flooded during the winter. The applicant affirmed the historical use of the footpath, and also stated he believes he and successive owners of the property have a right to prevent the use of it in future.</p> <p>While the trail is generally mapped in the access inventory of the HBAP (Access #10), the trail is shown as deleted from the inventory as it passes through sensitive dune areas. Accordingly, staff is not recommending the applicant be required to dedicate an additional public access easement along this existing footpath.</p> <p>Instead, staff is recommending standard conditions prohibiting construction of structures (including fences) within the mapped wetlands and wetland buffer area, which will help ensure continued public access consistent with the historical use of the footpath. Also, an informational note has been added explaining that issuance of the permit and completion of the development does not prejudice any future assertion of rights of implied dedication. <u>Section 5.30B(2) of the Plan requires that where potential prescriptive rights of access to be (sic) the shoreline are affected by new development, the applicant shall either 1) site and design the project to maintain the accessway, or 2) provide an equivalent accessway to the same designation (sic) including dedication of an access easement as described in Section 5.30B(3), or 3) demonstrate that either the State of California has quitclaimed any interest it may have in the accessway of a court of competent jurisdiction had determined that prescriptive rights do not exist along the accessway. Conditions of project approval require dedication of the required access easement.</u></p>

2. **Zoning Compliance:** The following table identifies the evidence which supports finding that the proposed subdivision is in conformance with all applicable policies and standards in the Humboldt County Zoning Regulations (H.C.C.).

Zoning Ordinance Sections	Summary of Applicable Requirement	Evidence Which Supports Making the Zoning Compliance Finding
313-6.2 Principal Permitted Use:	RS-5 is applied in areas suitable and desirable for low density residential development. One-family dwelling is a principal permitted use.	The proposed single family residence is a permitted use in the RS-5 zone.
Min. Parcel Size	5,000 square feet	The lot is > 20,000 square feet.
Min. Lot Width	50 feet	The lot is more than 50 feet wide.
Max. Lot Depth	3 x lot width	No change to the lot depth is proposed.
Max. Lot Coverage	35%	The proposed lot coverage is less than 35%..
Max. Building Height	35 feet	The proposed structure will not exceed 20' in height.
Parking: 314-109.1.3	4 spaces	4 spaces are shown on the plot plan.
Archaeological Resources Combining Zone (313-16)	To protect cultural resources	The North Coast Information Center identified no known archaeological or other cultural resources on the site. Conditions of approval require the applicant sign a notice stating they understand and will abide by State laws protecting cultural resources.

116 of 18

Zoning Ordinance Sections	Summary of Applicable Requirement	Evidence Which Supports Making the Zoning Compliance Finding
<p>313-125 Wetland Buffer Areas:</p>	<p>A Wetland Buffer of 250 feet from the wetland applies. However, within an Urban Limit Line, development shall be located 100' from the wetland. Setbacks less than this may be allowed where the applicant submits evidence the setback reduction will not result in significant adverse impacts to the wetland habitat and will be compatible with the continuance of such habitats.</p> <p>The release rate of stormwater runoff to adjacent wetlands shall not exceed the natural rate of stormwater runoff for a 50-year storm of 10-minute duration; stormwater outfalls, culverts, gutters, and the like, shall be dissipated, and where feasible, screened; areas disturbed during construction, grading, etc., within 100 feet of the boundary of the wetland shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area;</p> <p>Development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from grading areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).</p>	<p>The applicant submitted a wetland delineation which identifies the extent of the wetlands on the property, and a 15'-50' buffer area. The report explains the reduced setback area is justified because the wetland is separated from the more upland portion of the site by a 4'-5' berm. The report concludes, "The berm acts as a buffer itself from the proposed development."</p> <p>Conditions of approval require submittal of a development plan identifying the wetland and approved wetland buffer area as "non-buildable". Conditions of approval also require submittal and implementation of a landscaping plan consistent with the approved wetland delineation.</p> <p>Conditions of approval require that plans submitted for building permit approval show that the project meets these criteria.</p> <p>Conditions of approval require that plans submitted for building permit approval show that the project meets this criteria.</p>

17918

Zoning Ordinance Sections	Summary of Applicable Requirement	Evidence Which Supports Making the Zoning Compliance Finding
<u>§313-95.3 Coastal Access Protection</u>	<u>Where there is substantial evidence of historic public use of an accessway, the proposed project shall either 1) sited and designed to maintain the accessway, or 2) provide an equivalent accessway to the same destination including dedication of an access easement.</u>	<u>Conditions of project approval require dedication of a public access easement.</u>

3. Public Health, Safety and Welfare:

The project will not be detrimental to the public health, safety and welfare nor will it be materially injurious to properties or improvements in the area because:	Evidence supporting the finding:
All reviewing referral agencies have approved or conditionally approved the proposed project design.	See Attachment 5
The proposed project is consistent with the general plan.	See discussion above
The proposed project is consistent with the zoning.	See discussion above
The proposed project will not cause environmental damage.	See Attachment 3

4. Environmental Impact:

As required by the California Environmental Quality Act, the initial study conducted by the Planning and Building Department (Attachment 4) evaluated the project for any adverse effects on the environment. Based on a site inspection, information in the application, and a review of relevant references in the Department, staff has determined that there is no evidence before the Department that the project will have any potential adverse effect, either individually or cumulatively, on the environment. The environmental document on file in the Department includes a detailed discussion of all relevant environmental issues.

