

CALIFORNIA COASTAL COMMISSION

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F16a

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MEMORANDUM

Date: February 10, 2011

To: Commissioners and Interested Parties

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

Subject: **Addendum to Commission Meeting for Friday, February 11, 2011
North Coast District Item F16a, Appeal No. A-1-MEN-11-001 (Bradley)**

Since publication of the staff recommendation on January 21, 2011, the applicant has telephoned Commission staff and submitted correspondence clarifying the project description as approved by the County and commenting on the staff recommendation that the Commission find that the project as approved by the County raises a substantial issue of conformance with the policies of the certified LCP. In addition, Commission staff has received a copy of the local record from Mendocino County which includes a copy of the wetland delineation and botanical survey prepared for the project by the applicant's consultant. Staff has reviewed the submitted information and prepared this addendum to the staff report for Appeal No. A-1-MEN-11-001. The addendum presents: (I) the correspondence that has been received, (II) responses to the applicant's comments, (III) revisions to the recommended findings and Appendix A, and (IV) revisions to the "Information Needed for De Novo Review of Application" section of the staff report..

Staff continues to recommend that a substantial issue exists, as recommended in the January 21, 2011 staff report.

I. Correspondence Received.

The correspondence received from Douglas Bradley, the applicant, is attached as Attachment 1.

The applicant's letter clarifies that although the project design originally consisted of an intercept drain around the perimeter of three-fourths of the parcel (which was shown on

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the “topographic map” exhibit included in the County staff report; see S.I. report Exhibit 4 pg. 2 of 2), the project as approved by the County consisted of a revised design (as shown on the “diversion drain” exhibit dated 8/3/10 that was also included in the County staff report; see S.I. report Exhibit 4 pg. 1 of 2). The revised intercept drain design as shown on the 8/3/10 exhibit in the County staff report shows a trench on approximately one-half of the subject parcel: the trench extends from near the northwestern parcel boundary, then bends and continues toward the southeast, parallel with the parcel boundary. The exhibit shows a perforated pipe placed in gravel up to 100 feet from the mapped “drain course,” with a solid pipe continuing without gravel in the last 100 feet up to the drain course, where the pipe then discharges into the drainage course.

In addition to clarifying the project description, the applicant offers comments on the staff recommendation. The applicant points out that the portion of the approved intercept drain that actually intercepts groundwater, the portion consisting of a perforated pipe placed in gravel, does not extend into the wetland or Northern Bishop Pine forest ESHA mapped in the wetland delineation and biological report. Additionally, this portion of the approved intercept drain does not extend into a 100-foot buffer around the mapped wetland or Northern Bishop Pine forest ESHA. The applicant indicates that the solid pipe portion of the approved intercept drain that was approved to extend into the mapped wetland and ESHA can be reduced in length to maintain a 50-foot buffer around the mapped wetland and ESHA. The applicant concludes therefore, that there are no direct impacts on wetlands or ESHA and there should be no question of conformance with the LCP policies limiting the allowable uses in wetlands and other ESHA and requiring buffers between development and ESHA.

II Response to the Applicant’s Comments

The applicant points out that the project is incorrectly described in a number of places in the staff report. The incorrect descriptions were based on an earlier plan for the intercept drain that was superseded by a revised plan approved by the County. This addendum revises the staff recommendation to correct statements that refer to the intercept drain as extending around the perimeter of three-fourths of the parcel. The revisions make the sections of the report that describe the project consistent with the revised design approved by the County (as shown on the “diversion drain” exhibit dated 8/3/10 that was also included in the County staff report; see S.I. report Exhibit 4 pg. 1 of 2).

The clarification about the project design does not change the findings for substantial issue of conformance with the LCP policies on allowable uses in wetlands and ESHA and ESHA buffers because the solid pipe portion of the approved diversion drain still extends into the wetland and Northern Bishop Pine Forest ESHA. The solid pipe portion of the diversion drain is described in the County staff report as extending approximately 39 feet into and displacing approximately 76 square feet of wetlands to a depth of three feet. The applicant indicates that the project could be redesigned to eliminate the portion of the

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solid pipe that extends into the wetlands, other ESHA, and ESHA buffers. However, the project as approved by the County was not redesigned in this manner and still includes this portion of the solid pipe. Thus, the project as approved still raises the same issues regarding uses in wetlands and ESHA and providing adequate buffers.

In addition, whether the diversion drain intercepts three-fourths of the parcel or less than three-fourths of the parcel, it is not clear from the delineation report whether the interceptor drain design would result in the draining of wetlands due to the interception of surface and subsurface hydrology that drains to the wetlands. The 8/3/10 Diversion Drain exhibit does not show the location of wetlands overlaid on the map, and therefore it is unclear from the exhibit the exact location of these direct impacts to wetlands resulting from pipe placement, or the extent of pipe placement that is within the 50-foot wetland ESHA buffer. Commission staff review of the wetland delineation report submitted as part of the local record and received by the Coastal Commission following publication of the staff report reveals discrepancies in data collection and analysis for the wetland delineation. These discrepancies raise additional questions about the accuracy of the wetland delineation that was conducted on the subject parcel. Questions also remain as to why some Northern Bishop Pine trees located within 50 feet of the approved interceptor drain were excluded from mapped ESHA areas.

Therefore, the appeal continues to raise a substantial issue with respect to conformance of the County-approved development with LCP policies regarding the protection of wetlands and ESHA because: (1) groundwater intercept drains are not an allowable use in wetlands; (2) the County approved a development for a non-allowable use in ESHA and ESHA buffers without adequate factual or legal findings that justify the action; (3) the County approved a development that does not provide for a minimum 50-foot buffer between the development and the wetland, riparian, and Northern Bishop Pine Forest ESHA that exists on the site without addressing how the project is consistent with the ESHA buffer requirements of LUP Policies 3.1-4, 3.1-7, and 3.1-18 and CZC Section 20.496.020, including how a buffer that is less than the minimum of 50 feet is allowable under the LCP; (4) the County approved direct impacts to wetlands without any mitigation that replaces impacted areas; (5) the County failed to address in its findings why some areas within 50 feet of the approved development were excluded from Northern Bishop Pine Forest ESHA designation despite the presence of mapped pine trees within these areas; and (6) the County has not demonstrated there is not a feasible less environmentally damaging alternative to locating the development within the ESHA, inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-4, 3.1-7, and 3.1-18, and CZC Sections 20.496.020 and 20.532.095

III. Revisions to Staff Report Findings and Appendix A

Text to be deleted is shown in ~~**bold-strikethrough**~~, text to be added appears in **bold underline**

A. **Revise Sentences Describing the Project on Pages 2, 13, 14, and 15 as Follows:**

Page 2, Finding 1, “Project and Site Description,” first paragraph, second sentence

The approved development consists of the installation of a 6-inch diameter drain pipe within a 36-inch deep trench excavated around ~~the perimeter of three-fourths a~~ **portion** of the subject parcel.

Page 13, Finding 5, “Wetland Mitigation Plan and Clarification of Wetland Impacts,” first paragraph, second sentence

The trenching would be approximately 36 inches deep and excavated around ~~the perimeter of three-fourths a~~ **portion** of the subject parcel, with 6-inch-diameter piping placed inside and covered by drainage gravel.

Page 14, first full paragraph, first sentence

Clarification of the amount of wetland fill associated with the groundwater intercept drain and the amount of wetlands to be drained, **if any**, resulting from installation of the drain around ~~three-fourths a~~ **portion** of the parcel is also needed.

Page 15 (Appendix A), paragraph 1, second sentence

The approved development consists of the installation of a 6-inch diameter drain pipe within a 36-inch deep trench excavated around ~~the perimeter of three-fourths a~~ **portion** of the subject parcel.

<p>REASON FOR CHANGES: The revisions to the staff recommendation correct statements that refer to the intercept drain as extending around the perimeter of three-fourths of the parcel. The revisions make the sections of the report that describe the project consistent with the revised design approved by the County (as shown on the “diversion drain” exhibit dated 8/3/10 that was also included in the County staff report; see S.I. report Exhibit 4 pg. 1 of 2).</p>
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B. Revise Substantial Issue Analysis Beginning on Page 4 as Follows:

A. Substantial Issue With Respect to Allowable Uses in Wetlands Policies of the Certified LCP

A botanical survey and wetland delineation report dated June 16, 2010 is referenced in the County staff report, and a buffer analysis addendum dated November 28, 2010 is referenced and included as Appendix A to the County staff report. In the buffer analysis addendum, the botanical consultant indicates that the “proposed diversion drain would extend into the wetland for approximately 39’ and replace [sic] approximately 76 sq.ft [sic] of the wetland in the far southeastern corner of the property. The trenching would be approximately 36” deep with 6” diameter piping.” **The June 16, 2010 wetland delineation report was submitted to the Coastal Commission as part of the local record received on January 24, 2011. The report states:**

The wetland is primarily fed by stormwater run-off [sic] that is directed onto the property from a culvert off of Highway One. The culvert off of Highway One is approximately 100’-200’ from the property. The water is directed from the culvert into a ditch that extends through adjacent properties and then onto the subject property and through the delineated wetland. The ditch is about a [sic] 1’-2’ wide and 1’ deep. There are evident drainage patterns within the wetland including algal mats. Because of the water that is diverted onto the property, the natural topography of the wetland area, the slower permeability of the soils and the higher water table, saturation or inundation typically persists for most of the winter and spring.

The topographic map included as part of the County staff report does not depict site topography or hydrologic connectivity in relation to Highway One and the referenced stormwater runoff. During a site visit on January 7, 2011, Commission staff observed saturated conditions indicative of wetlands located outside of delineated wetland boundaries. It is unclear whether all wetland features on the site were accurately identified, and whether the interceptor drain design would intercept hydrology that supports wetlands on the site.

The County staff report ~~discusses the intent of~~ implies the approved development ~~to~~ **may** drain wetlands by stating “The intent of the project is to drain the site sufficiently for an on-site septic disposal system design, presumably to serve a future residence.” It further notes “The applicant proposes installation of an intercept (curtain) drain to dry out an area in order to allow for a future on-site disposal system to be designed.” LUP Policy 3.1-4 and CZC Section 20.496.025 allow certain uses in addition to resource dependent uses within wetlands. The nine categories of use allowed in wetlands range from port facilities to incidental public services. However, none of the nine categories of allowable uses in wetlands include residential development or development designed to support a future residential use. The County failed to describe how **installation of the interceptor drain, including a solid pipe displacing approximately 76 square feet of wetlands and the possible** draining of wetlands **is would (a) be** compatible with the continuance of the wetland feature, ~~or how draining wetlands could~~ **and (b)** maintain their functional capacity (which includes stormwater retention, groundwater recharge, and filtration of pollutants, among other functions). The development as approved by the County

therefore raises a substantial issue of conformance with LCP policies including but not limited to LUP Policies 3.1-4 and CZC Section 20.496.025 because the approved development is not an allowable use in wetlands or wetland buffers.

The County staff report concludes that “the proposed drainage system is encouraged by the LCP” and references an excerpt from Section 20.492.025(G) of the Mendocino County Coastal Zoning Code that states “Subsurface drainage devices shall be provided in areas having a high water table and to intercept seepage that would adversely affect slope stability, building foundations, or create undesirable [sic] wetness.” However, the County staff report references this policy out of context: Chapter 20.492, entitled “Grading, Erosion, and Runoff” states the purpose and applicability of the chapter under CZC Section 20.492.005 as follows:

The approving authority shall review all permit applications for coastal developments to determine the extent of project related impacts due to grading, erosion, and runoff. The approving authority shall determine the extent to which the following standards should apply to specific projects, and the extent to which additional studies and/or mitigation are required, specifically development projects within Development Limitations Combining Districts. (Ord. No. 3785 (part), adopted 1991) (Emphasis added)

CZC Section 20.492.025, entitled “Runoff Standards,” therefore directs the approving authority to evaluate and mitigate as required runoff impacts that *result* from the *proposed development*, and not as a means to facilitate a non-allowable use in wetlands as interpreted by the County. CZC Section 20.492.025(A) further introduces and underscores this intended application by stating “Water flows in excess of natural flows resulting from project development shall be mitigated.” (Emphasis added).

The saturated areas Commission staff observed in the identified building envelope during a site visit on January 7, 2011 were not mapped as wetlands in the topographic map exhibit included in the County staff report (see Commission staff report Exhibit 4 page 2). The Coastal Commission received a copy of the June 16, 2010 “Wetland Delineation and Botanical Survey for the Bradley Property” on January 24, 2011 as part of the local record. Upon review of this document, the following discrepancies were identified:

- 1. The soil classification as described in the wetland delineation results on page 8 indicates the presence of the “115-Bruhel-Abalobadiah-Vizcaino complex, 9 to 30 percent slopes and the 199-Shinglemill-Gibney complex, 2 to 9 percent slopes.” The 199-Shinglemill-Gibney complex is recognized as a hydric soil on the U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) list of hydric soils for California. The wetland delineation report does not document this soil as hydric, and the topographic map does not show any soil pits were sampled in this mapped soil type. Due to the presence of wetland features on the site and the presence of a mapped hydric soil, additional soil pits should be sampled within this area to determine whether hydric soil conditions are present elsewhere on the parcel that may meet Coastal Commission-jurisdictional wetland criteria.**

2. According to the data forms included in Appendix C of the wetland delineation report, saturation was observed at 15 inches in a loamy sand soil matrix at Sampling Point #2. The remarks indicate “This is expected based on the time of the delineation during mid spring. It is expected that based on the degree of precipitation and the level of clay these soils are marginally saturated during the wet season for typical durations but not long enough to develop hydric soils or support wetland vegetation. This is common throughout [sic] coastal Mendocino County.” No information was provided to indicate what the degree of precipitation was during or prior to the wetland delineation, and it is unclear what the level of clay was in a soil designated as “loamy sand.” Therefore, clarification is necessary to explain these discrepancies, including documentation of precipitation events occurring near the project area within the three weeks prior to and including the dates of field inspections.
3. According to the data forms included in Appendix C of the subject report, the soil matrix in the upper 14 inches of Soil Pit #3 consists of a loam/sandy loam soil with a color matrix of 10YR 3/2, and a reduced matrix of 10% redox features with colors of 10YR 4/3 and 10YR 4/6. The remarks indicate that mottles are few and faint; however, redox features with a color of 10YR 4/6 in a matrix of 10YR 3/2 are recognized as “prominent” under NRCS and Army Corps of Engineers (ACOE) criteria. Soils with these characteristics are typical of the “Redox dark surface (F6)” designation, which is a hydric soil indicator. More information is necessary to demonstrate why a soil meeting ACOE and NRCS hydric soil criteria was not designated as hydric.
4. The botanical survey and wetland delineation report map lacks certain key information for delineating the extent that the approved development extends into wetlands, ESHA, and ESHA buffer areas in that: 1) plant communities on the site and described in the report have not been delineated; 2) the map does not clearly depict Coastal Commission-jurisdictional wetlands (1 factor) versus other jurisdiction’s wetland features (2-3 factor); 3) the map does not clearly show at a visible scale the extent of development encroaching into wetlands; 4) the map does not depict ESHA 50- and 100- buffers in relation to all ESHA features on the site

The protection of wetlands in the coastal zone is an issue of statewide concern addressed by Section 30233 of the Coastal Act. In addition, the degree of factual and legal support for the County’s action is lacking, given that the findings do not demonstrate how the solid drain pipe portion of the approved interceptor drain is an allowable uses in wetlands and do not evaluate the direct impacts to wetlands in relation to the proposed development. Therefore, the Commission finds that the appeal of the County’s approval raises a substantial issue of conformity of the approved development with the wetland protection provisions of the certified LCP including but not limited to LUP Policy 3.1-4 and CZC Section 20.496.025.

REASON FOR CHANGES: The clarification about the project design does not change the findings for substantial issue because the solid pipe portion of the approved diversion drain still extends into the wetland and Northern Bishop Pine Forest ESHA. The solid pipe portion of the diversion drain will extend approximately 39 feet into wetlands and displace approximately 76 square feet of wetlands to a depth of three feet. The changes to the staff recommendation clarify that at least the solid pipe portion of the diversion drain raises substantial issues of conformance with the LCP policies regarding allowable uses in wetlands and other ESHA and providing minimum buffers between development and ESHA.

Whether the diversion drain intercepts three-fourths of the parcel or less than three-fourths of the parcel, it is not clear from the delineation report whether the interceptor drain design would result in the draining of wetlands due to the interception of surface and subsurface hydrology that drains to the wetlands. The 8/3/10 Diversion Drain exhibit also does not show the location of wetlands overlaid on the map and therefore it is unclear from the exhibit the exact location of these direct impacts to wetlands resulting from pipe placement, or the extent of pipe placement that is within the 50-foot wetland ESHA buffer. Upon review of the wetland delineation report submitted as part of the local record and received by the Coastal Commission following publication of the staff report, discrepancies in data collection and analysis raise additional questions about the accuracy of the wetland delineation that was conducted on the subject parcel. This addendum revises the staff recommendation to include more detail about the specific concerns about the accuracy of the submitted wetland delineation report.

IV. Revisions to Information Needed for *De Novo* Review of Application

Text to be deleted is shown in ~~**bold-strikethrough**~~, text to be added appears in **bold underline**

A. Revise the “Information Needed for *De Novo* Review” section beginning on Page 9 as follows:

1. Submittal of Current Botanical and Wetland Delineation Reports

As discussed previously, the project raises a substantial issue of conformance with the policies of the LCP regarding the protection of environmentally sensitive habitat areas (ESHA), as (1) it is unclear why a portion of the Northern Bishop Pine Forest community was excluded from ESHA designation; (2) the fine-scale map depicting ESHA features does not appear to designate minimum 50-foot buffers around any ESHA; ~~and~~ (3) it appeared during a site visit by Commission staff that wetland features extended beyond mapped boundaries; **and (4) the wetland delineation report appears to contain discrepancies in the data collection and results.**

Therefore, to determine the presence and extent of all potential sensitive plant community and wetland and riparian habitat at and adjacent to the project site, a **current supplementary** botanical survey and wetland delineation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be provided. The **supplementary** survey and delineation should be prepared by a qualified biologist and should include, but not be limited to: (1) a map of all environmentally sensitive habitat areas (ESHA) identified by the survey that addresses Northern Bishop Pine Forest not previously identified as ESHA; (2) a mapped delineation of all Coastal Commission-jurisdictional wetland and riparian features at a legible scale (typically 1 inch = 200 feet as per CZC Section 20.532.060) that includes all proposed developments superimposed on the map; (3) evaluation of site hydrology including current water sources for the wetland and riparian feature, **what effect, if any, the interceptor drain will have on wetlands,** and whether the riparian feature contributes hydrology to the wetland; and (4) copies of all original wetland delineation data forms completed in the field. Each environmentally sensitive habitat area identified should be described in detail and depicted on an ESHA map prepared for the subject site at a minimum size of 11 inches by 17 inches.

The following additional information should be provided to address discrepancies in the June 16, 2010 delineation report:

- 1) **The delineation should include soil sampling points within areas mapped by NRCS as containing hydric soils to determine whether hydric soil conditions are present elsewhere on the parcel that may meet Coastal Commission-jurisdictional wetland criteria;**
- 2) **Provide clarification of hydrology conditions at Sampling Point 2, including soil types present, and documentation of precipitation events occurring near the project area within the three weeks prior to and including and the dates of field inspections;**
- 3) **Either correct data forms for Sampling Point 3, or explain why a soil meeting ACOE and NRCS hydric soil criteria was not designated as hydric;**
- 4) **Provide a map delineating vegetation communities on the site in relation to proposed developments and ESHA.**

5. Wetland Mitigation Plan and Clarification of Wetland Impacts

As described in the County staff report, the proposed diversion drain would extend into the wetland for approximately 39 feet and displace approximately 76 square feet of the wetland in the far southeastern corner of the property. The trenching would be approximately 36 inches deep and excavated around ~~the perimeter of three-fourths a~~ **portion** of the subject parcel, with 6-inch-diameter piping placed inside and covered by drainage gravel. The County staff report ~~discusses the intent of~~ **implies** the diversion drain ~~to~~ **would** drain wetlands by stating "The intent of the project is to drain the site

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sufficiently for an on-site septic disposal system design, presumably to serve a future residence.” It further notes “The applicant proposes installation of an intercept (curtain) drain to dry out an area in order to allow for a future on-site disposal system to be designed.” The placement of the drain pipe into the wetland is a form of fill that directly impacts and displaces wetlands. Additionally, **if the interceptor drain design would intercept hydrology that supports wetlands on the site, then the resulting** draining **the of** wetlands is also considered a direct impact of installation of the interceptor (curtain) drain that would not be compatible with the continuance of the wetland features, and would affect the functional capacity of the wetlands (which includes stormwater retention, groundwater recharge, and filtration of pollutants, among other functions). LUP Policy 3.1-4 and CZC Section 20.496.025 allow certain uses in addition to resource dependent uses within wetlands. The nine categories of use allowed in wetland range from port facilities to incidental public services. However, none of the nine categories of allowable uses in wetlands include residential development or development designed to support a future residential use.

If wetland fill and draining of wetlands are necessary and unavoidable to facilitate testing for a future septic system and residential development, and if the Commission determines that to deny the project would result in an unconstitutional taking of private property inconsistent with Section 30010 of the Coastal Act, some impacts to wetlands may need to be approved even if such impacts are not an allowable purpose for draining and placing fill in wetlands pursuant to the wetland fill policies of the Coastal Act and the certified LCP. In that event, the Commission would still need to find that the development is consistent with all other policies of the certified LCP, including, but not limited to, the provisions of LUP Policy 3.1-4 and CZC Section 20.496.025 that require that any fill and draining of wetlands that are approved shall include mitigation measures required to minimize adverse environmental effects, in accordance with Sections 30233 and 30607, and other provisions of the Coastal Act. One of the adverse environmental effects of the filling and draining of the wetland for a groundwater intercept drain and future septic system would be the loss of wetland area. Therefore, if the alternatives analysis required under Item 2 above demonstrates that there are no feasible less environmentally damaging alternatives that would avoid the filling and draining of wetlands, a wetland mitigation plan must be provided that compensates for any direct loss of wetlands and wetland values and functions associated with filling and draining the wetland. The mitigation plan needs to provide for the creation of new or expanded wetlands at a ratio of wetlands created or expanded to wetlands filled that is large enough to compensate for temporal loss of wetland values and functions between the time the wetlands are filled and drained, and the full establishment of wetland values and functions in the wetland area to be created or expanded. The wetland mitigation plan must include detailed descriptions and diagrams of the wetland mitigation site and proposal, success criteria, and monitoring proposals.

Clarification of the amount of wetland fill associated with the groundwater intercept drain and the amount of wetlands to be drained, **if any,** resulting from installation of the drain around **three-fourths a portion** of the parcel is also needed. Clarification is needed as to exactly how much wetland fill and wetland area to be drained (both in cubic yards of

volume and square feet of coverage) is proposed for the amount of solid pipe extending into the wetland and the amount of wetland to be drained, and whether it would be feasible to reduce the amount of such fill and drained wetlands by relocating the diversion drain elsewhere on the parcel.

Without the above information, the Commission cannot reach a final determination concerning the appropriateness of the proposed development or identified building envelope designed to accommodate future development consistent with the policies in the LCP to protect wetlands and other environmentally sensitive habitat areas. Therefore, before the Commission can act on the project *de novo*, the applicant must submit Items 1 (current botanical and wetland delineation reports), 2 (Alternatives Analysis), and 3 (Revised ESHA Buffer Analysis), as well as Item 4 (Information Needed for Evaluating Project Consistency with Section 30010) if no acceptable project alternatives are available that avoid non-resource-dependent uses in ESHA or ESHA buffers, and Item 5 (Wetland Mitigation Plan and Clarification of Wetland Impacts) if wetland fill and draining of wetlands are necessary and unavoidable to facilitate testing for a future septic system and residential development.

REASON FOR CHANGES: Since publication of the staff recommendation, the Commission has received the June 16, 2010 Botanical Survey and Wetland Delineation included as part of the local record for the subject project. Commission staff has reviewed the report with consideration to previously-requested information needed for *de novo* review. Following review of the document, deficiencies in the submittal were identified and added to the information needs of the Commission as described above.

Whether the diversion drain intercepts three-fourths of the parcel or less than three-fourths of the parcel, it is not clear from the delineation report whether the interceptor drain design would result in the draining of wetlands due to the interception of surface and subsurface hydrology that drains to the wetlands from Highway One stormwater runoff. Additional information must be submitted to assist the Commission with this determination, and therefore the text was modified accordingly.

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Attn: Bob Merrill

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COASTAL COMMISSION

February 4, 2011

Dear Mr. Merrill:

I want to thank you for your two recent phone calls outlining the process in reviewing applications for development in the Coastal Zone. Your comments have been very helpful. The following information and comments are in response to the notice of appeal sent to us with regard to our application for a limited coastal development permit for a surface water drain. The permit number assigned to our application is A-1-Men-11-001.

As a point of reference, the lot in question was purchased approximately sixteen years ago for enjoyment and for future use with a septic design approved by Mendocino County and in accord with their regulations at that time. During most of the ensuing sixteen years we lived on a five acre parcel immediately North of the Haven's Neck subdivision, and that property was contiguous with the Haven's Neck lot listed in our application. More recently, we have moved out of Mendocino County, sold our former home in that area, and wish to sell the remaining lot for the enjoyment and use of a new owner. Hence, the reason for the application for development which is to provide a plan for a future septic system, and by inference, access to the lot, taking into consideration the environmental factors extant; namely the ESHA with the small wetland area and a Bishop pine stand along the front or roadside part of the lot.

The following comments are meant to be answers and/or comments to the list of "Substantial Issues" presented as reasons for the appeal. Implicit in understanding the proposal is the definition and physical location of the ESHAs determined to be on the property by the previous Botanical survey, Wetland Delineation and Buffer Analysis provided by Playalina Nelson who visited and studied the site numerous times over the last three years. The completed reports are part of our application and she may send an additional letter to you with regard to her work. In her report dated June 16, 2010 the wetland is described as 3280 square feet in size and is precisely located on the topographical survey map as a liner cross-hatched area provided by Welty and Associates of Fort Bragg, CA. The Bishop pine stand was described as "small" consisting of 35-40 trees, mostly on the front of the lot and also precisely located on the topographical survey as a cross-hatched area of squares. The total wetland area, as described, represents 5.9% of the total lot area of 55,250 square feet which should allow adequate area for development beyond the ESHA and beyond either a 50 or 100 foot setback; eg: as I understand in a Buffer Zone.

Further, in the summary of the Botanical Survey and Wetland Delineation of June 16, 2010, a suggestion was made that the diversion drain be re-designed to "avoid the wetland and be implemented in the upland areas". This was done and a revised design was provided by David

ATTACHMENT 1

Miller in consultation with the Mendocino County Sanitarian and submitted August 3, 2010. This design is page 17 of your report, and also is shown as "Exhibit No. 4" on a separate page and supercedes the original design showing a "U shaped" drainage ditch. This design avoids the wetland, and only shows a six inch solid pipe directed to the edge of the pine forest. This pipe is the only item in the buffer zone, is not in the ESHA proper, and in fact could be terminated at either 50 or 100 feet north of the pine forest if necessary. The re-designed surface drain was intended to avoid any issue with the ESHAs, and the functional part of the drain would be 100 or more feet from the ESHAs beyond which development should be acceptable and in conformity with the provisions of the Coastal Act. In addition, the area for development would be "upslope" more than ten feet from the front of the lot. (Refer to topographical survey) and any minor reduction of the water table to allow for a septic system would have absolutely no effect on the wetland on the lower part of the lot. The August 2010 redesign of the intercept drain was followed by a Buffer Analysis by Playalina Nelson dated November 28, 2010, and in fact, in the second paragraph states "is based on the diversion drain design dated 8/03/2010". Here some conflict of terms appears to exist, as it states that the diversion drain "would extend into the wetland for approximately 39 feet and replace approximately 76 square feet of the wetland in the far southeastern corner of the property". With reference to the topographical survey, this area is shown as "pine forest" and not technically wetland, except at the terminus of the solid pipe which Dave Miller envisioned as emptying into the drainage ditch existent in the area which is 2-3 feet wide at that point and is itself the source for the surface water diverted from adjacent lots and evolves into the wetland on the western side of our lot. I contacted Playalina Nelson today, 2/05/2011, with regard to this point and she indicated that the ditch should be considered "wetland" for the purpose of the application. She also indicated that the topographical survey, in her opinion, can be considered entirely accurate. However, this is a mute point, as has been discussed during our phone calls with you, the solid pipe is the issue here, and certainly could be ended at least 50 feet back, or even 100 feet if necessary avoiding either the pine forest or wetland entirely. In that event, the water emanating from the diversion drain, being uphill, would simply flow downhill along with any other surface water as now occurs in the rainy season and would eventually end up at the front of the lot and exit through the culvert under Haven's Neck drive as has been the case for many years.


A brief summary of responses to the "Summary of Findings" in the Appeal are as follows:

- #1. The ground water intercept drain is not proposed in a wetland area, or in the pine forest as proposed in the final revision of the 8/03/2010 design. (See enclosed copy)
- #2. There should be no question of a "non-allowable" use as any development proposed is more than 50 feet above the ESHA (The solid pipe can be eliminated at 50 or more feet from the ESHA.)
- #3. The county approved development with the revised drain design is beyond a 100 foot buffer from the ESHA.
- #4. There is no direct impact on the wetlands, the pine forest or the riparian area., from the diversion drain alone.

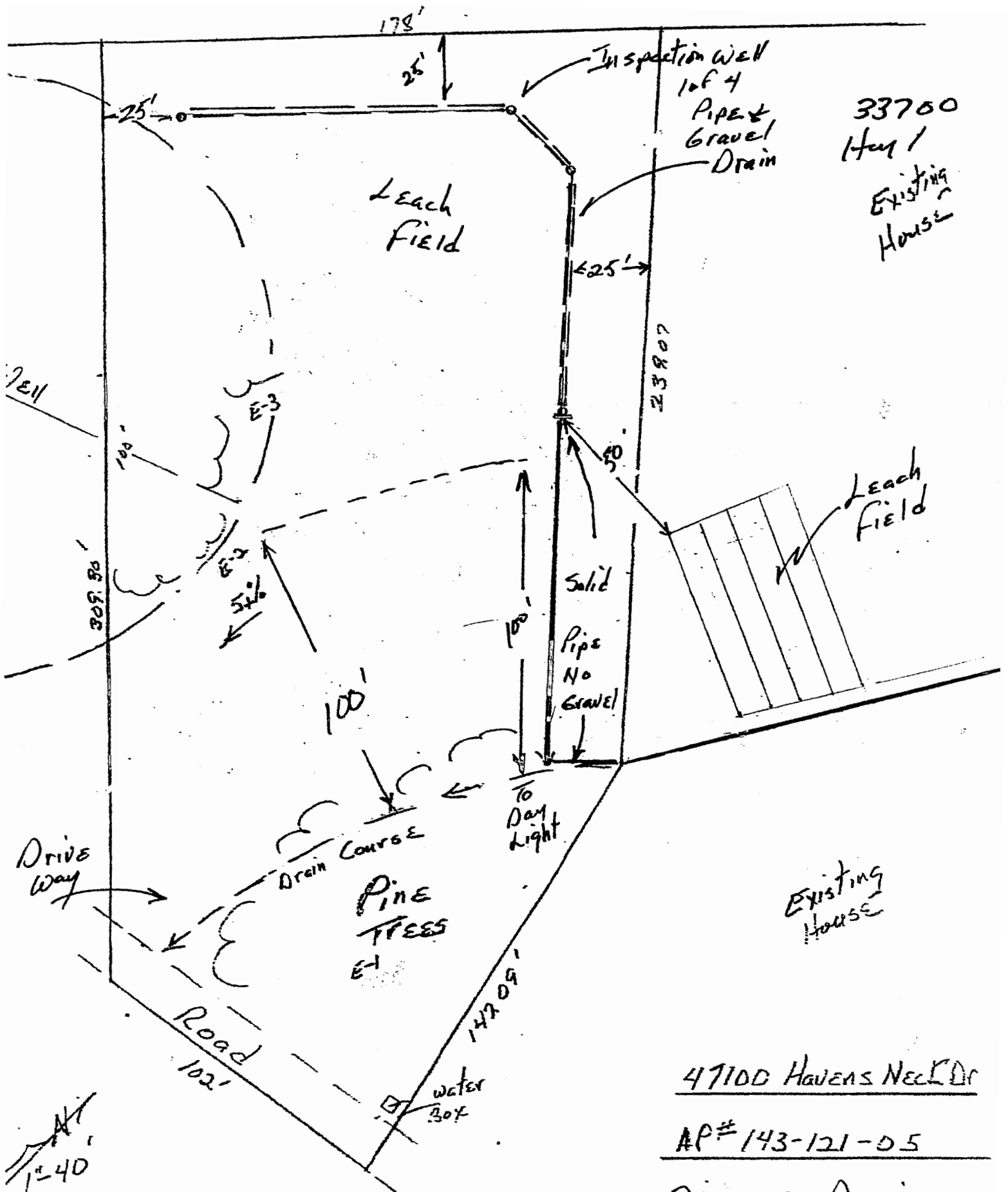
#5. With regard to "Mitigation measure e" in the Buffer analysis, I might mention we have had an active program for the past sixteen years, during our ownership of the lot in question, to remove certain invasive plant species such as *Cytisus scoparius* (scotch broom).

#5. Although the preceding comments are strictly related to the present application for a surface water drain, it does not address a most important future issue in development, which is eventual access to the developable part of the lot from Haven's Neck Drive. One would assume that Haven's Neck Drive was meant to provide such access. Access to the property from adjacent lots has been studied and is not possible. Access avoiding the wetland is possible, but an alternate would involve the pine forest, although by bridging over the narrowest part of the riparian area which is about two feet wide, would allow a driveway and spare most or all of the pine trees. The point in bringing this up now is that providing for a septic system is of little consequence if eventual access to the buildable part of the lot is not possible. Comments on the request for development to install a surface water drain with the application in process, as well as on the last question about access will be greatly appreciated.