Staff has also determined that the project, as approved and conditioned, will not result in a change to any of the resources listed in subsections (A) through (G) of Section 753.5(d) of the California Code of Regulations [Title 14, Chapter 4]. Therefore, staff is supportive of a *di minimis* finding regarding the waiver of environmental review fees subject to Section 711.4 of the Fish and Game Code. The Department will file a "Certificate of Fee Exemption" with the County Clerk pursuant to Section 753.5(c) of the California Code of Regulations. The \$25.00 document handling fee required by the statute will be paid by the applicant.

18918



PLANNING DIVISION
COMMUNITY DEVELOPMENT SERVICES

COUNTY OF HUMBOLDT

3015 H STREET
EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

Appealable Status: APPEALABLE

September 22, 2003

CALIFORNIA COASTAL COMMISSION

Eureka Office
P.O. Box 4908
Eureka, CA 95502-4908

Subject: Coastal Development Permit
Notice of Action Taken

Contact: Michael Richardson

Applicant: Tina Christensen
Address: 2120 Campton Rd, Eureka, CA 95521

Case No.: CDP-02-106 (filed 4/13/03)/PMS-02-31
File No.: APN 401-011-03

Following a noticed public hearing, the Humboldt County Planning Commission approved the referenced application on September 18, 2003.

Sincerely,

Michael Richardson, Senior Planner
Humboldt County Planning Division
Humboldt County Community Development Services

Attachments: Record of Action
Agenda Item Transmittal
Resolution
Conditions of Approval

EXHIBIT NO. 13

APPLICATION NO.

A-1-HUM-05-041 - KABLE
NOTICE OF FINAL LOCAL
ACTION & COUNTY FINDINGS
FOR ORIGINAL PERMIT
CDP-02-106 (1 of 15)

Handwritten initials or mark.

CHRISTENSEN, TINA

APN 401-011-03

Case No

DP-02-106/PMS-02-31



PLANNING DIVISION
COMMUNITY DEVELOPMENT SERVICES

COUNTY OF HUMBOLDT

3015 H STREET

EUREKA, CALIF. 95501-4484

PHONE (707) 445-7541

DATE: September 4, 2003

TO: Humboldt County Planning Commission

FROM:

Kirk Girard
Kirk Girard, Director

SUBJECT: **Christensen** Parcel Map Subdivision/Coastal Development Permit Manila area
Case No.: **PMS-02-31/CDP-02-106** File No. APN 401-101-03

The attached staff report was prepared for your consideration of the Christensen tentative map and coastal development permit application at the public hearing on September 18, 2003. The staff report includes the following:

Table of Contents

Agenda Item Transmittal Form

2

Executive Summary

3

Maps

Vicinity Map

4

Zoning Map

5

Assessor Parcel Map

6

Project Proposal Map

insert

Draft Record of Planning Commission Action

7

Attachments

Attachment 1: Recommended Conditions of Approval

8

Attachment 2: Staff Analysis of Required Findings

12

Attachment 3: Mitigated Negative Declaration

15

Attachment 4: Applicant's Evidence Supporting the Findings

38

Attachment 5: Referral Agency Comments

39

Please contact Michael Richardson at (707) 268-3723 if you have any questions about the scheduled public hearing item.

cc: Applicant, Owners, Referral Agencies

2 of 15

AGENDA ITEM TRANSMITTAL

TO: HUMBOLDT COUNTY PLANNING COMMISSION

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

MEETING DATE: 9/18/03	AGENDA ITEM: <input type="checkbox"/> Public Hearing Item <input checked="" type="checkbox"/> Consent Agenda PARCEL MAP SUBDIVISION & COASTAL DEVELOPMENT PERMIT	CONTACT: Michael Richardson <i>MR</i>
--------------------------	---	---

Before you is the following:

PROJECT DESCRIPTION: This project proposes a minor subdivision of APN 401-011-03, a 1.19± acre parcel, into two (2) parcels. After the parcel split, Parcel 1 will be 0.57± acres, Parcel 2 will be 0.62± acres. As the property is located in the Coastal Zone, a Coastal Development Permit is also requested for the project. There is one existing residential structure on Parcel 1 (401-011-03). The residence is approximately 1,000 sq. ft. and is located on the northern portion of the site. On site parking is provided. Sewer and water services are provided by Manila Community Services District. PG&E supplies electricity and telephone service is provided by SBC Pacific Bell. Access to the parcels is via County maintained Peninsula Road, a 22 foot paved road within a 40 foot right of way. There are 2 foot shoulders on either side of the road. There are no curbs, gutters or sidewalks on Peninsula Road.

PROJECT LOCATION: The project site is located in Humboldt County, in the Manila area, on the west side of Peninsula Drive, approximately 500 feet north from the southern intersection of Peninsula Drive with New Navy Base Road, on the property known as 1407 Peninsula Drive.

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

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

ASSESSOR PARCEL NUMBER: 401-011-03**APPLICANT**

Tina Christensen
2120 Campton Road
Eureka, CA 95521
Phone: 443-8651

OWNER(S)

Dianna & Philip Kable & Brice Luster
1483 Faye Avenue
Samoa, CA 95564

AGENT

Omsberg & Company
304 N Street
Eureka, CA 95501
Phone: 445-8811

ENVIRONMENTAL REVIEW:

Environmental review is required.