Sincerely,


Douglas D Bradley
P.O.Box 784
Diablo, California
94528-0784

Ph 925-837-8716 or
616-304-7834 (cell)



47100 HAVENS NECDR

AP# 143-121-05

DIVERSION DRAIN
8/3/10

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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F16a

DATE: Prepared January 21, 2011 for the February 11, 2011 hearing

TO: Coastal Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Robert Merrill, North Coast District Manager
Tamara L. Gedik, Coastal Program Analyst

SUBJECT: **Appeal No. A-1-MEN-11-001 (Bradley)**, local permit # CDP 48-2007), Appeal by Commissioners Mark Stone and Esther Sanchez of Mendocino County decision approving a coastal development permit for the installation of a groundwater intercept drain to prepare the site for testing associated with a design for a potential future on-site disposal system. The project site is located on approximately 1.3 acres within the Haven's Neck subdivision, 1.5 miles north of Anchor Bay, at 47100 Haven's Neck Drive, 500 feet north of its intersection with Highway One (APN 143-121-05).

Appeal filed: January 12, 2011; 49th day: March 2, 2011.

Recommendation:

Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which Appeal No. A-1-MEN-11-001 has been filed and that the Commission hold a *de novo* hearing.

Staff recommends a NO vote on the following motion and resolution:

Motion & Resolution. *I move that the Commission determine and resolve that: Appeal No. A-1-MEN-11-001 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

Following the staff recommendation by voting no will result in the Commission conducting a *de novo* review of the application, and adoption of the following findings. Passage of this motion via a yes vote, thereby rejecting the staff recommendation, will result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners.

The Coastal Act presumes that an appeal raises a substantial issue of conformity of the approved project with the certified LCP, unless the Commission decides to take public testimony and vote on the question of substantial issue.

IMPORTANT NOTE:
**THE COMMISSION WILL NOT TAKE PUBLIC TESTIMONY DURING THE
SUBSTANTIAL ISSUE PHASE OF THE APPEAL HEARING UNLESS
THREE COMMISSIONERS REQUEST IT.**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its de novo review at the same or subsequent meeting. The Commission will not take public testimony during this phase of the appeal hearing unless three Commissioners request it.

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

Unless it is determined that there is no substantial issue, the Commission will proceed to the de novo portion of the appeal hearing and review the merits of the proposed project. Oral and written public testimony will be taken during this de novo review which may occur at the same or subsequent meeting.

Findings:

1. Project and Site Description

On December 17, 2010, the County of Mendocino approved Coastal Development Permit #CDP 48-2007 for the installation of a groundwater intercept drain. The approved development consists of the installation of a 6-inch diameter drain pipe within a 36-inch deep trench excavated around the perimeter of three-fourths of the subject parcel. The groundwater interceptor drain would prepare the site for testing associated with designing a potential future on-site septic disposal system. The parcel (APN 143-121-05) consists of approximately 1.3 acres located within the Haven's Neck subdivision, 1.5 miles north of Anchor Bay, at 47100 Haven's Neck Drive.

According to a biological report and wetland delineation prepared for the site, the parcel contains wetlands, a small stream, and Northern Bishop Pine Forest (a rare and endangered plant community). The County staff report indicates the development will extend a 6-inch diameter pipe approximately 39 feet into wetlands, and displace approximately 76 square feet of wetland. A map included in the County staff report shows some but not all Northern Bishop Pine Forest delineated as ESHA. The fine-scale map appears to delineate the wetland and riparian area as part of the ESHA, but does not appear to designate buffers around any ESHA. The map also delineates a future building envelope, apparently within 50 feet of ESHA.

The County staff report describes the parcel as relatively flat with patches of forested areas as well as grassy areas. The forested portion consists of mostly Bishop pine (*Pinus muricata*), with Monterrey cypress (*Cupressus macrocarpa*), a few tan oak (*Lithocarpus densiflorus* var. *densiflorus*), and some wax myrtle (*Myrica californica*) along the edges of the parcel. The understory varies from grassy areas that include velvet grass (*Holcus lanatus*), sweet vernal grass (*Anthoxanthum odoratum*), California blackberry (*Rubus ursinus*), and Douglas iris (*Iris douglasiana*), to areas dominated by rushes (*Juncus spp.*) and dock (*Rumex spp.*).

The parcels are designated on the County general plan Coastal Plan Map as Rural Residential, Five Acre Minimum with an alternate density of One Acre Minimum (RR-5 [RR-1]). The parcels show a similar zoning designation on the Coastal Zoning Map (RR:L-5[RR]). The County staff report describes the development as drainage improvements that would potentially serve a future single family residence, which is a principally permitted use in the Rural Residential zoning district.

2. Appeal

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the approved development is located (1) within 100 feet of a wetland and stream; and (2) between the sea and the first public road paralleling the sea.

The appellant (Commissioners Mark Stone and Esther Sanchez) claims that the approved project is inconsistent with the policies and standards of the Mendocino County certified Local Coastal Program (LCP) relating to protection of environmentally sensitive habitat areas (ESHAs).

3. Substantial Issue Analysis

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determined that no substantial issue exists with respect to the grounds on which the appeal has been filed.¹ Commission staff has analyzed the County's Final Local Action Notice for

¹ The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues, or those of regional or statewide significance.

the development (Exhibit No. 6), appellant's claims (Exhibit No. 5), and the relevant requirements of the LCP (Appendix B). Staff recommends that the Commission find that the appeal raises a substantial issue of conformance of the approved development with respect to the policies of the certified LCP regarding the protection of wetlands and ESHA as explained below.

A. Substantial Issue With Respect to Allowable Uses in Wetlands Policies of the Certified LCP

A botanical survey and wetland delineation report dated June 16, 2010 is referenced in the County staff report, and a buffer analysis addendum dated November 28, 2010 is referenced and included as Appendix A to the County staff report. In the buffer analysis addendum, the botanical consultant indicates that the "proposed diversion drain would extend into the wetland for approximately 39' and replace [sic] approximately 76 sq.ft [sic] of the wetland in the far southeastern corner of the property. The trenching would be approximately 36" deep with 6" diameter piping."

The County staff report discusses the intent of the approved development to drain wetlands by stating "The intent of the project is to drain the site sufficiently for an on-site septic disposal system design, presumably to serve a future residence." It further notes "The applicant proposes installation of an intercept (curtain) drain to dry out an area in order to allow for a future on-site disposal system to be designed." LUP Policy 3.1-4 and CZC Section 20.496.025 allow certain uses in addition to resource dependent uses within wetlands. The nine categories of use allowed in wetlands range from port facilities to incidental public services. However, none of the nine categories of allowable uses in wetlands include residential development or development designed to support a future residential use. The County failed to describe how the draining of wetlands is compatible with the continuance of the wetland feature, or how draining wetlands could maintain their functional capacity (which includes stormwater retention, groundwater recharge, and filtration of pollutants, among other functions). The development as approved by the County therefore raises a substantial issue of conformance with LCP policies including but not limited to LUP Policies 3.1-4 and CZC Section 20.496.025 because the approved development is not an allowable use in wetlands or wetland buffers.

The County staff report concludes that "the proposed drainage system is encouraged by the LCP" and references an excerpt from Section 20.492.025(G) of the Mendocino County Coastal Zoning Code that states "Subsurface drainage devices shall be provided in areas having a high water table and to intercept seepage that would adversely affect slope stability, building foundations, or create undesirable [sic] wetness." However, the County staff report references this policy out of context: Chapter 20.492, entitled "Grading, Erosion, and Runoff" states the purpose and applicability of the chapter under CZC Section 20.492.005 as follows:

The approving authority shall review all permit applications for coastal developments to determine the extent of project related impacts due to grading, erosion, and runoff. The approving authority shall determine the extent to which the following standards should apply to specific projects, and the extent to which additional studies and/or mitigation are

required, specifically development projects within Development Limitations Combining Districts. (Ord. No. 3785 (part), adopted 1991) (Emphasis added)

CZC Section 20.492.025, entitled “Runoff Standards,” therefore directs the approving authority to evaluate and mitigate as required runoff impacts that *result* from the *proposed development*, and not as a means to facilitate a non-allowable use in wetlands as interpreted by the County. CZC Section 20.492.025(A) further introduces and underscores this intended application by stating “Water flows in excess of natural flows resulting from project development shall be mitigated.” (Emphasis added).

The protection of wetlands in the coastal zone is an issue of statewide concern addressed by Section 30233 of the Coastal Act. In addition, the degree of factual and legal support for the County’s action is lacking, given that the findings do not demonstrate how the approved interceptor drain is an allowable uses in wetlands and do not evaluate the direct impacts to wetlands in relation to the proposed development. Therefore, the Commission finds that the appeal of the County’s approval raises a substantial issue of conformity of the approved development with the wetland protection provisions of the certified LCP including but not limited to LUP Policy 3.1-4 and CZC Section 20.496.025.

B. Substantial Issue With Respect to ESHA Protection Policies of the Certified LCP

The County staff report dated December 3, 2010 indicates the vacant parcel contains three types of Environmentally Sensitive Habitat Areas (ESHA): 1) wetlands; 2) a riparian area; and 3) Northern Bishop Pine Forest. As cited in the policies above, CZC Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and specifically includes wetlands, riparian areas, and habitats of rare and endangered species.

The approved development would be partially located both within wetlands, as discussed above, and within Northern Bishop Pine Forest ESHA. The LCP policies identify specific uses permitted in wetland ESHAs, but do not specifically identify what uses are allowed within rare plant community ESHA, and by extension, within the rare plant buffer. Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. Section 30240 of the Coastal Act is listed and referred to in the narrative for the section of the Land Use Plan containing the other LUP policies governing the protection of ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

Neither the approved drainage improvements nor the future residential development that the groundwater interceptor drain is designed to facilitate are in any way dependent on the rare Northern Bishop Pine Forest ESHA habitat at the site, but would occur within a rare plant community ESHA and within buffer areas that are required to be established around rare plant and wetland ESHAs.

As ESHA, wetlands, riparian areas, and endangered species habitat are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state in that event, the buffer shall not be less than 50 feet in width. CZC Section 20.496.020 states the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed.

LUP Policy 3.1-7 and CZC Section 20.496.020(A)(1) further require that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA, and that of the permitted development types allowed within an ESHA, structures are only allowable within the buffer area if there is no other feasible site available on the parcel. LUP Policy 3.1-18 states, in applicable part, that development within buffer areas recommended by DFG to protect rare or endangered wildlife species and their nesting and breeding areas shall meet guidelines and management practices established by the Department, and must be consistent with other applicable policies of this plan.

In the buffer analysis included in Appendix A of the County staff report, the consultant addresses buffer area requirements of CZC Section 20.496.020(A) by stating, “The focus of this buffer matrix is to determine the least environmentally damaging alternative by considering all ecological factors involved with the proposed project. The proposed development is a diversion drain. At this time no other development is proposed.” The consultant does not provide further explanation of the ecological factors considered, and responds further to buffer width requirements of CZC 20.496.020(A)(1) by stating “There is no buffer. The diversion drain extends partially into the wetland and to the edge of the Bishop-pine forest.”

The County staff report acknowledges that the consulting botanist indicates development will occur within the 50-foot ESHA buffer area, noting that “the proposal is the least impacting option...” The County staff report does not discuss how the omitted buffers for wetland, riparian, and Northern Bishop Pine Forest ESHA are consistent with the LCP ESHA buffer policies, and makes no reference to whether DFG was consulted or is in agreement with the omitted buffer associated with the proposed development. In its

“Summary of Referral Agency Comments” section of the staff report, the County notes that DFG recommend avoidance of wetlands.

The County additionally notes there are concerns relating to future development of the site for a residential use, and states the following:

Staff has concerns regarding future development of the site. The onsite ESHAs are adjacent to the access road, and there does not appear to be a location for vehicular access without directly impacting ESHAs. The neighboring driveway runs very near the western parcel boundary, however the neighbors are not interested in a shared driveway agreement. Although feasible locations for a residence and septic system exist on the parcel outside of ESHAs, vehicular access is likely to be a challenge when future development is considered, and alternatives may need to be explored at that time.

While the County notes that options are available to develop a residence and septic system outside ESHA, it does not address that these developments are within ESHA buffer. Following a site visit on January 7, 2011 where Commission staff observed saturated conditions in the identified building envelope, it is also questionable whether future development within the future building envelope would be outside ESHA. Regardless of future development constraints, the current proposed interceptor drain is sited within ESHA. The County’s findings also do not analyze alternatives, including whether other septic options are available (such as off-site septic disposal), to demonstrate how the proposal is the least impacting option in comparison to other options that could best avoid significant adverse effects on the ESHA.

The County staff report notes the following:

Development within the buffer and ESHA is necessary to convey subsurface water to the on-site drainage course, and is limited to a solid pipe within the ESHA and ESHA buffer area. The 6 inch diameter pipe would extend approximately 39 feet into wetland areas, and would be about three feet deep.

Measures to assure resources are protected and impacts are minimized are outlined in the botanical survey report and reduced buffer analysis. These measures are required conditions of approval as recommended by staff (Special Condition Number 1). Measures include (but not limited to): no heavy equipment allowed on the site, removal of invasive plants, and protective fencing and erosion control measures.

Special Condition Number 1 of the County Staff report includes mitigation measures such as protection in perpetuity of ESHAs except for developments and disturbances permitted by the County; hand trenching; invasives removal; replanting exposed areas with native plants; and installation of construction fence and straw wattles prior to construction. No mitigation is proposed to replace wetlands displaced by the approved development.

Providing mitigation for impacts to ESHA does not eliminate LCP requirements that minimum buffers be established between ESHA and development. CZC Section 20.496.020 and LUP Policy 3.1-7 require that a buffer shall not be less than 50 feet in width, after consultation and concurrence from DFG. Furthermore, LUP Policy 3.1-7 requires that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA. Approval of the subject development raises a substantial issue of conformance with the ESHA policies of the certified LCP

including, but not limited to, LUP Policies 3.1-7 and 3.1-18 and CZC Section 20.496.020, because the County fails to address how a buffer for wetlands and the rare Northern Bishop Pine Forest habitat that is less than the minimum of 100 feet is consistent with the requirements of LUP Policy 3.1-7 and CZC Sections 20.496.020(A)(1) and (3). Furthermore, the degree of factual and legal support for the County's action is lacking, given that the County failed to demonstrate how installation of a curtain drain was an allowable use within wetlands, and did not identify mitigation measures that would replace wetlands impacted by the proposed development, inconsistent with LUP policies including but not limited to LUP Policy 3.1-4 and CZC 20.496.020(A)(4)(e).

Lastly, the "topographic map" included with the County staff report shows an area delineated as ESHA that includes wetlands, a riparian feature extending across the southern portion of the site, and a portion of Northern Bishop Pine Forest. The map also shows an additional 18 pine trees outside of the delineated ESHA and within 50 feet of the approved development and identified future building envelope. The County does not articulate in its findings why a portion of the Northern Bishop Pine Forest community was excluded from ESHA designation. The protection of ESHA in the coastal zone is an issue of statewide concern addressed by Section 30240 of the Coastal Act. In addition, as noted above, the degree of factual and legal support for the County's action is lacking, given that the findings do not adequately evaluate or represent the full extent of habitat conditions and threats to rare habitats in relation to the approved development.

The Commission finds that the appeal raises a substantial issue with respect to conformance of the County-approved development with LCP policies regarding coastal ESHA buffer policies including, but not limited to, the LUP's references to Section 30240 of the Coastal Act, and including LUP Policies 3.1-4, 3.1-7, and, 3.1-18, and CZC Sections 20.496.020, and 20.532.100(A)(1).

Summary of Findings:

The Commission finds that the appeal raises a substantial issue with respect to conformance of the County-approved development with LCP policies regarding the protection of wetlands and ESHA. The Commission finds a substantial issue exists, because (1) groundwater intercept drains are not an allowable use in wetlands; (2) the County approved a development for a non-allowable use in ESHA and ESHA buffers without adequate factual or legal findings that justify the action; (3) the County approved a development that does not provide for a minimum 50-foot buffer between the development and the wetland, riparian, and Northern Bishop Pine Forest ESHA that exists on the site without addressing the consistency of the project with the ESHA buffer requirements of LUP Policies 3.1-4, 3.1-7, and 3.1-18 and CZC Section 20.496.020, including how a buffer that is less than the minimum of 50 feet is allowable under the LCP; (4) the County approved direct impacts to wetlands without any mitigation that replaces impacted areas; (5) the County failed to address in its findings why some areas within 50 feet of the approved development were excluded from Northern Bishop Pine Forest ESHA designation despite the presence of mapped pine trees within these areas; and (6) the County has not demonstrated there is not a feasible less environmentally damaging alternative to locating the development within the ESHA, inconsistent with the ESHA

protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-4, 3.1-7, and 3.1-18, and CZC Sections 20.496.020 and 20.532.095.