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

3415

EXECUTIVE SUMMARY

CHRISTENSEN Parcel Map Subdivision

Case No.: PMS-02-31; CDP-02-106; File No.: APN 401-011-03

This project proposes a minor subdivision of APN 401-011-03, a 1.19± acre parcel, into two (2) parcels. After the parcel split, Parcel 1 will be 0.57± acres, Parcel 2 will be 0.62± acres. As the property is located in the Coastal Zone, a Coastal Development Permit is also requested for the project. There is one existing approximate 1,000 sq. ft. residential structure on Parcel 1 located on the northern portion of the site. Proposed Parcel 2 is undeveloped. Sewer and water services are provided by Manila Community Services District. Access to the parcels is via County maintained Peninsula Road, a 22 foot paved road within a 40 foot right of way. There are 2 foot shoulders on either side of the road. There are no curbs, gutters or sidewalks on Peninsula Road.

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

The property occupies a relatively flat area (2-3% slope) and is currently developed with one single family residence. The site lies to the north of a wetland located on APN 401-011-23, and designated Natural Resources under the Humboldt Bay Area Plan. Policies of the HBAP require that a development buffer of 100 feet be established from the wetland boundary. This buffer setback will limit development on Parcel 2 but adequate area exists for a single building site. This wetland buffer setback will be depicted on a Development Plan to be required as a condition of the subdivision.

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

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

STAFF RECOMMENDATIONS:

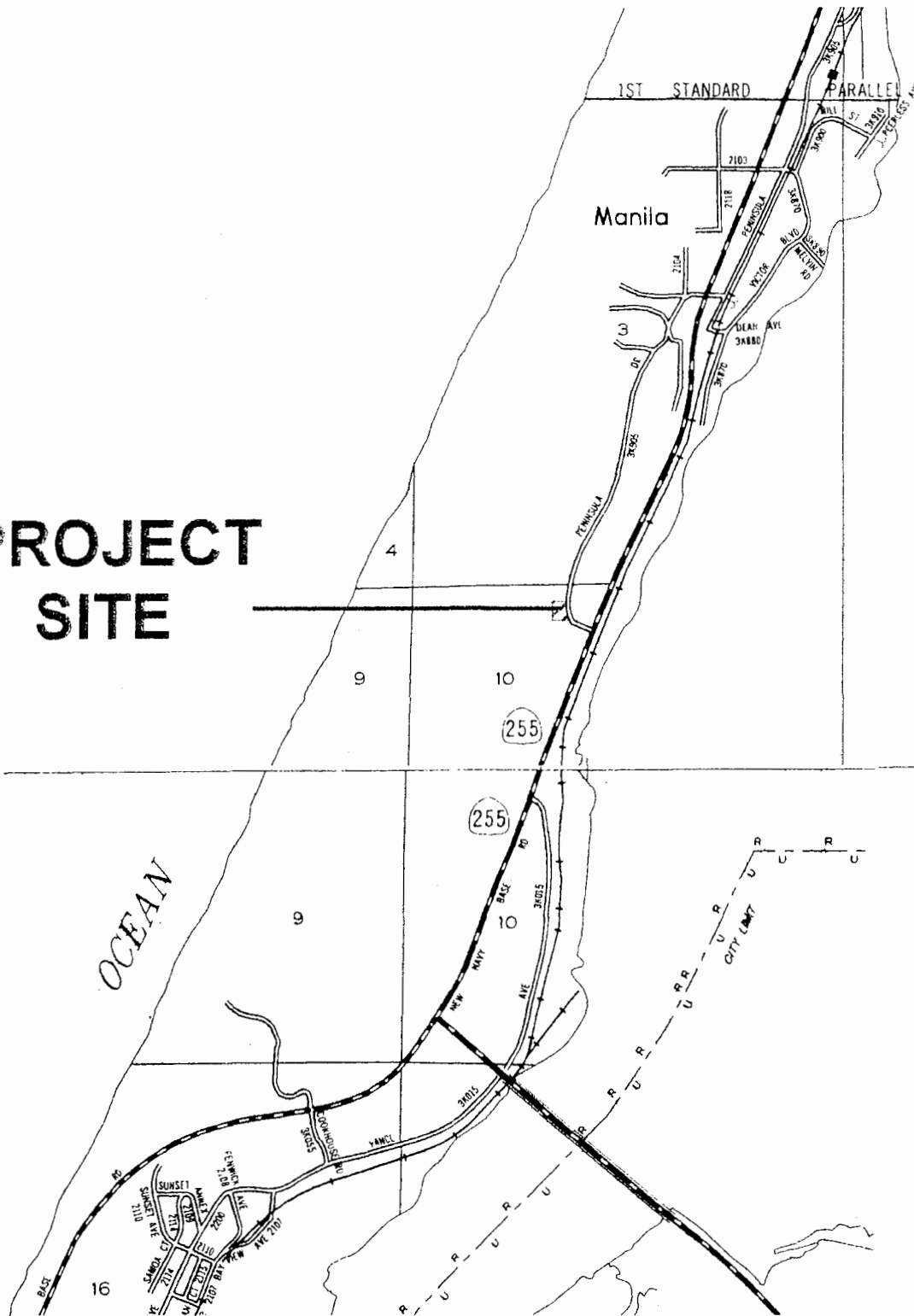
1. Describe the application as part of the Consent Agenda.
2. Survey the audience for any person who would like to discuss the application.
3. If no one requests discussion, make the following motion to approve the application as a part of the consent agenda:

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

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

4915

PROJECT SITE



PROPOSED CHRISTENSEN PARCEL MAP SUBDIVISION & COASTAL DEVELOPMENT PERMIT

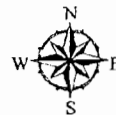
MANILA AREA PMS-02-31/CDP-02-106

APN: 401-011-03

SECTION 10 T5N R1W H. B. & M.