Information Needed for *De Novo* Review of Application

Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

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

1. Submittal of Current Botanical and Wetland Delineation Reports

As discussed previously, the project raises a substantial issue of conformance with the policies of the LCP regarding the protection of environmentally sensitive habitat areas (ESHA), as (1) it is unclear why a portion of the Northern Bishop Pine Forest community was excluded from ESHA designation; (2) the fine-scale map depicting ESHA features does not appear to designate minimum 50-foot buffers around any ESHA; and (3) it appeared during a site visit by Commission staff that wetland features extended beyond mapped boundaries.

Therefore, to determine the presence and extent of all potential sensitive plant community and wetland and riparian habitat at and adjacent to the project site, a current botanical survey and wetland delineation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be provided. The survey and delineation should be prepared by a qualified biologist and should include, but not be limited to: (1) a map of all environmentally sensitive habitat areas (ESHA) identified by the survey that addresses Northern Bishop Pine Forest not previously identified as ESHA; (2) a mapped delineation of all Coastal Commission-jurisdictional wetland and riparian features at a legible scale (typically 1 inch = 200 feet as per CZC Section 20.532.060) that includes all proposed developments superimposed on the map; (3) evaluation of site hydrology including current water sources for the wetland and riparian feature, and whether the riparian feature contributes hydrology to the wetland; and (4) copies of all original wetland delineation data forms completed in the field. Each environmentally sensitive habitat area identified should be described in detail and depicted on an ESHA map prepared for the subject site at a minimum size of 11 inches by 17 inches.

2. Alternatives Analysis for Proposed Wetland Impacts and Reduced ESHA buffers

The location chosen to install the proposed interceptor (curtain) drain will affect the ultimate choice of location for the future septic system, which in turn will constrain the siting options for a future residence. Development of a future septic system and residence could displace wetlands and habitat or encroach into required ESHA buffer areas. Thus even though the application does not include a request for authorization of a future residence, the future location of a septic system and residence must be considered at the time of approval of any interceptor drain to avoid or minimize encroachment into ESHA and required ESHA buffer areas. The County findings note that “the proposal is the least impacting option...” In addition, a map included in the County staff report delineates a future building envelope, apparently within 50 feet of ESHA, and the County staff report notes that “The onsite ESHAs are adjacent to the access road, and there does not appear to be a location for vehicular access without directly impacting ESHAs.” However, the County’s findings do not analyze alternatives, including whether other septic or building envelope options are available that would avoid or at least truly minimize encroachment of the interceptor line, septic system, and residence into ESHA and required ESHA buffer areas.

Thus, an alternatives analysis must be provided that addresses the feasibility of different interceptor drain, septic, building site, and access alternatives for the site, including alternatives and combinations of alternatives that would avoid or minimize encroachment into wetland, riparian, and Northern Bishop pine forest ESHA habitat and ESHA buffers, and the “no project” alternative. The alternatives analysis should evaluate at least the alternative septic system options of (1) using an offsite leach field location, and (2) limiting the leach field locations on the subject parcel to avoid or minimize encroachment into ESHA and ESHA buffer areas. Alternative residence locations should also be evaluated that would avoid or minimize encroachment into ESHAs and ESHA buffers. Furthermore, different building envelope sizes should be evaluated, including smaller envelopes that would rely on a multi-story building design. The alternatives analysis should include: (1) a detailed description of each alternative and combination of alternatives; (2) what access improvements would be needed for each alternative (e.g., amount of grading and filling, proposed watercourse crossing plans including but not limited to bridges, drainage control measures, etc.); (3) an analysis of riparian and wetland impacts associated with each alternative (e.g., amount of vegetation requiring removal, amount of wetland dredging and/or filling, etc.); and (4) mitigation measures proposed for each alternative to minimize impacts to water quality, natural resources, and sensitive habitats.

3. Revised ESHA Buffer Analysis

CZC Section 20.496.010 defines ESHA and includes “wetlands,” “riparian areas,” and “habitats of rare and endangered plants and animals.” Therefore, as ESHA, wetlands, riparian areas, and rare species habitats are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish

and Game that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width. CZC Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed.

In the November 28, 2010 buffer analysis included in Appendix A of the County staff report, the consultant addresses buffer area requirements of CZC Section 20.496.020(A) by stating, "The focus of this buffer matrix is to determine the least environmentally damaging alternative by considering all ecological factors involved with the proposed project. The proposed development is a diversion drain. At this time no other development is proposed." The consultant does not provide further explanation of the ecological factors considered, and responds further to buffer width requirements of CZC 20.496.020(A)(1) by stating "There is no buffer. The diversion drain extends partially into the wetland and to the edge of the Bishop-pine forest."

The November 28, 2010 buffer analysis submitted by the consultant is inconsistent with the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. Therefore, if the alternatives analysis required under Item 2 above demonstrates there are no feasible alternatives that do not encroach into 100-foot buffer areas, a buffer analysis shall be provided for each alternative that includes a determination of adequate buffers as prescribed in Coastal Zoning Code 20.496.020(A)(1)(a-g) and should depict buffers in relation to proposed development on a map. The revised buffer analysis should include: (1) a thorough evaluation of the potential impacts and disturbance to ESHAs as a result of all elements of the proposed development; and (2) a discussion of any recommended mitigation measures to ensure that the development would be sited and designed in a manner that would prevent impacts that would significantly degrade the area and provide for the continuance of the ESHA, including mitigation for direct impacts to wetland ESHA. Additionally, consultation and agreement by DFG that a protective buffer of less than 100 feet as determined pursuant to CZC 20.496.020 is adequate to protect the ESHA resource is required if development would occur within 100 feet of any delineated ESHA.

4. Information Needed to Evaluate Project Consistency with Coastal Act Section 30010

If the project cannot be found consistent with the ESHA resource policies of the certified Mendocino County LCP, the Commission will need to evaluate whether an alternative proposal could be approved, and if not, whether denial of the project would result in an unconstitutional taking of private property for public use. In order to make that evaluation, the Commission would need additional information from the applicants concerning the applicants' reasonable investment-backed expectations to make such determinations prior to holding a *de novo* hearing on the project as described below.

Therefore, if the alternatives analysis required under Item 2 above demonstrates that there are no feasible project alternatives that would avoid all ESHA and minimum-required ESHA buffers on the subject parcel, then the landowner(s) of the property that is the subject of A-1-MEN-11-001 must provide the following specific information for the property that is subject to A-1-MEN-11-001 as well as all property in common contiguous ownership, *i.e.* any immediately adjacent property also owned by the applicant:

1. When the property was acquired, and from whom;
2. The purchase price paid for the property;
3. The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;
4. Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).
5. At the time the property was purchased, or at any subsequent time, whether the project been subject to any development restriction(s) (e.g., restrictive covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;
6. Whether the size or use of the property changed in any way since it was purchased. If so, identify the nature of the change, the circumstances and the relative date(s);
7. Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;
8. A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);
9. The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property;
10. The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:
 - property taxes
 - property assessments
 - debt service, including mortgage and interest costs
 - operation and management costs;
11. Whether apart from any rent received from leasing all or a portion of the property (see question #7 above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an

annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

5. Wetland Mitigation Plan and Clarification of Wetland Impacts

As described in the County staff report, the proposed diversion drain would extend into the wetland for approximately 39 feet and displace approximately 76 square feet of the wetland in the far southeastern corner of the property. The trenching would be approximately 36 inches deep and excavated around the perimeter of three-fourths of the subject parcel, with 6-inch-diameter piping placed inside and covered by drainage gravel. The County staff report discusses the intent of the diversion drain to drain wetlands by stating “The intent of the project is to drain the site sufficiently for an on-site septic disposal system design, presumably to serve a future residence.” It further notes “The applicant proposes installation of an intercept (curtain) drain to dry out an area in order to allow for a future on-site disposal system to be designed.” The placement of the drain pipe into the wetland is a form of fill that directly impacts and displaces wetlands. Additionally, draining the wetlands is also considered a direct impact of installation of the interceptor (curtain) drain that would not be compatible with the continuance of the wetland features, and would affect the functional capacity of the wetlands (which includes stormwater retention, groundwater recharge, and filtration of pollutants, among other functions). LUP Policy 3.1-4 and CZC Section 20.496.025 allow certain uses in addition to resource dependent uses within wetlands. The nine categories of use allowed in wetland range from port facilities to incidental public services. However, none of the nine categories of allowable uses in wetlands include residential development or development designed to support a future residential use.

If wetland fill and draining of wetlands are necessary and unavoidable to facilitate testing for a future septic system and residential development, and if the Commission determines that to deny the project would result in an unconstitutional taking of private property inconsistent with Section 30010 of the Coastal Act, some impacts to wetlands may need to be approved even if such impacts are not an allowable purpose for draining and placing fill in wetlands pursuant to the wetland fill policies of the Coastal Act and the certified LCP. In that event, the Commission would still need to find that the development is consistent with all other policies of the certified LCP, including, but not limited to, the provisions of LUP Policy 3.1-4 and CZC Section 20.496.025 that require that any fill and draining of wetlands that are approved shall include mitigation measures required to minimize adverse environmental effects, in accordance with Sections 30233 and 30607, and other provisions of the Coastal Act. One of the adverse environmental effects of the filling and draining of the wetland for a groundwater intercept drain and future septic system would be the loss of wetland area. Therefore, if the alternatives analysis required under Item 2 above demonstrates that there are no feasible less environmentally damaging alternatives that would avoid the filling and draining of wetlands, a wetland mitigation plan must be provided that compensates for any direct loss of wetlands and wetland values and functions associated with filling and draining the wetland. The mitigation plan needs to provide for the creation of new or expanded wetlands at a ratio of wetlands created or expanded to wetlands filled that is large enough to compensate for temporal loss of wetland values and functions between the time the wetlands are filled and drained, and the full establishment

of wetland values and functions in the wetland area to be created or expanded. The wetland mitigation plan must include detailed descriptions and diagrams of the wetland mitigation site and proposal, success criteria, and monitoring proposals.

Clarification of the amount of wetland fill associated with the groundwater intercept drain and the amount of wetlands to be drained resulting from installation of the drain around three-fourths of the parcel is also needed. Clarification is needed as to exactly how much wetland fill and wetland area to be drained (both in cubic yards of volume and square feet of coverage) is proposed for the amount of solid pipe extending into the wetland and the amount of wetland to be drained, and whether it would be feasible to reduce the amount of such fill and drained wetlands by relocating the diversion drain elsewhere on the parcel.

Without the above information, the Commission cannot reach a final determination concerning the appropriateness of the proposed development or identified building envelope designed to accommodate future development consistent with the policies in the LCP to protect wetlands and other environmentally sensitive habitat areas. Therefore, before the Commission can act on the project *de novo*, the applicant must submit Items 1 (current botanical and wetland delineation reports), 2 (Alternatives Analysis), and 3 (Revised ESHA Buffer Analysis), as well as Item 4 (Information Needed for Evaluating Project Consistency with Section 30010) if no acceptable project alternatives are available that avoid non-resource-dependent uses in ESHA or ESHA buffers, and Item 5 (Wetland Mitigation Plan and Clarification of Wetland Impacts) if wetland fill and draining of wetlands are necessary and unavoidable to facilitate testing for a future septic system and residential development.

APPENDICES

APPENDIX A: Commission's Appeal Jurisdiction Over Project

APPENDIX B: Excerpts from the Humboldt County Local Coastal Program

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Assessor's Parcel Map
4. Site Plans
5. Appeal
6. Notice of Final Local Action and Findings for Approval
7. Biological documents prepared by consultant

APPENDIX A

COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On December 17, 2010 the County of Mendocino approved Coastal Development Permit CDP 48-2007 for the installation of a groundwater intercept drain. The approved development consists of the installation of a 6-inch diameter drain pipe within a 36-inch deep trench excavated around the perimeter of three-fourths of the subject parcel. The groundwater interceptor drain would prepare the site for testing associated with designing a potential future on-site septic disposal system. The parcel (APN 143-121-05) consists of approximately 1.3 acres located within the Haven's Neck subdivision, 1.5 miles north of Anchor Bay, at 47100 Haven's Neck Drive.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is located (1) within 100 feet of a wetland or stream; and (2) between the sea and the first public road paralleling the sea.

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received at the Commission's North Coast District Office on December 31, 2010 (Exhibit No. 6). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

One appeal was filed with the Commission's North Coast District Office on January 12, 2011 from Commissioners Mark Stone and Esther Sanchez (Exhibit No. 5). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action.

APPENDIX B

EXCERPTS FROM THE MENDOCINO COUNTY CERTIFIED LOCAL COASTAL PROGRAM

Summary of Applicable LCP Policies Relating to Environmentally Sensitive Habitat Areas:

Environmentally Sensitive Habitat Areas (ESHA) are defined in **Section 3.1 of the Mendocino County Land Use Plan (LUP)** as follows:

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

Mendocino County Coastal Zoning Code (CZC) Section 20.496.010 “*Environmentally Sensitive Habitat and other Resource Areas—Purpose*” states the following (emphasis added):

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

CZC Section 20.496.020 “*Environmentally Sensitive Habitat and other Resource Areas—Development Criteria*” states the following (emphasis added):

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

*(1) **Width.** The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

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

*(a) **Biological Significance of Adjacent Lands.** Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on*

adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).

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

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

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*
- (iii) An assessment of the impact and activity levels of the proposed development on the resource.*

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

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

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

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

(g) Type and Scale of Development Proposed. *The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary*

to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...

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

(3) Land Division. *New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*

(c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*

(d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) *Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.*

(i) *Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*

(j) *Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*

(k) *If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.*

Wetlands are defined in **Section 3.1 of the Mendocino County Land Use Plan (LUP)** as follows:

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

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

Wetlands are defined in **Section 13577 of the Commission Regulations** as follows:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the

growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.

LUP Policy 3.1-4 states:

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

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

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

CZC Section 20.496.025 “Wetlands and Estuaries” states, in part, that:

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

- (1) Port facility expansion or construction.*
- (2) Energy facility expansion or construction.*

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

LUP Policy 3.1-7 states the following (emphasis added):

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

1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;

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

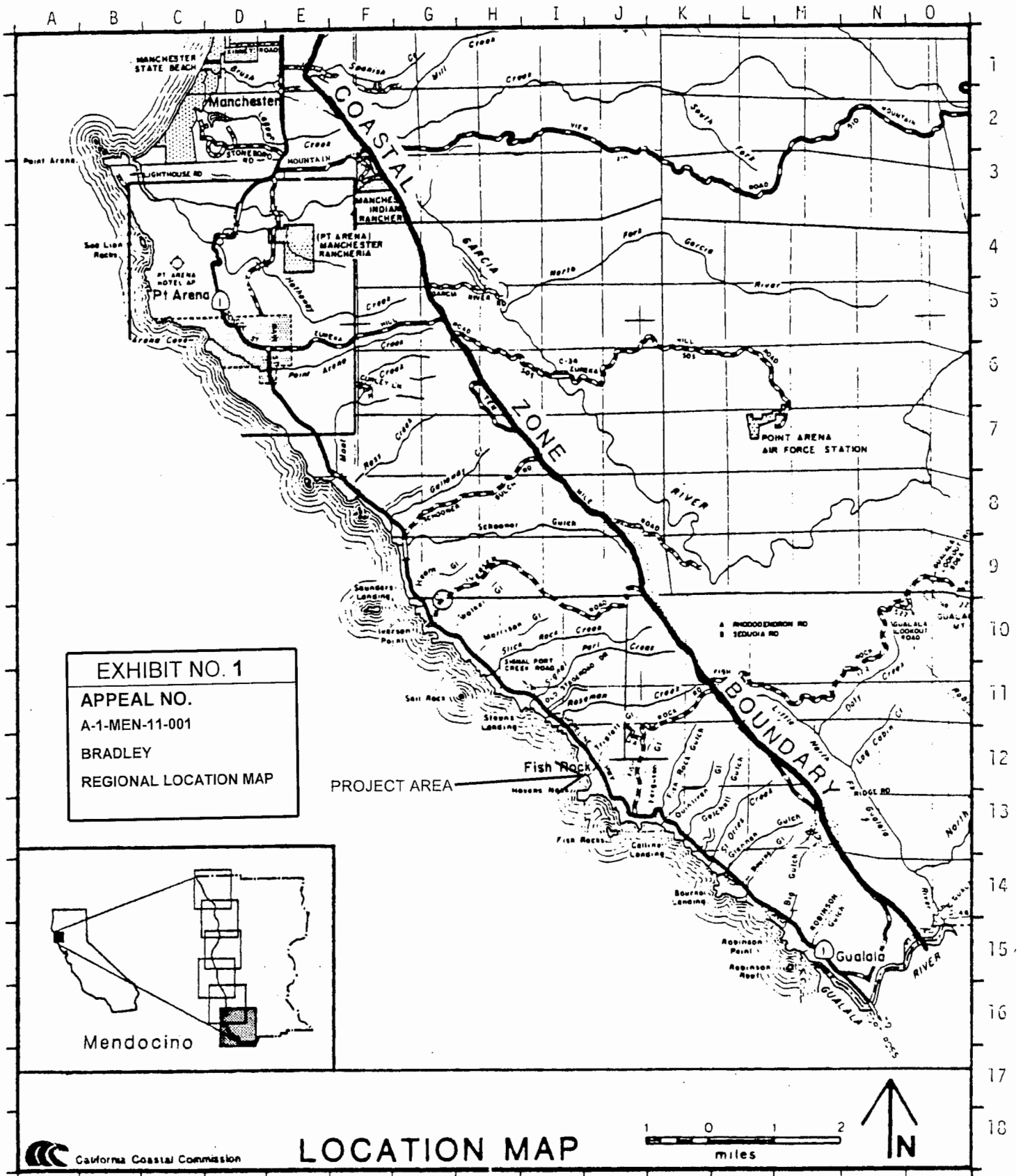
LUP Policy 3.1-18 states the following (emphasis added):

Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.

Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.

CZC Section 20.532.095 “*Required Findings for all Coastal Development Permits*” states, in applicable part, the following (emphasis added):

- (A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:
 - (1) The proposed development is in conformity with the certified local coastal program; and
 - (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...



County of Mendocino

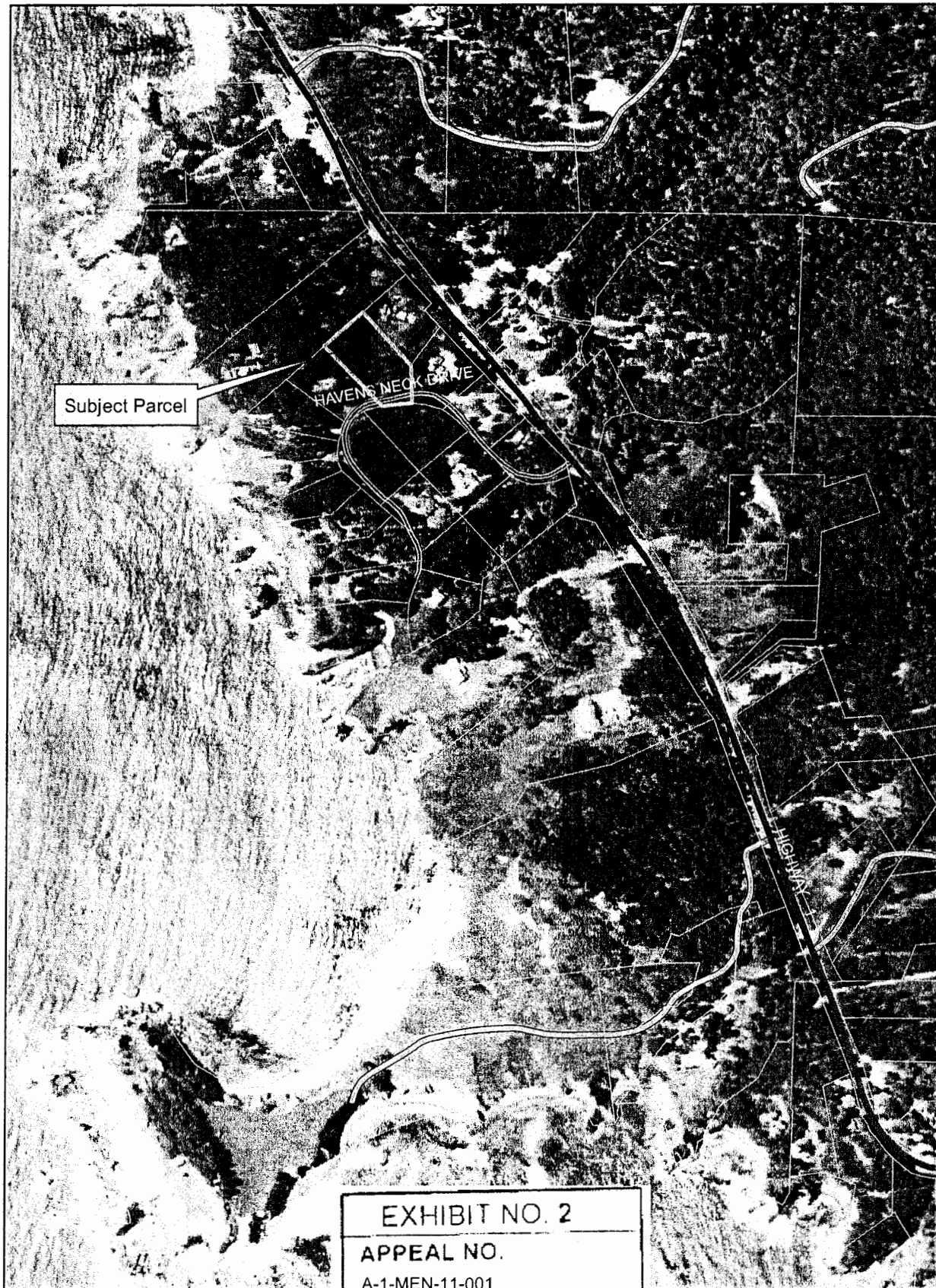


EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-11-001
(Bradley)

VICINITY MAP: AERIAL
PHOTO

Por. of NW¹/₄ of SE¹/₄, NE¹/₄ of SW¹/₄ of Sec. 12 T.11N. R.16W. M.D.B.& M.
Havens Neck Subdivision Unit 1

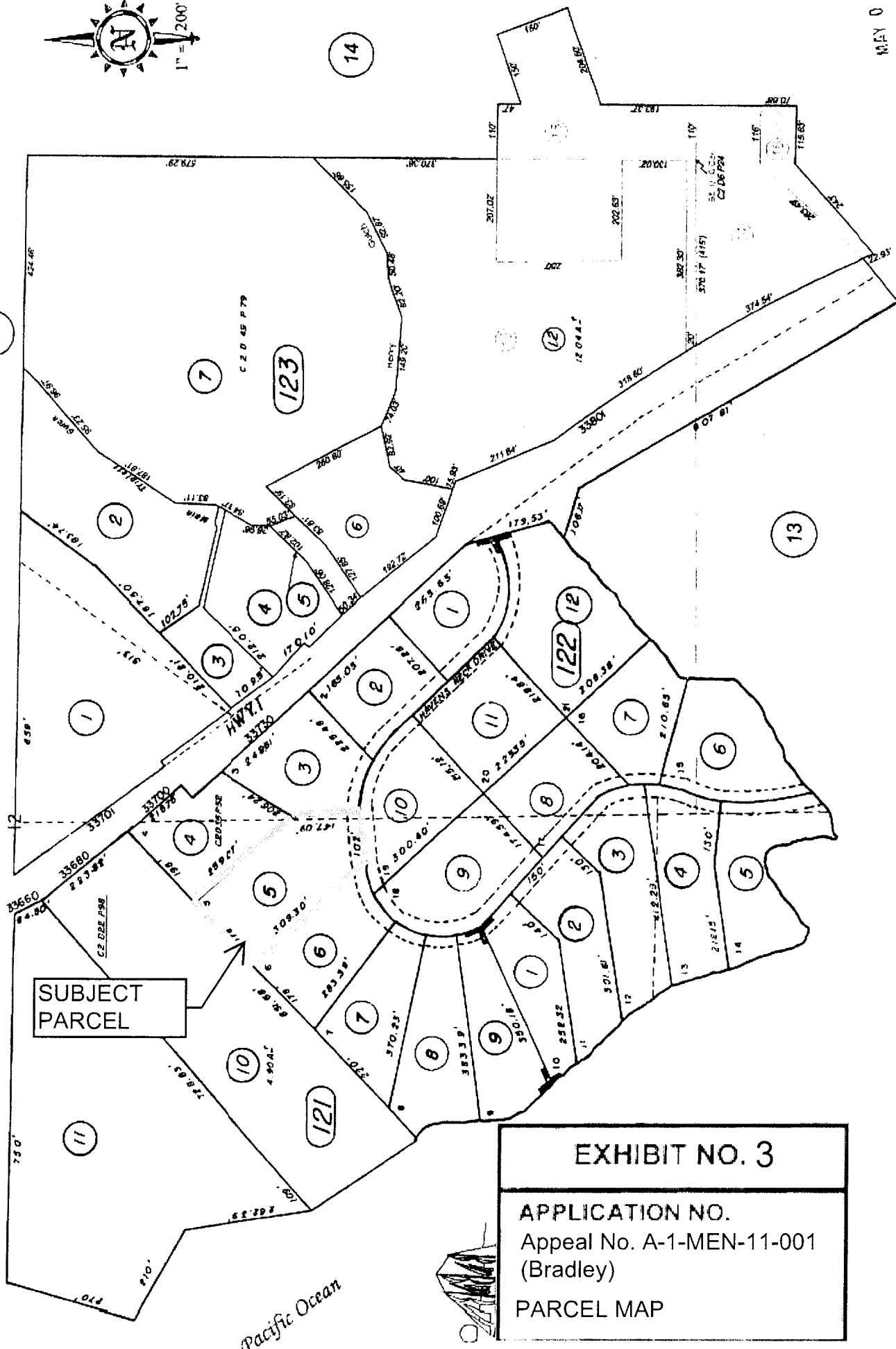


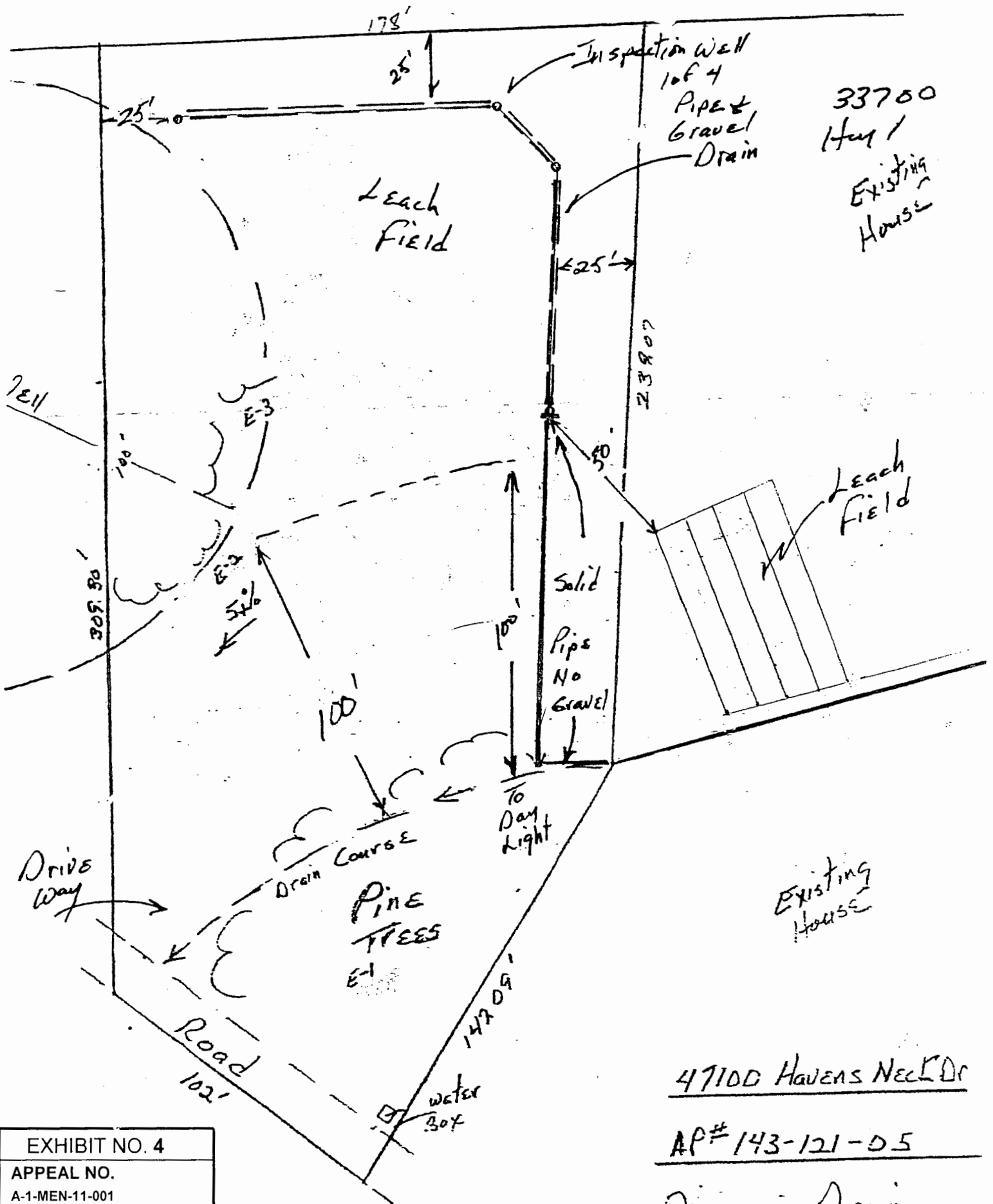
EXHIBIT NO. 3

APPLICATION NO.
Appeal No. A-1-MEN-11-001
(Bradley)
PARCEL MAP

NOTE: This map was prepared for assessment purposes only. No liability is assumed for the data delineated hereon.

MAY 01 2006

Assessor's Map
County of Mendocino, Calif.
Updated April 18, 2006



47100 HAVENS NEED Dr

AP# 143-121-05

Diversion Drain
8/3/10

EXHIBIT NO. 4

APPEAL NO.

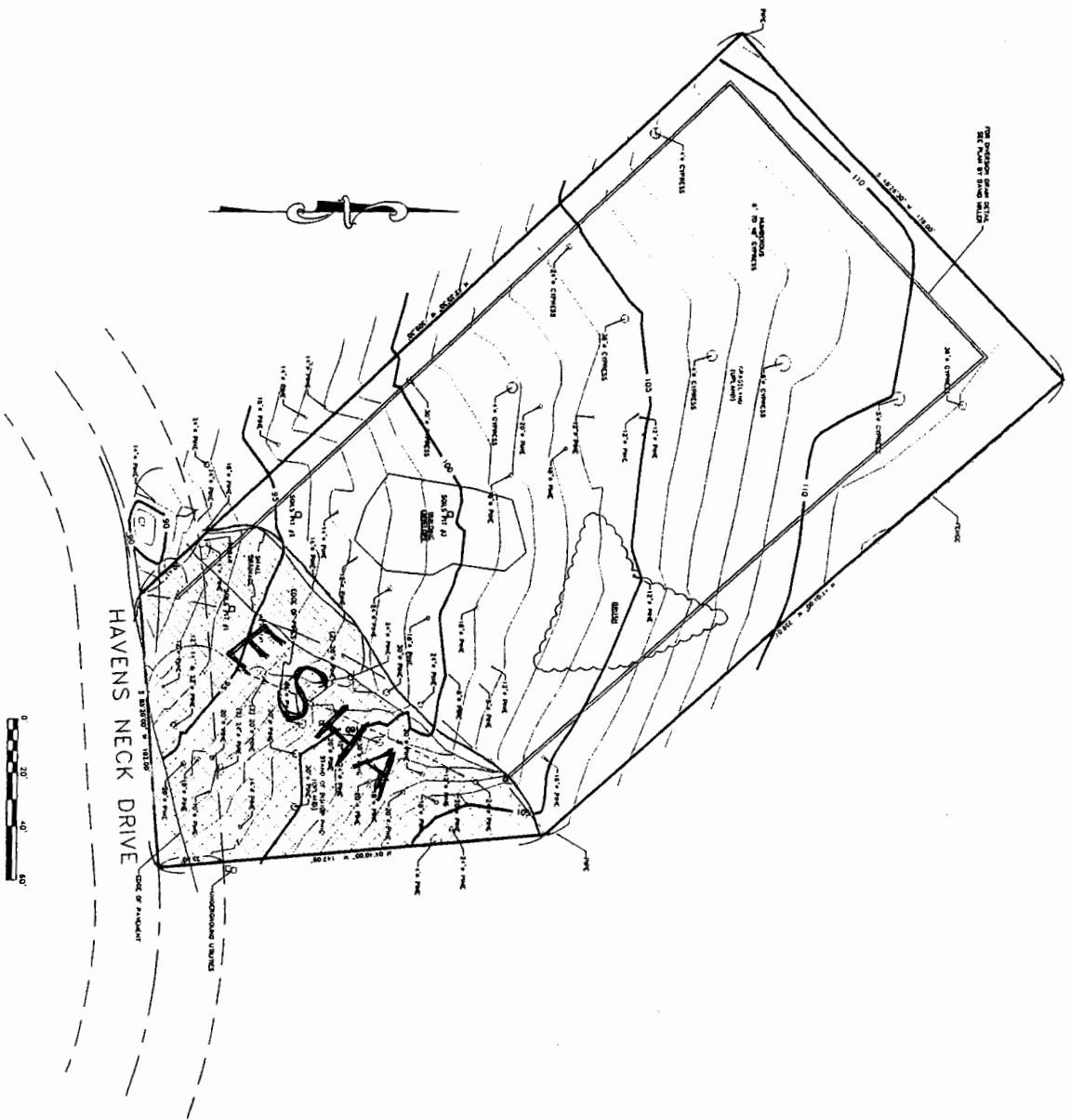
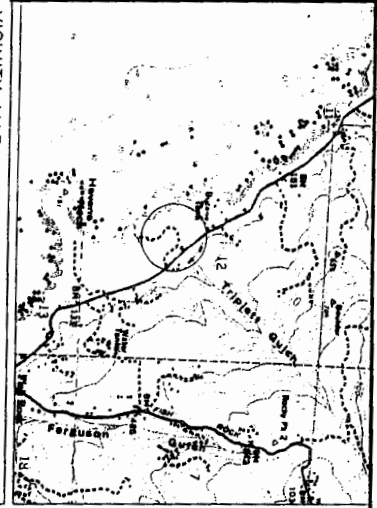
A-1-MEN-11-001

BRADLEY

SITE PLANS (1 of 2)

VICINITY MAP

NO SCALE



NOTES:
- SHOWN ELEVATION
OF A CORNER POINT



JOB #09012 00
DRAWN FF
DATE 5/09
SCALE AS SHOWN
APPROVED

TOPOGRAPHIC MAP
LANDS OF BRADLEY
LOT 5 OF HAVENS NECK SUBDIVISION
ANCHOR BAY, CA



I.L. Welty & Associates
703 North Main Street
Fort Bragg, California 95437
(707) 964-8865 (707) 964-5920 Fax
www.ilwelty.com

2092

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET, SUITE 200
EUREKA, CA 95501
VOICE (707) 445-7833
FAX (707) 445-7877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name: SEE ATTACHMENT A

Mailing Address:

City:

Zip Code:

Phone:

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Install a groundwater intercept drain to prepare the site for testing associated with a design for a potential future on-site disposal system.