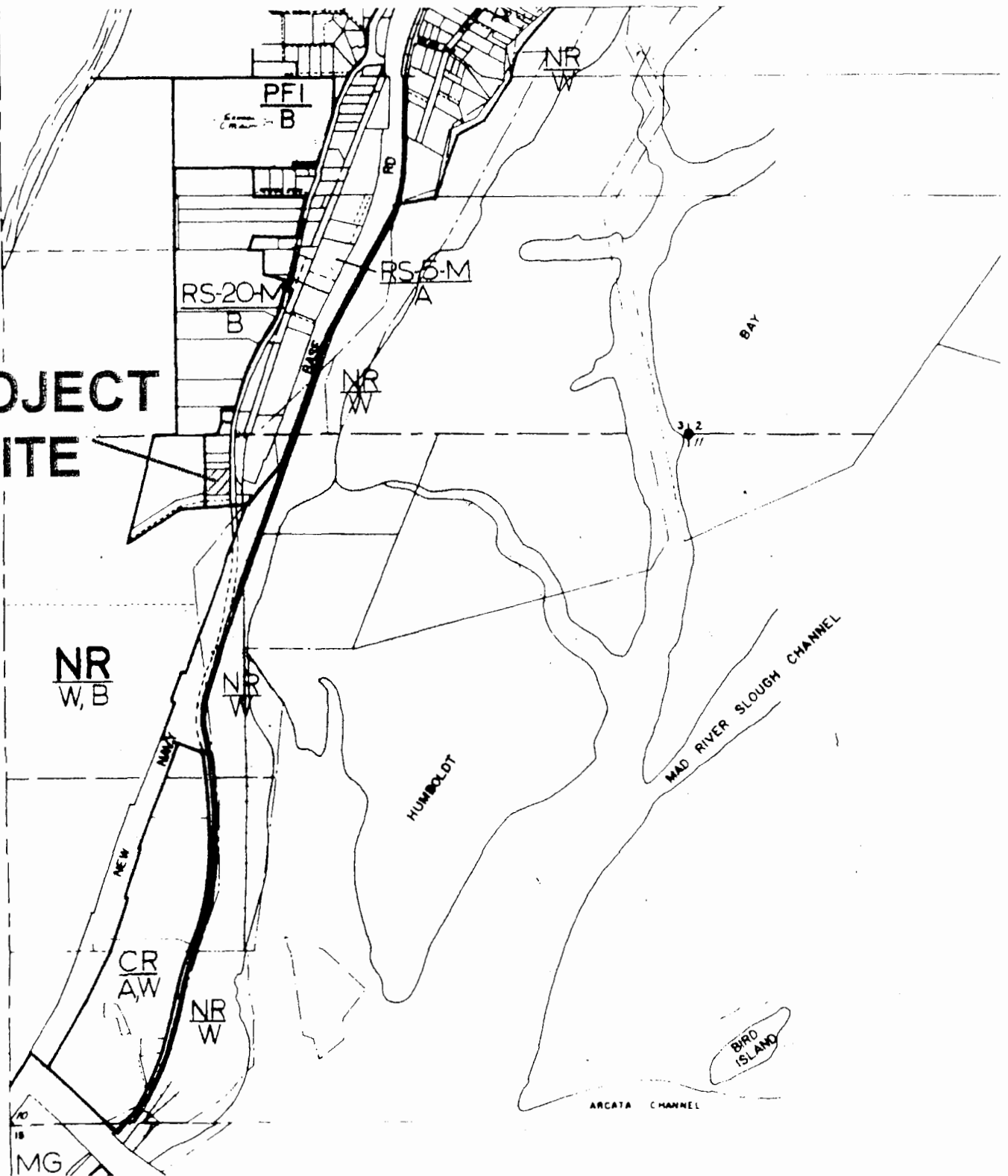
LOCATION MAP

5 of 15



Map is not drawn to scale.

**PROJECT
SITE**



**PROPOSED CHRISTENSEN PARCEL MAP SUBDIVISION &
COASTAL DEVELOPMENT PERMIT**

MANILA AREA PMS-02-31/CDP-02-106

APN: 401-011-03

SECTION 10 T5N R1W H. B. & M.

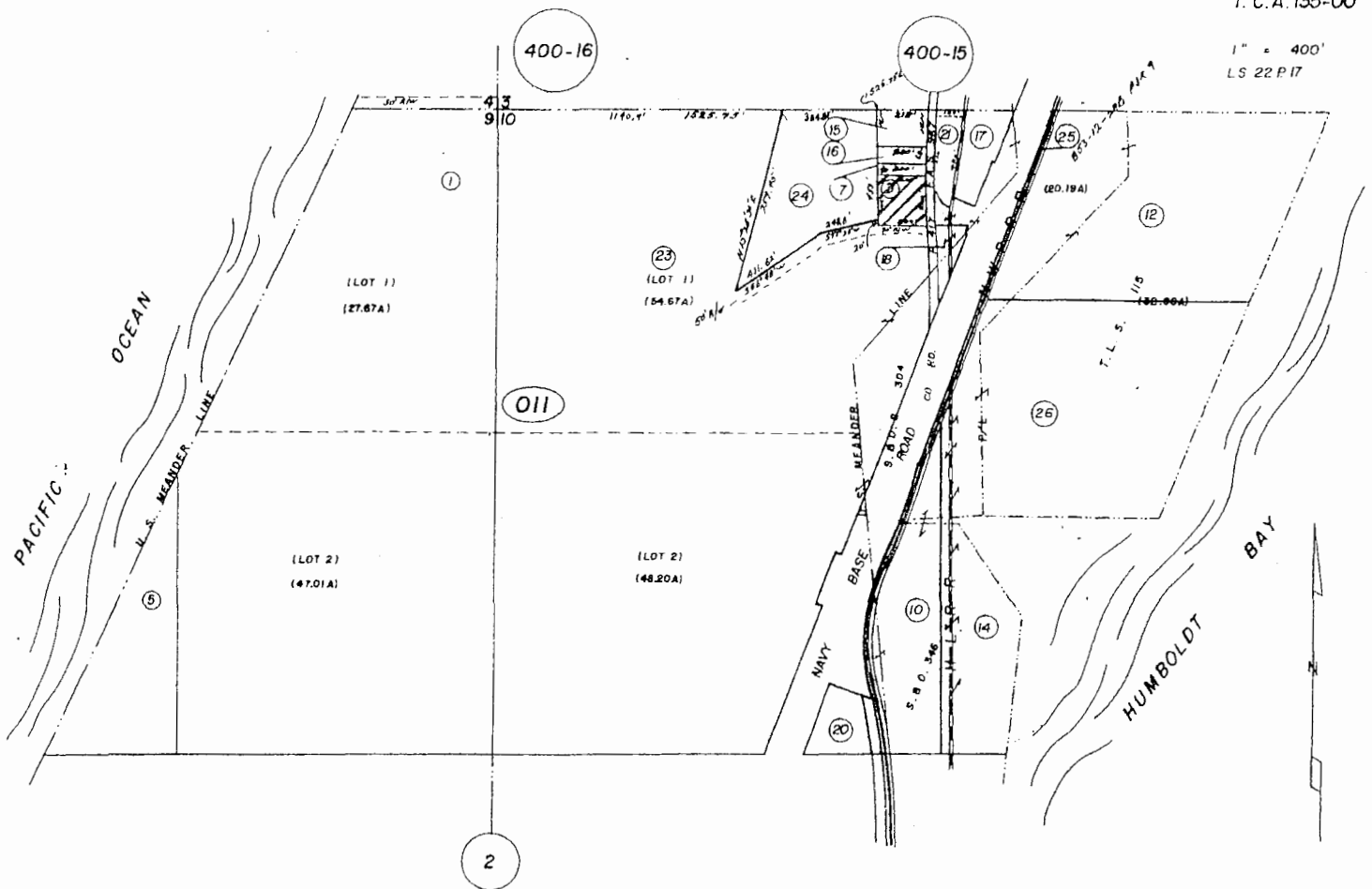
ZONING MAP

6 of 15



Map is not drawn to scale.

1" = 400'
LS 22 P 17



PROPOSED CHRISTENSEN PARCEL MAP SUBDIVISION & COASTAL DEVELOPMENT PERMIT

MANILA AREA PMS-02-31/CDP-02-106

APN: 401-011-03

SECTION 10 T5N R1W H. B. & M.

ASSESSOR PARCEL MAP

7915



Map is not drawn to scale.

RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT
Resolution Number 03-

MAKING THE REQUIRED FINDINGS FOR CERTIFYING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CONDITIONALLY APPROVING THE CHRISTENSEN PARCEL MAP SUBDIVISION APPLICATION: CASE NO.: PMS-02-31/CDP-02-106; ASSESSOR PARCEL NUMBER 401-011-03.

WHEREAS, Tina Christiansen submitted an application and evidence in support of approving the Minor Subdivision of APN 401-011-03, a 1.19± acre parcel, into two (2) parcels; after the parcel split, Parcel 1 will be 0.57± acres, Parcel 2 will be 0.62± acres; and

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

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

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

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

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

1. The Planning Commission approves the proposed Mitigated Negative Declaration in Attachment 3, as required by Section 15074(b) of the CEQA Guidelines, and finds that there is no substantial evidence that the proposed project will have a significant effect on the environment.
2. The Planning Commission further makes the findings in Attachment 2 of the Planning Division staff report for Case Nos. PMS-02-31/CDP-02-106 based on the submitted evidence.
3. The Planning Commission approves the proposed subdivision applied for as recommended and conditioned in Attachment 1 and Attachment 2 for Case Nos. PMS-02-31/CDP-02-106.

Adopted after review and consideration of all the evidence on September 18, 2003.

The motion was made by COMMISSIONER

and seconded by COMMISSIONER

AYES: Commissioners:

NOES: Commissioners:

ABSTAIN: Commissioners:

ABSENT: Commissioners:

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

Kirk Girard, Director of Community Development Services

By: _____, Clerk

Last Day to appeal to the Board of Supervisors: _____ (file Appeal with the Planning Division and Clerk of the Board.)