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

Approximately 1.5 miles north of Anchor Bay at 47100 Haven's Neck Drive, 500 feet north of its intersection with Highway One (APN 143-121-05)

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

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

RECEIVED**JAN 12 2011****CALIFORNIA
COASTAL COMMISSION****EXHIBIT NO. 5****APPEAL NO.****A-1-MEN-11-001****BRADLEY****APPEAL (1 of 17)**

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-11-001

DATE FILED: 1/12/11

DISTRICT: North Coast

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

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

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

6. Date of local government's decision: December 17, 2010

7. Local government's file number (if any): CDP# 48-2007

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:

Douglas D. Bradley
P.O. Box 784
Diablo, CA 94528

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) Douglas D. & Barbara A. Bradley
1047 Crystal Drive
Frankfort, MI 49635

(2) Playalina Nelson, Botanical Consultant
P.O. Box 5765
Santa Rosa, CA 95402

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

See Attachment B.

Page 4

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

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

Date: January 12, 2011

Signed:

(Document2)

Page 4

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

Signed: Signature on File
Appellant or Agent

Date: January 12, 2011

Signed: _____

Date: _____

ATTACHMENT A

SECTION I. Appellant(s)

1. Mark Stone
County Government Center
701 Ocean Street, Suite 500
Santa Cruz, CA 95060

(831) 454-2200

2. Esther Sanchez
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

(760) 435-0971

ATTACHMENT B

APPEALABLE PROJECT:

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is located (1) within 100 feet of a wetland or stream; and (2) between the sea and the first public road paralleling the sea.

BACKGROUND:

On December 17, 2010, the County of Mendocino approved Coastal Development Permit # CDP 48-2007 for the installation of a groundwater intercept drain. The approved development consists of the installation of a 6-inch diameter drain pipe within a 36-inch deep trench excavated around the perimeter of three-fourths of the subject parcel. The groundwater interceptor drain would prepare the site for testing associated with designing a potential future on-site septic disposal system. The parcel (APN 143-121-05) consists of approximately 1.3 acres located within the Haven’s Neck subdivision, 1.5 miles north of Anchor Bay, at 47100 Haven’s Neck Drive.

According to a biological report and wetland delineation prepared for the site, the parcel contains wetlands, a small stream, and Northern Bishop Pine Forest (a rare and endangered plant community). The County staff report indicates the development will extend a 6-inch diameter pipe approximately 39 feet into wetlands, and displace approximately 76 square feet of wetland. A map included in the County staff report shows some but not all Northern Bishop Pine Forest delineated as ESHA. The fine-scale map appears to delineate the wetland and riparian area as part of the ESHA, but does not appear to designate buffers around any ESHA. The map also delineates a future building envelope, apparently within 50 feet of ESHA.

The parcels are designated on the County general plan Coastal Plan Map as Rural Residential, Five Acre Minimum with an alternate density of One Acre Minimum (RR-5 [RR-1]). The parcels show a similar zoning designation on the Coastal Zoning Map (RR:L-5[RR]). The County staff report describes the development as drainage improvements that would potentially serve a future single family residence, which is a principally permitted use in the Rural Residential zoning district.

REASONS FOR APPEAL:

The approved development is inconsistent with the policies of the certified LCP, including but not limited to the policies contained in the “Habitats and Natural Resources” sub-sections of Section 3: Resources and Development Issues and Policies of the Land Use Plan, and the development regulations and standards of Sections 20.496 and 20.532 of the Mendocino County Coastal Zoning Code (herein “Coastal Zoning Code” or “CZC”), for the following reasons:

Inconsistencies with Coastal Zoning Code Regulations for the Protection of Environmentally Sensitive Habitat Areas (ESHAs).

LCP Policies on Environmentally Sensitive Habitat Areas:

Environmentally Sensitive Habitat Areas (ESHA) are defined in Section 3.1 of the Mendocino County Land Use Plan (LUP) as follows:

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

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

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

CZC Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states the following (emphasis added):

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

*(1) **Width.** The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

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

habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).

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

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

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*
- (iii) An assessment of the impact and activity levels of the proposed development on the resource.*

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

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

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

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

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

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

(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.

(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) *Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*

(j) *Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*

(k) *If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.*

Wetlands are defined in Section 3.1 of the Mendocino County Land Use Plan (LUP) as follows:

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

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

Wetlands are defined in Section 13577 of the Commission Regulations as follows:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of

surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.

LUP Policy 3.1-4 states:

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

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

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

CZC Section 20.496.025 “Wetlands and Estuaries” states, in part, that:

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

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

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

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

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

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

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

(10) Nature study purposes and salmon restoration projects.

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

LUP Policy 3.1-7 states the following (emphasis added):

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

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

LUP Policy 3.1-18 states the following (emphasis added):

Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.

Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.

CZC Section 20.532.095 "Required Findings for all Coastal Development Permits" states, in applicable part, the following (emphasis added):

(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:

- (1) The proposed development is in conformity with the certified local coastal program; and*
- (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...*

Discussion:

The County staff report dated December 3, 2010 indicates the vacant parcel contains three types of Environmentally Sensitive Habitat Area (ESHA) features: 1) wetlands; 2) a riparian area; and 3) Northern Bishop Pine Forest. As cited in the policies above, CZC Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and specifically includes wetlands, riparian areas, and habitats of rare and endangered species.

A botanical survey and wetland delineation report dated June 16, 2010 is referenced in the County staff report, and a buffer analysis addendum dated November 28, 2010 is referenced and included as Appendix A to the County staff report. In the buffer analysis addendum, the botanical consultant indicates that the "proposed diversion drain would extend into the wetland for approximately 39' and replace [sic] approximately 76 sq.ft [sic] of the wetland in the far southeastern corner of the property. The trenching would be approximately 36" deep with 6" diameter piping."

The County staff report discusses the intent of the approved development to drain wetlands by stating "The intent of the project is to drain the site sufficiently for an on-site septic disposal system design, presumably to serve a future residence." It further notes "The applicant proposes installation of an intercept (curtain) drain to dry out an area in order to allow for a future on-site disposal system to be designed." LUP Policy 3.1-4 and CZC Section 20.496.025 allow certain uses in addition to resource dependent uses within wetlands. The nine categories of use allowed in wetland range from port facilities to incidental public services. However, none of the nine categories of allowable uses in wetlands include residential development or development designed to support a future residential use. The County failed to describe how the draining of wetlands is compatible with the continuance of the wetland feature, or how draining wetlands could maintain their functional capacity (which includes stormwater retention, groundwater

recharge, and filtration of pollutants, among other functions). The development as approved by the County is therefore inconsistent with LCP policies including but not limited to LUP Policies 3.1-4 and 3.1-7, and CZC Section 20.496.025 because the approved development is not an allowable use in wetlands or wetland buffers.

The approved development would also be partially located within Northern Bishop Pine Forest ESHA. The LCP policies identify specific uses permitted in wetland ESHAs, but do not specifically identify what uses are allowed within rare plant community ESHA, and by extension, within the rare plant buffer. Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. Section 30240 of the Coastal Act is listed and referred to in the narrative for the section of the Land Use Plan containing the other LUP policies governing the protection of ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

Neither the approved drainage improvements nor the future residential development that the groundwater interceptor drain is designed to facilitate are in any way dependent on the rare Northern Bishop Pine Forest ESHA habitat at the site, but would occur within a rare plant community ESHA and within buffer areas that are required to be established around rare plant and wetland ESHAs. Therefore, as neither drainage improvements or other residential uses are listed in the LCP as allowable uses within rare plant ESHA and ESHA buffers, and the Coastal Act only allows resource dependent uses within an ESHA, the approved development is inconsistent with the use limitations of the certified LCP, including its references to 30240, and including LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496.020(A)(1) and 20.496.020(A)(4).

As ESHA, wetlands, riparian areas, and endangered species habitat are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state in that event, the buffer shall not be less than 50 feet in width. CZC Section 20.496.020 states the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot

configuration and location of existing development, and (g) the type and scale of the development proposed.

LUP Policy 3.1-7 and CZC Section 20.496.020(A)(1) further require that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA, and that of the permitted development allowed within an ESHA, structures are only allowable within the buffer area if there is no other feasible site available on the parcel. LUP Policy 3.1-18 states, in applicable part, that development within buffer areas recommended by DFG to protect rare or endangered wildlife species and their nesting and breeding areas shall meet guidelines and management practices established by the Department, and must be consistent with other applicable policies of this plan.

In the buffer analysis included in Appendix A of the County staff report, the consultant addresses buffer area requirements of CZC Section 20.496.020(A) by stating, "The focus of this buffer matrix is to determine the least environmentally damaging alternative by considering all ecological factors involved with the proposed project. The proposed development is a diversion drain. At this time no other development is proposed." The consultant does not provide further explanation of the ecological factors considered, and responds further to buffer width requirements of CZC 20.496.020(A)(1) by stating "There is no buffer. The diversion drain extends partially into the wetland and to the edge of the Bishop-pine forest."

The County staff report acknowledges that the consulting botanist proposes development within the 50 foot ESHA buffer area, noting that "the proposal is the least impacting option..." The County staff report does not discuss how the omitted buffers for wetland, riparian, and Northern Bishop Pine Forest ESHA are consistent with the LCP ESHA buffer policies, and makes no reference to whether DFG was consulted or is in agreement with the omitted buffer associated with the proposed development. In its "Summary of Referral Agency Comments" section of the staff report, the County notes that DFG recommend avoidance of wetlands.

The County staff report notes the following:

Development within the buffer and ESHA is necessary to convey subsurface water to the on-site drainage course, and is limited to a solid pipe within the ESHA and ESHA buffer area. The 6 inch diameter pipe would extend approximately 39 feet into wetland areas, and would be about three feet deep.

Measures to assure resources are protected and impacts are minimized are outlined in the botanical survey report and reduced buffer analysis. These measures are required conditions of approval as recommended by staff (Special Condition Number 1). Measures include (but not limited to): no heavy equipment allowed on the site, removal of invasive plants, and protective fencing and erosion control measures.

Special Condition Number 1 of the County Staff report includes mitigation measures such as protection in perpetuity of ESHAs except for developments and disturbances permitted by the County; hand trenching; invasives removal; replanting exposed areas with native plants; and installation of construction fence and straw wattles prior to construction. No mitigation is proposed to replace wetlands displaced by the approved development.

Providing mitigation for impacts to ESHA does not eliminate LCP requirements that minimum buffers be established between ESHA and development. CZC Section 20.496.020 and LUP Policy 3.1-7 require that a buffer shall not be less than 50 feet in width, after consultation and

concurrence from DFG. Furthermore, LUP Policy 3.1-7 requires that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA. Approval of the subject development is inconsistent with the ESHA policies of the certified LCP including, but not limited to, LUP Policies 3.1-7 and 3.1-18, and CZC Section 20.496.020, because the County fails to address how a buffer for wetlands, the riparian feature, and the rare Northern Bishop Pine Forest that is less than the minimum of 100 feet is consistent with the requirements of LUP Policy 3.1-7 and CZC Sections 20.496.020(A)(1) and (3). Even if installation of a curtain drain was an allowable use within wetlands- which it is not- the County failed to identify mitigation measures that would replace wetlands impacted by the proposed development, inconsistent with LUP policies including but not limited to LUP Policy 3.1-4 and CZC 20.496.020(A)(4)(e).

Lastly, the “topographic map” included with the County staff report shows an area delineated as ESHA that includes wetlands, a riparian feature extending across the southern portion of the site, and a portion of Northern Bishop Pine Forest. The map also shows an additional 18 pine trees outside of the delineated ESHA and within 50 feet of the approved development and identified future building envelope. The County does not articulate in its findings why a portion of the Northern Bishop Pine Forest community was excluded from ESHA designation. CZC Section 20.532.095(A)(1) requires the County make findings that demonstrate the project is consistent with all provisions of the local coastal program.

CONCLUSION:

Therefore, because (1) groundwater intercept drains are not an allowable use in wetlands and within other forms of ESHA or ESHA buffer areas; (2) the County approved a development that does not provide for a minimum 50-foot buffer between the development and the wetland, riparian, and Northern Bishop Pine Forest ESHA that exists on the site; (3) the County approved direct impacts to wetlands without any mitigation that replaces impacted areas; and (4) the County failed to address in its findings why some areas within 50 feet of the approved development were excluded from Northern Bishop Pine Forest ESHA designation despite the presence of mapped pine trees within these areas, the project, as approved by the County, is inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-4, 3.1-7, and 3.1-18, and CZC Sections 20.496.020 and 20.532.095.



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

790 SOUTH FRANKLIN STREET · FORT BRAGG · CALIFORNIA · 95437

IGNACIO GONZALEZ, DIRECTOR

Telephone 707-964-5379

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www.co.mendocino.ca.us/planning

December 28, 2010

NOTICE OF FINAL ACTION

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

CASE#: CDP #48-2007

OWNER: Douglas D. & Barbara A. Bradley

APPLICANT: Douglas D. Bradley

REQUEST: Install a groundwater intercept drain to prepare the site for testing associated with a design for a potential future on-site septic disposal system.

LOCATION: In the Coastal Zone, 1 ½± miles north of Anchor Bay, on the north side of Haven's Neck Drive, approximately 500 feet north of its intersection with Highway One at 47100 Haven's Neck Drive (APN 143-121-05).

PROJECT COORDINATOR: Teresa Spade

HEARING DATE: December 17, 2010

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 6

APPEAL NO.

A-1-MEN-11-001

BRADLEY

NOTICE OF FINAL LOCAL
ACTION AND FINDINGS FOR
APPROVAL (1 of 41)

RECEIVED

DEC 31 2010

CALIFORNIA
COASTAL COMMISSION

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 4B-2007 HEARING DATE: 12-17-10

OWNER: Bradley

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt

☐ Negative Declaration

☐ EIR

FINDINGS:

☒ Per staff report

☐ Modifications and/or additions

ACTION:

☒ Approved

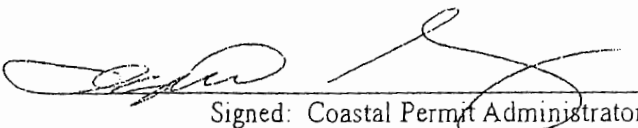
☐ Denied

☐ Continued _____

CONDITIONS:

☒ Per staff report

☐ Modifications and/or additions


Signed: Coastal Permit Administrator



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

790 SOUTH FRANKLIN STREET · FORT BRAGG · CALIFORNIA · 95437

notice bradley cdp 48 2007

IGNACIO GONZALEZ, DIRECTOR

Telephone 707-964-5379

FAX 707-961-2427

www.co.mendocino.ca.us/planning

December 3, 2010

RECEIVED

DEC 06 2010

CALIFORNIA
COASTAL COMMISSION

**PUBLIC NOTICE OF PENDING ACTION
STANDARD COASTAL DEVELOPMENT PERMIT**

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Friday, December 17, 2010 in the Planning and Building Services Conference Room, 790 South Franklin Street, Fort Bragg, at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

CASE #: CDP #48-2007
DATE FILED: originally filed 9/10/2007; file complete 7/7/2010
OWNER: Douglas D. & Barbara A. Bradley
APPLICANT: Douglas D. Bradley
REQUEST: Install a groundwater intercept drain to prepare the site for testing associated with a design for a potential future on-site septic disposal system.
LOCATION: In the Coastal Zone, 1 ½± miles north of Anchor Bay, on the north side of Haven's Neck Drive, approximately 500 feet north of its intersection with Highway One at 47100 Haven's Neck Drive (APN 143-121-05).
PROJECT COORDINATOR: Teresa Spade

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

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

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

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

Staff reports for agenda items may be accessed and printed from the County website. Go to www.co.mendocino.ca.us/planning

Click on the Boards and Commissions link, click on Coastal Permit Administrator, click on the hearing date

Ignacio Gonzalez, Coastal Permit Administrator

**STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT**

**CDP# 48-2007 (Bradley)
December 17, 2010
CPA-2**

Gualala Municipal Advisory Council

The project was considered at the regularly scheduled Gualala Municipal Advisory Council (GMAC) meeting held October 7, 2010. GMAC voted unanimously (5-0) to recommend approval of this Coastal Development Permit. There was some discussion regarding drainage, and whether the proposal would result in additional water into the drainage course on the parcel. It was noted that the botanical report indicates that the drainage flows under the road and into a large wetland area on unimproved residential lots in the center portion of the subdivision.

Land Use

The parcel is classified on the Coastal Plan Map as Rural Residential Five Acres Minimum with an alternate density of One Acre Minimum (RR-5 [RR-1]). The parcel is similarly zoned; RR:L-5 [RR]. The Rural Residential zone (RR, which has a one acre minimum lot size) is applied by virtue of the fact that the parcel is less than two acres and cannot be further divided in either case. The proposed drainage improvements would potentially serve a future single family residence, which is a principally permitted use within the Rural Residential Zoning District, and consistent with the Rural Residential land use classification.

Section 20.492.025(G) of the Mendocino County Coastal Zoning Code states:

Subsurface drainage devices shall be provided in areas having a high water table and to intercept seepage that would adversely affect slope stability, building foundations, or create undesirable wetness.

The proposed drainage system is encouraged by the LCP.

Public Access

The project site is located west of Highway 1, but is not designated as a potential public access trail location on the LUP maps. A potential public access is shown along Haven's Neck Drive, which is located south of the parcel. There is no evidence of prescriptive access on the developed site. The project would have no effect on public access to the coast.

Hazards

The proposed structure would be located in a flat area, and the development does not present any hazard issues relative to fire hazards or slope failure. There are no known faults, landslides or other geologic hazards in close proximity to the proposed development.

Visual Resources

The parcel is not located in a highly scenic area and the structure would not have visual impacts as it would be underground.

Natural Resources

The project is located on an undeveloped 1.3 acre lot in the Haven's Neck Subdivision. Parcels on either side are developed with residences. The property is relatively flat and contains wetlands, a small drainage, and patches of forested areas (both native and non-native) as well as grassy areas. The property was

**STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT**

**CDP# 48-2007 (Bradley)
December 17, 2010
CPA-1**

OWNERS	Douglas D. & Barbara A. Bradley 1047 Crystal Drive Frankfort, MI 49635
APPLICANT:	Douglas D. Bradley PO Box 784 Diablo, CA 94528
REQUEST:	Install a groundwater intercept drain to prepare the site for testing associated with a design for a potential future on-site septic disposal system.
LOCATION:	In the Coastal Zone, 1 ½± miles north of Anchor Bay, on the north side of Haven's Neck Drive, approximately 500 feet north of its intersection with Highway One at 47100 Haven's Neck Drive (APN 143-121-05).
APPEALABLE AREA:	Yes – ESHA, West of 1 st Public Road
PERMIT TYPE:	Standard
TOTAL ACREAGE:	1.3± acres
GENERAL PLAN:	RR-5 [RR-1]
ZONING:	RR: L-5 [RR: L-1]
EXISTING USES:	Undeveloped
ADJACENT ZONING:	North: RR-5 East, South & West: RR-5 [RR-1]
SURROUNDING LAND USES:	Residential
SUPERVISORIAL DISTRICT:	5
ENVIRONMENTAL DETERMINATION:	Categorically exempt from the California Environmental Quality Act, Class 3(d)
PROJECT DESCRIPTION: The applicant proposes installation of an intercept (curtain) drain to dry out an area in order to allow for a future on-site septic disposal system to be designed. The project includes monitoring of the groundwater levels through wet weather testing.	
LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program (LCP) as described below.	

surveyed for natural resources by Playalina Nelson on numerous occasions in 2008, 2009, and 2010. Her report, Botanical Survey and Wetland Delineation for the Bradley Property, dated June 16, 2010, outlines resources identified on the property, including wetlands, a small stream, and a patch of Northern Bishop Pine Forest, a rare and endangered plant community.

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

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

The wetlands, stream, and Northern Bishop Pine Forest have been determined by staff to constitute Environmentally Sensitive Habitat Areas as outlined in the LCP.

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

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

The consulting botanist has performed a reduced buffer analysis, and indicates that development is proposed within the minimum 50 foot buffer area. The proposal is the least impacting option, and mitigation measures are recommended to assure that impacts are reduced to a level of less than significant. The reduced buffer analysis is included as Appendix A.

Development within the buffer and ESHA is necessary to convey subsurface water to the on-site drainage course, and is limited to a solid pipe within the ESHA and ESHA buffer area. The 6 inch diameter pipe would extend approximately 39 feet into wetland areas, and would be about three feet deep.

Measures to assure resources are protected and impacts are minimized are outlined in the botanical survey report and reduced buffer analysis. These measures are required conditions of approval as recommended by staff (Special Condition Number 1). Measures include (but not limited to): no heavy equipment allowed on the site, removal of invasive plants, and protective fencing and erosion control measures.

Staff has concerns regarding future development of the site. The onsite ESHAs are adjacent to the access road, and there does not appear to be a location for vehicular access without directly impacting ESHAs. The neighboring driveway runs very near the western parcel boundary, however the neighbors are not interested in a shared driveway agreement. Although feasible locations for a residence and septic system exist on the parcel outside of ESHAs, vehicular access is likely to be a challenge when future development is considered, and alternatives may need to be explored at that time.

Archaeological/Cultural Resources

The project was reviewed by the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University. The Information Center responded that the project area has the possibility of containing unrecorded archaeological sites and recommended a study. The application was reviewed by the Mendocino County Archaeological Commission on September 8, 2010, at which time it was determined that an archaeological survey was warranted. A survey was conducted, and the survey report by Sally Evans, dated October 6, 2010 was accepted at the October 6, 2010 Archaeological Commission hearing. No archaeological or cultural resources were identified. Standard Condition Number 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance (Chapter 22.12 of the Mendocino County Code) in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Groundwater Resources

The site is located within an area designated as a Critical Water Resources area (CWR) as shown in the 1982 Coastal Groundwater Study prepared by the Department of Water Resources.

The intent of the project is to drain the site sufficiently for an on-site septic disposal system design, presumably to serve a future residence. The project was referred to the Division of Environmental Health (DEH), who responded that the project could be cleared, providing a revised site plan for drain locations. The project would not result in significant impacts to groundwater resources.

Transportation/Circulation

The project would not result in a new encroachment or an increase in use. No impacts to transportation/circulation are expected.

Zoning Requirements

The project complies with the zoning requirements for the Rural Residential District set forth in Chapter 20.376, and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, the Coastal Permit Administrator approves the proposed project, and adopts the following findings and conditions.

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and

**STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT**

**CDP# 48-2007 (Bradley)
December 17, 2010
CPA-5**

4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.
8. Resource protection findings:
 - (a) The resource identified will not be significantly degraded by the proposed development.
 - (b) There is no feasible less environmentally damaging alternative.
 - (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:

- a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. The on-site Environmentally Sensitive Habitat Areas as shown in Exhibit H, and including wetlands, drainage course, and Northern Bishop Pine Forest, shall be protected in perpetuity from development and disturbance, with the exception of developments and disturbances specifically permitted by Coastal Permit. The following measures are required conditions of approval of this permit, necessary to assure impacts are minimized:
 - a. All trenching and installation shall be by hand or with hand-operated equipment. No heavy machinery or vehicles are allowed on the site for installation, maintenance or removal of the structures hereby approved.
 - b. Prior to installation, temporary construction fence and straw wattles shall be placed and maintained in working order along the northern side of the wetlands, in a manner to assure that no runoff enters the wetlands from the development area. Construction fence and wattles shall remain in working order until all work is completed. Except for the minimum necessary during construction, all materials and equipment shall be kept outside of the wetlands, drainage course, and Northern Bishop Pine Forest.
 - c. To the extent possible, all removed soils shall be replaced after installation, with topsoil placed on top. Any excess soil shall be removed from the site to an approved location. To the extent possible, all native plants removed as a result of installation shall be salvaged and replanted as soon as possible in areas of disturbed earth. All areas of disturbed earth shall be stabilized as soon as possible with native plants,

STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT

CDP# 48-2007 (Bradley)
December 17, 2010
CPA-7

replanted from the site. These plants may include tufted hair grass, wild strawberry, sedge and rush. Revegetation should be carried out by a qualified professional.

- d. Prior to installation, the following invasive plants on the property shall be removed: scotch broom (*Cytisus scoparius*), New Zealand fireweed (*Erechtites minima*), and bull thistle (*Cirsium vulgare*). Between 6 months and one year after completion of the project, all invasive plants shall be removed again, taking special care to identify and remove any additional species of invasive plants that may have established at the site as a result of the installation. A qualified professional shall visit the site to assure removal has been satisfactorily accomplished, and shall submit a short (one page) summary to the County Planning Division as proof of compliance.

Staff Report Prepared By:

Dec. 3, 2010
Date

Teresa Spade
Teresa Spade
Planner II

Attachments: Exhibit A Location Map
Exhibit B Zoning Display Map
Exhibit C Fire Hazard Severity Zones Map
Exhibit D California Natural Diversity Database RareFind Map
Exhibit E Orthophoto, June 2009
Exhibit F California Coastal Records Project Photo, October 2009
Exhibit G Site Plan
Exhibit H ESHA map

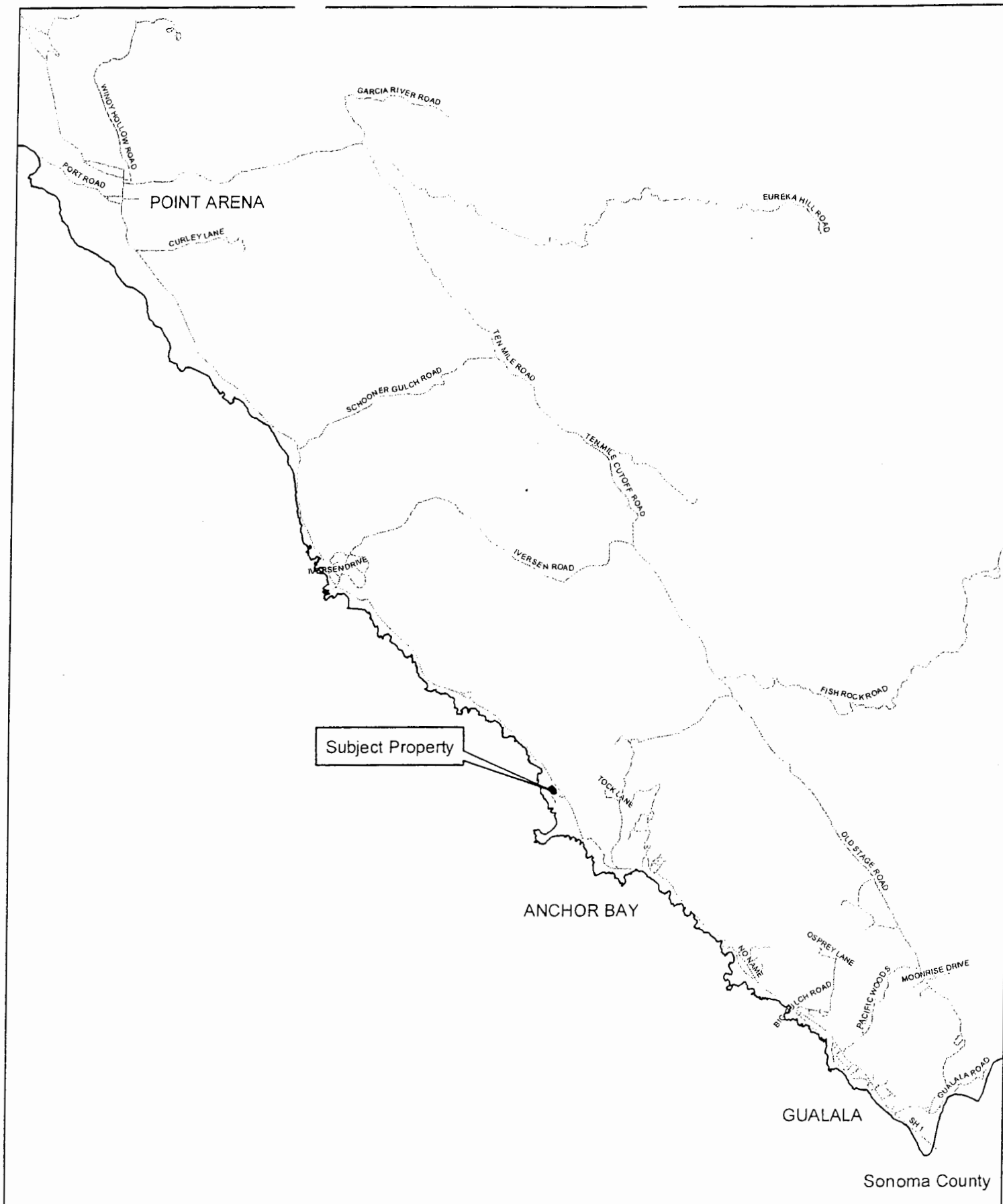
Appendix A Reduced Buffer Analysis

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

Appeal Fee: \$945 (For an appeal to the Mendocino County Board of Supervisors.)

SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning – Ukiah	No permits noted – RR-5(1)
Department of Transportation	Recommend approval – work does not impact a County road.
Environmental Health – Fort Bragg	DEH can clear – please see revised site plan.
Building Inspection – Fort Bragg	No comment.
SSU	Arch study recommended
Assessor	No response.
Department of Fish & Game	Recommend avoidance of wetlands.
Army Corps of Engineers	No response.
Coastal Commission	No response.
USFWS	No issues with project.
North Gualala Water Co	No comment.
Point Arena City Hall	No response.
GMAC	Recommend approval



OWNER: BRADLEY, Douglas & Barbara
 APNs: 143-121-05
 ADDRESS: 47100 HAVEN'S NECK DRIVE

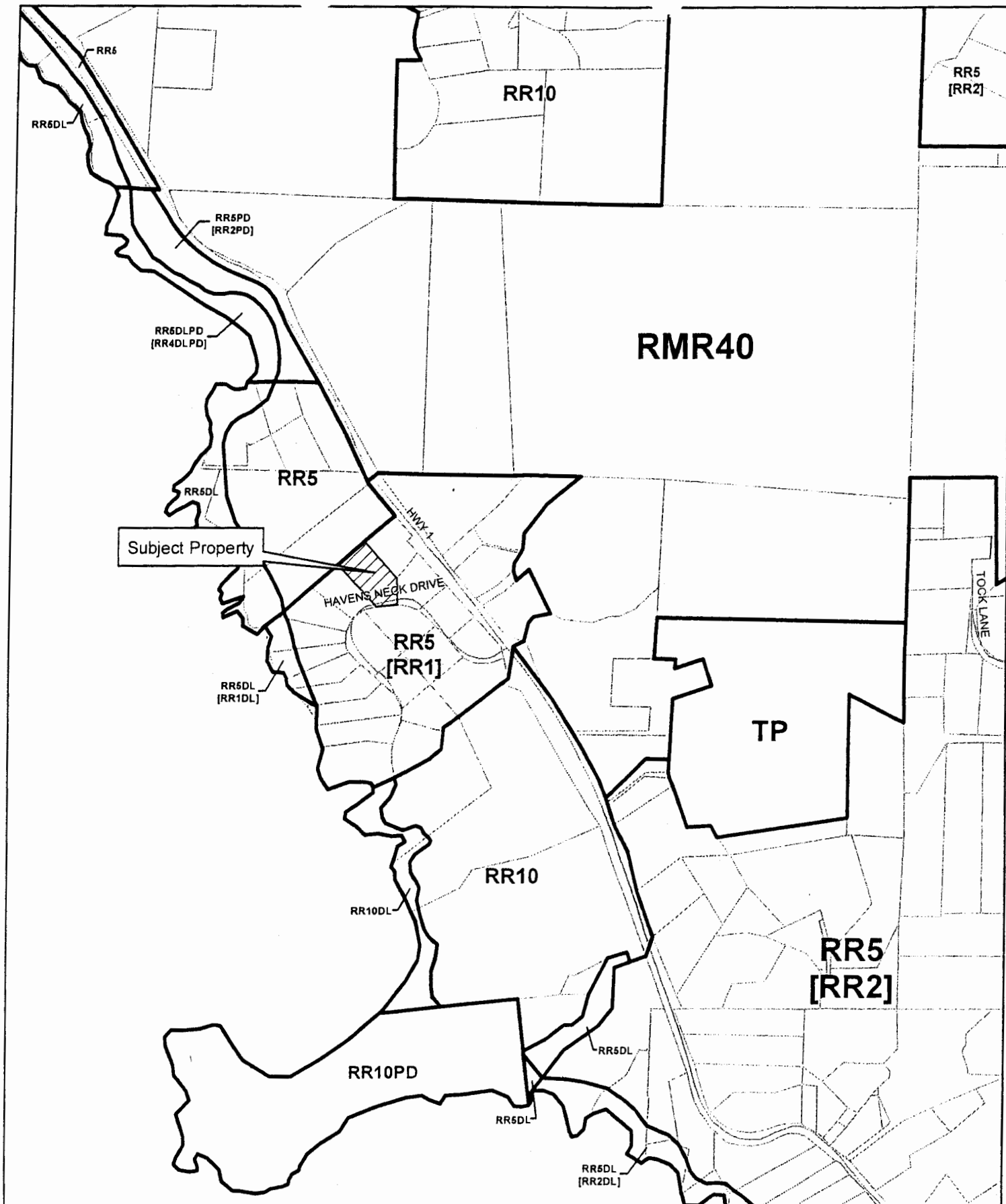
11 of 41

LOCATION MAP

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of October 2009)