**ATTACHMENT 1
CONDITIONS OF APPROVAL**

APPROVAL OF THE TENTATIVE MAP IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS WHICH MUST BE SATISFIED BEFORE THE PARCEL MAP MAY BE RECORDED.

Conditions of Approval:

1. All taxes to which the property is subject shall be paid in full if payable, or secured if not yet payable, to the satisfaction of the County Tax Collector's Office, and all special assessments on the property must be paid or reapportioned to the satisfaction of the affected assessment district. Please contact the Tax Collector's Office approximately three to four weeks prior to filing the parcel or final map to satisfy this condition. This requirement will be administered by the Department of Public Works.
2. The conditions on the Department of Public Works referral dated 8/5/98, included herein as Exhibit B of Attachment 1, shall be completed or secured to the satisfaction of that department. Prior to performing any work on the improvements, contact the Land Use Division of the Department of Public Works.
3. Two (2) copies of the Parcel Map be submitted for review and approval
4. Prior to recordation of the Parcel Map, the applicant shall submit a letter from the Manila Community Services District stating that the project meets their requirements.
5. The applicant shall submit three (3) copies of a Development Plan to the Planning Division for review and approval by the Director. The plan shall be drawn to scale and shall give detailed specifications as to the development and improvement of the site, and shall include the following site development details:

A. Mapping

- (1) Topography of the land in 2-foot contours.
- (2) The building site and four independently accessible parking places on Parcel 2 outside of the required setback areas.
- (3) A 100' Wetland Buffer Area shown as "non-buildable" as required by the Humboldt Bay Area Plan standards.

B. Notes to be Placed on the Development Plan:

- (1) "All flammable vegetation and fuels caused by site development and construction, road and driveway construction, and fuel modification shall be disposed of by chipping, burying, burning or removal to a landfill site approved by the County."
- (2) "The project site is not located within an area where known cultural resources have been located. However, as there exists the possibility that undiscovered cultural resources may be encountered during construction activities, the following mitigation measures are required under state and federal law:

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

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

9915

6. The applicant shall cause to be recorded a "Notice of Development Plan" on forms provided by the Humboldt County Planning and Building Department (enclosed in the final approval packet). Document review fees as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$136 plus recordation fees) will be required.
7. The applicant shall submit a map revision fee as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$51.00 per parcel) as required by the County Assessor's Office shall be paid to the County Planning & Building Department, 3015 H Street, Eureka. The check shall be made payable to the "County of Humboldt". The fee is required to cover the Assessor's cost in updating the parcel boundaries.

Informational Notes:

1. To minimize costs the applicant is encouraged to bring in written evidence of compliance with all of the items listed as conditions of approval in this Exhibit that are administered by the Planning Division. The applicant should submit the listed item(s) for review as a package as early as possible before the desired date for final map checking and recordation. Post application assistance by the Assigned Planner, with prior appointment, will be subject to a Special Services Fee for planning services billed at the County's current burdened hourly rate. Copies of all required forms and written instructions are included in the final approval packet.
- * Each item evidencing compliance except legal documents to be recorded should note in the upper right hand corner:

Assessor's Parcel No. _____.

Condition _____.
(Specify)
(Specify)

2. The project site is not located within an area where cultural resources have been located. However, as there exists the possibility that undiscovered cultural resources may be encountered during construction activities, the following mitigation measures are required under state and federal law:

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

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

10 of 15



EXHIBIT A

MICHAEL RICHARDSON, SENIOR PLANNER

DEPARTMENT OF PUBLIC WORKS COUNTY OF HUMBOLDT

MAILING ADDRESS: 1106 SECOND STREET, EUREKA, CA 95501-0579
AREA CODE 707 / FAX 445-7409

ARCATA-EUREKA AIRPORT TERMINAL
McKINLEYVILLE

AVIATION 839-5401

PUBLIC WORKS BUILDING
SECOND & L ST., EUREKA

ADMINISTRATION	445-7491	NATURAL RESOURCES	445-7741
BUSINESS	445-7652	PARKS	445-7651
ENGINEERING	445-7377	ROADS & EQUIPMENT MAINT.	445-7421
ARCHITECT	445-7493		

CLARK COMPLEX
HARRIS & H ST., EUREKA

LAND USE 445-7205

SUBDIVISION REQUIREMENTS

IN THE MATTER OF THE APPLICATION OF CHRISTENSEN SUBDIVISION, APN 401-011-03 FOR APPROVAL OF A TENTATIVE MAP

ISSUED: 8/27/03

GENERAL PLAN: Residential Low Density (RL), Humboldt Bay Area Plan

ZONING: Residential Single Family w/ Manufactured Home and Archaeological
Resource Area (RS-5-M/A)

AREA: 1.29 acre parcel into a 0.57 acre and a 0.62 acre parcel

The following requirements and standards are applicable to this project and must be completed to the specifications and satisfaction of this Department before the subdivision may be recorded. If there has been a substantial change in the project since the last date shown above, an amended report must be obtained and used in lieu of this report. Prior to commencing the improvements indicated below, please contact the Subdivision Inspector at 445-7205 to schedule a preconstruction conference.

Applicant shall be required to deposit a security deposit for inspection and administration fees as per Section 326-13 of the Humboldt County Code prior to review of construction plans or the construction of improvements.

READ THE ENTIRE REPORT BEFORE COMMENCING WORK ON THE PROJECT

(1) Applicant must cause to be recorded a parcel map showing monumentation of all property corners to the satisfaction of the Department of Public Works in compliance with Section 326-15 of the Humboldt County Code. Map checking fees and recording fees for the parcel map will be required to be submitted.

11/9/15

(2) Applicant/Owner shall dedicate to the County of Humboldt an easement for public road purposes lying within 25 feet of the center line of the County road (#3K905) known as Peninsula Drive.

(3) The County road is not constructed to allow on-street parking. All parking required by Code must be developed on-site or the permittee must construct a parking lane along the County road in a manner approved by the Department of Public Works. All parking required by Code must be constructed prior to occupancy of building or "final" issued for building permit.

(4) Applicant must apply for and obtain an encroachment permit for both the existing and proposed driveways. The permit will require the applicant to construct a driveway entrance surfaced with asphalt concrete or portland cement concrete. The driveway approach shall comply with Humboldt County visibility standards. The driveway approach shall be constructed of asphalt concrete from at least the edge of existing road pavement to the property line. Beyond that point, the driveway may be constructed of asphalt concrete or portland cement concrete. Overall, the driveway approach shall be surfaced a minimum of 25 feet back from the edge of existing road pavement. This condition may be waived by the Department of Public Works for existing driveways upon a showing that the driveway conforms to the standards noted above.

The existing driveway accessing Parcel 2 appears to encroach upon Parcel 1. The encroaching driveway shall be located within an easement of sufficient width to contain the encroachment.

(5) No runoff drainage from the driveway or building site shall be channeled or directed to flow across the traveled section of the County roadway. Drainage shall be contained at the edge of the County road surface. The applicant shall be responsible to correct any involved drainage problems to the satisfaction of the Department of Public Works.

(6) At least some of the parcels may be further divided; therefore, the applicant shall conform to Code Section 323-6(a)(5).

(7) If any utilities are required to be installed as a condition of tentative map approval by the Planning Division, the utility work shall be completed prior to constructing the structural section for the road. All laterals shall be extended onto each lot and marked in a manner that they will be easily located at the time of individual hookups. A letter of completion of all work from each involved utility company shall be submitted prior to constructing the roadway structural section. Any utilities that need to be relocated shall be done solely at the subdivider's expense.

c: Tina Christensen, 2120 Campton Road, Eureka CA 95503
Omsberg & Company, 304 N St, Eureka CA 95501

12/15

ATTACHMENT 2
Staff Analysis of the Evidence Supporting the Required Findings

Required Findings: To approve this project, the Planning Commission must determine that the applicants have submitted evidence in support of making **all** of the following required findings.

Subdivision Findings: §66474 of the State Subdivision Map Act and Title III Division 2 of the Humboldt County Code (H.C.C.) specifies the findings that must be made to approve tentative subdivision maps. Basically, the Hearing Officer may approve a tentative map if the applicants have submitted evidence that supports making all of the following findings:

1. That the proposed subdivision together with the provisions for its design and improvements, is consistent with the County's General Plan.
2. That the tentative subdivision map conforms with the requirements and standards of the County's subdivision regulations.
3. That the proposed subdivision conforms to all requirements of the County's zoning regulations.
4. The proposed subdivision is not likely to cause substantial environmental damage.

In addition, Section 312-17 specifies that coastal development permits may be approved if the project is found to not be detrimental to the public health, safety and welfare nor materially injurious to properties or improvements in the area

1. **General Plan Consistency:** The following table identifies the evidence which supports finding that the proposed subdivision is in conformance with all applicable policies and standards in Chapters 2-4 of the Framework Plan (FP) and Humboldt Bay Area Plan (HBAP).

Plan Section(s)	Summary of Applicable Goal, Policy or Standard	Evidence Which Supports Making the General Plan Conformance Finding
Land Use 2700 (FP), 5.30 (HBAP)	RL designation applies in urban areas suitable for one-family development. Density: one to six dwelling units per acre.	The subdivision will create a lot appropriate for single family residential use (the other lot already has a home on it).
Urban Limits: 2600 (FP), 3.21 (HBAP)	New development shall be located within existing developed areas or in areas with adequate public services.	The parcels will be served by community water and sewer provided by the CSD. All service providers have indicated that full urban services are available to the project site. See Attachment 5.
Housing: 2400 (FP)	Housing shall be developed in conformity with the goals, policies and standards of the Humboldt County Housing Element.	The subdivision will create a lot appropriate for residential use (the other lot already has a home on it), which is consistent with Housing Element policies encouraging new housing construction.
Hazards: 3100- 3203 (FP), 3.29 (HBAP)	New development shall minimize risk to life and property in areas of high geologic, flood and fire hazards.	The project site is located in an area of low slope instability, minimal flooding. The property is located in an area of low wildland fire hazard rating. The property is within Arcata. Fire Protection District. The proposal raises no fire protection issues for the Fire District.

Plan Section(s)	Summary of Applicable Goal, Policy or Standard	Evidence Which Supports Making the General Plan Conformance Finding
Biological Resource Protection 3400-3604 (FP), 3.30 (HBAP)	To protect designated sensitive and critical resource habitats.	The site lies to the north of a wetland located on APN 401-011-23, and designated Natural Resources under the Humboldt Bay Area Plan. Policies of the HBAP require that a development buffer of 100 feet be established from the wetland boundary. This buffer setback will limit development on Parcel 2 but adequate area exists for a single building site. This wetland buffer setback will be depicted on a Development Plan to be required as a condition of the subdivision.
Cultural Resource Protection 3500 (FP), 3.29.1 (HBAP)	New development shall protect cultural, archeological and paleontological resources.	The North Coast Information Center identified no historical resources and recommends no further study.
Visual Resource Protection 3540 (FP)	New development shall conserve and protect scenic and visual qualities of coastal areas.	The project will have the effect of creating an additional lot for the construction of a single family home. The visual impacts of a single family home are not likely to be significant as there are other homes in the immediate vicinity, and the project will not impact any mapped coastal scenic or coastal view areas.

2. Subdivision Regulations: The following table identifies the evidence which supports finding that the proposed subdivision is in conformance with all applicable policies and standards in Section 66474 of the State Subdivision Map Act and Title III Division 2 of the Humboldt County Code (H.C.C.).

Section(s)	Applicable Subdivision Requirements	Evidence Supporting Subdivision Requirement Finding
Lot Suitability 322-3	All lots shall be suitable for their intended uses.	The subdivision results in two parcels zoned for residential use. All referral agencies have recommended approval or conditional approval. See Attachment 5.
Access and Drainage 324-1	Improvements shall be required for the safe and orderly movement of people and vehicles.	The parcels are accessed via the County road, Peninsula Drive. LUD has responded with a list of standards applicable to the subdivision (see Exhibit A of Attachment 1). Condition No.2 of Attachment 1 requires the applicant to comply with those conditions to the satisfaction of the LUD.
Sewer and Water 324-1 (d)	Sewer and water systems shall be constructed to appropriate standards.	The parcels will be served by community water and sewer provided by Manila CSD. Project approval is conditioned upon satisfaction of the requirements set by Manila CSD.
Access Road Appendix 4-1	Roadway design must incorporate a 40-foot right of way.	The parcels are accessed via the existing County road, Peninsula Drive, which has a 40' right of way. LUD has responded with a list of standards applicable to the subdivision (see Exhibit A of Attachment 1). Condition No. 2 of Attachment 1 requires the applicant to comply with those conditions to the satisfaction of the LUD.

3. Zoning Compliance: The following table identifies the evidence which supports finding that the proposed subdivision is in conformance with all applicable policies and standards in the Humboldt County Zoning Regulations (H.C.C.).

Sections 313-6.2 Residential One-Family	Summary of Applicable Requirement	Evidence for Resultant Parcels
Principal Permitted Use:	RS-5 is applied in areas suitable and desirable for low density residential development. One-family dwelling is a principal permitted use.	The subdivision results in two parcels proposed for residential use. Future development must comply with the prescribed standards of the RS-5 zone and building installations must meet County Building requirements.
Min. Parcel Size	5,000 square feet	Lot 1 > 20,000 square feet, Lot 2 > 20,000 square feet
Min. Lot Width	50 feet	> 100'
Max. Lot Depth	3 x lot width	+/- 2x lot width
Max. Lot Coverage	35%	Lot 1 - ± 5% Lot 2 - Must comply with the prescribed standards of the RS-5 zone.
Max. Building Height	35 feet	Lot 1 - ± 24' Lot 2 - Must comply with the prescribed standards of the RS-5 zone.
Parking: 314-109.1.3	Parcel 1: 4 spaces Parcel 2: 4 spaces	Lot 1 - 4 spaces Lot 2 - 4 spaces.
Archaeological Resources Combining Zone (313-16)	To protect cultural resources	The North Coast Information Center identified no known archaeological or other cultural resources on the site. Conditions of approval require the applicant sign a notice stating they understand and will abide by State laws protecting cultural resources.

4. Public Health, Safety and Welfare:

The project will not be detrimental to the public health, safety and welfare nor will it be materially injurious to properties or improvements in the area because:	Evidence supporting the finding:
All reviewing referral agencies have approved or conditionally approved the proposed project design.	See Attachment 5
The proposed project is consistent with the general plan.	See discussion above
The proposed project is consistent with the zoning.	See discussion above
The proposed project will not cause environmental damage.	See Attachment 3

5. Environmental Impact:

As required by the California Environmental Quality Act, the initial study conducted by the Planning and Building Department (Attachment 4) evaluated the project for any adverse effects on the environment. Based on a site inspection, information in the application, and a review of relevant references in the Department, staff has determined that there is no evidence before the Department that the project will have any potential adverse effect, either individually or cumulatively, on the environment. The environmental document on file in the Department includes a detailed discussion of all relevant environmental issues.

Staff has also determined that the project, as approved and conditioned, will not result in a change to any of the resources listed in subsections (A) through (G) of Section 753.5(d) of the California Code of Regulations [Title 14, Chapter 4]. Therefore, staff is supportive of a *de minimis* finding regarding the waiver of environmental review fees subject to Section 711.4 of the Fish and Game Code. The Department will file a "Certificate of Fee Exemption" with the County Clerk pursuant to Section 753.5(c) of the California Code of Regulations. The \$25.00 document handling fee required by the statute will be paid by the applicant.

15 of 15