5,000 2,500 0 5,000
 Feet





OWNER: BRADLEY, Douglas & Barbara
 APNs: 143-121-05
 ADDRESS: 47100 HAVEN'S NECK DRIVE

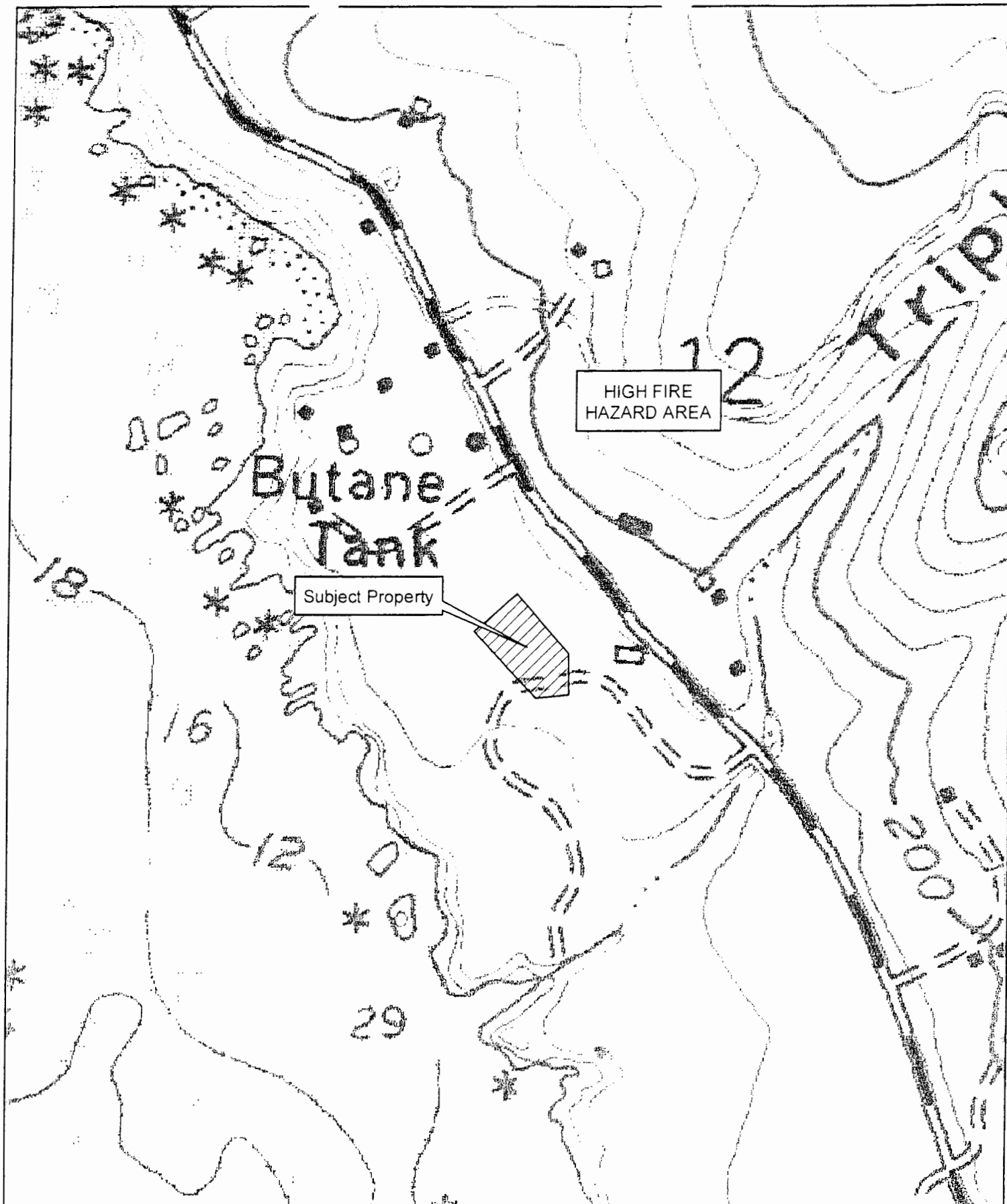
12 of 41

ZONING DISPLAY MAP

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of October 2009)

400 200 0 400 Feet





OWNER: BRADLEY, Douglas & Barbara
APNs: 143-121-05
ADDRESS: 47100 HAVEN'S NECK DRIVE

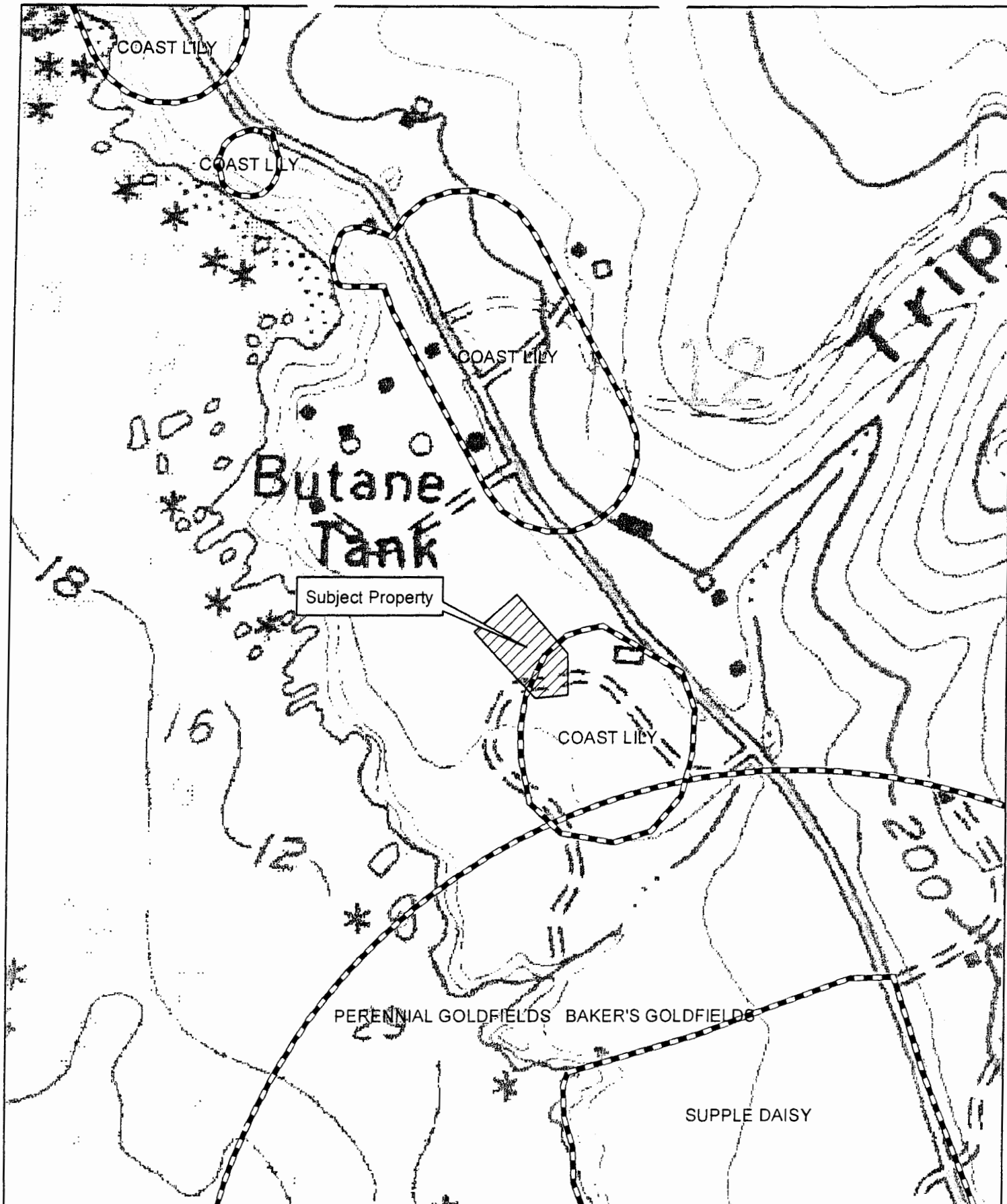
13 of 41

FIRE HAZARD SEVERITY ZONES
SOUTH COAST RURAL FIRE PROTECTION DISTRICT

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of October 2009)

200 100 0 200
Feet





OWNER: BRADLEY, Douglas & Barbara
 APNs: 143-121-05
 ADDRESS: 47100 HAVEN'S NECK DRIVE

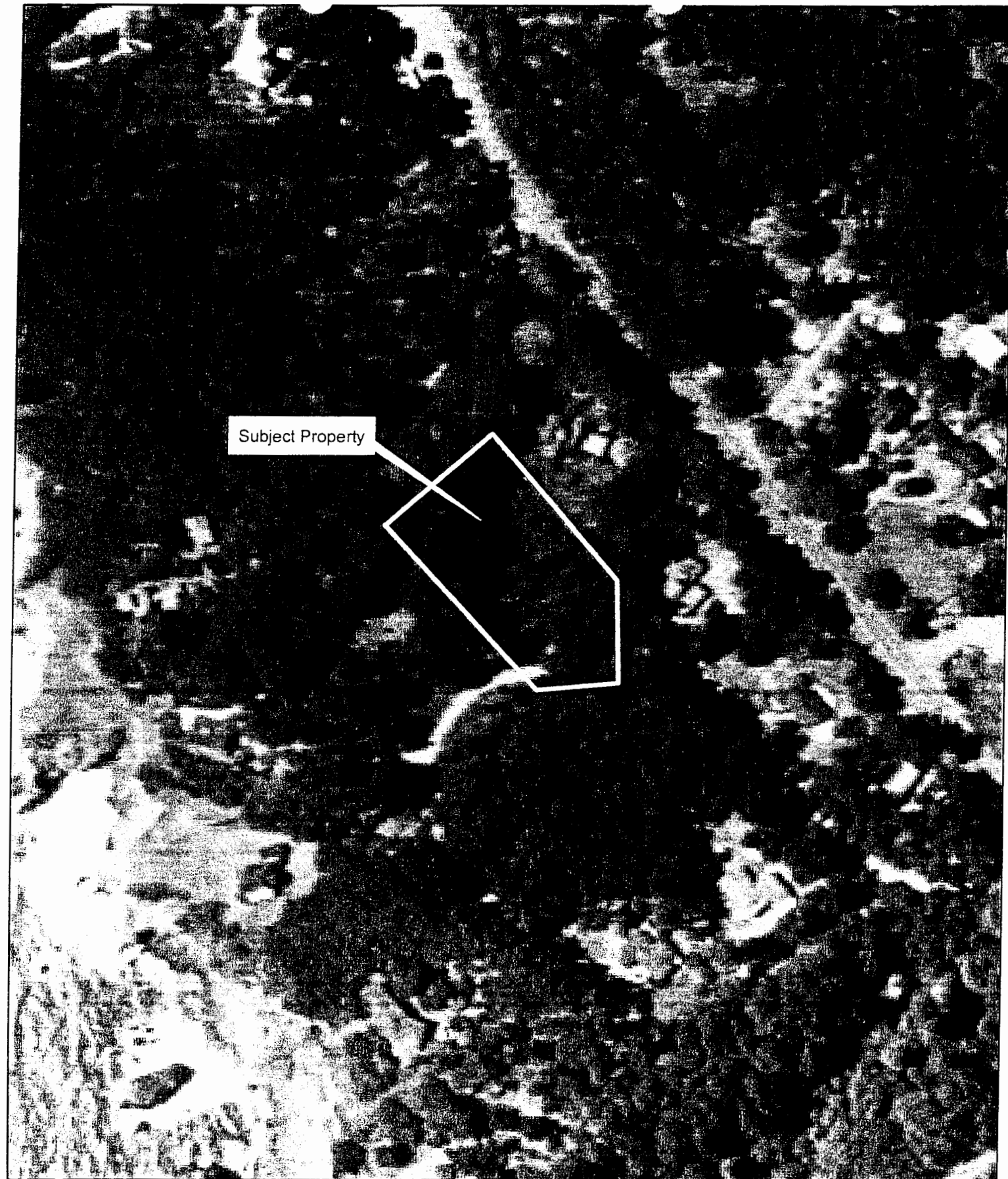
14 of 41

CALIFORNIA NATURAL DIVERSITY
 DATABASE RAREFIND (July 2010)

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of October 2009)

200 100 0 200
 Feet





OWNER: BRADLEY, Douglas & Barbara
APNs: 143-121-05
ADDRESS: 47100 HAVEN'S NECK DRIVE

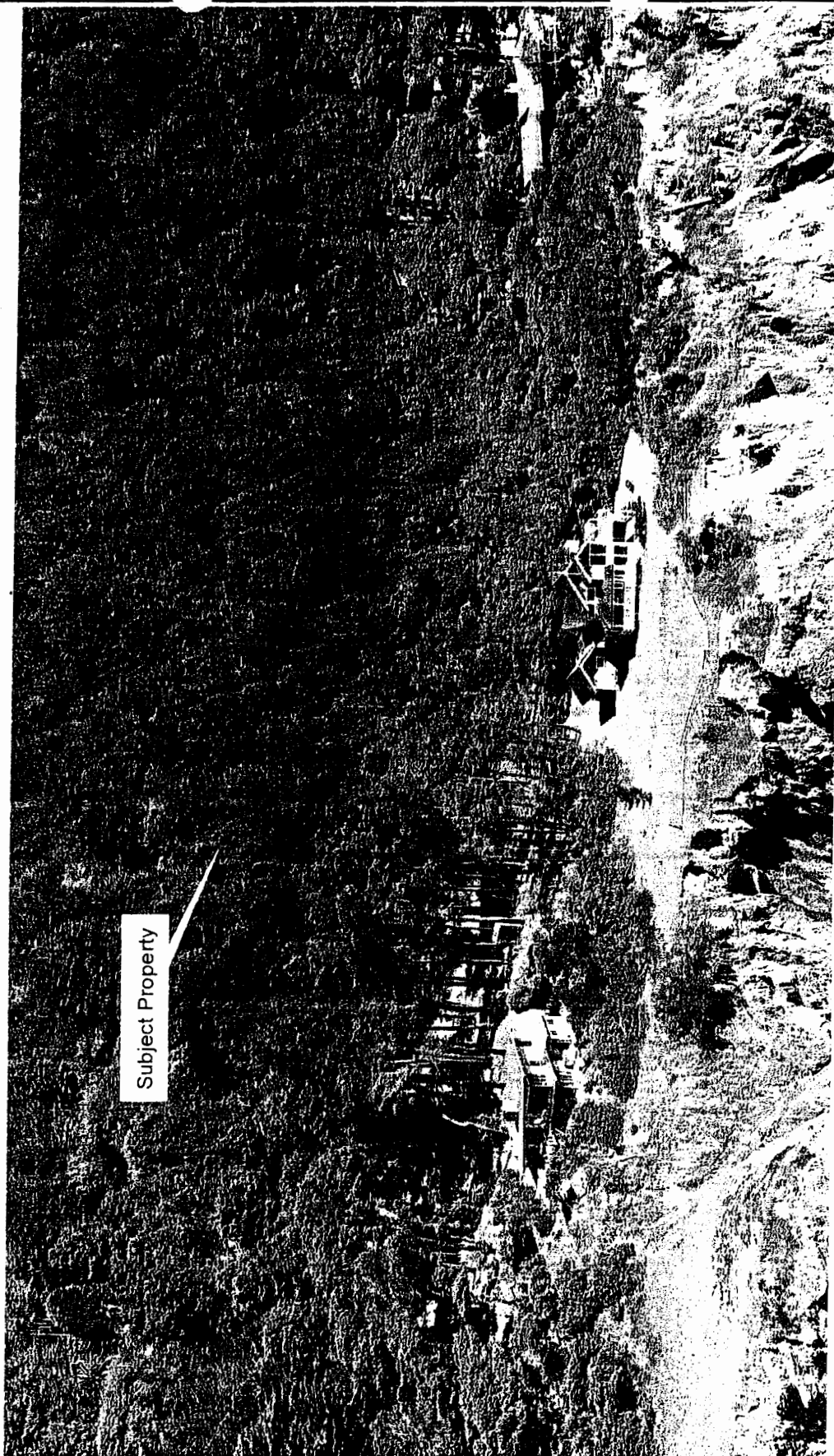
15 of 41

ORTHOPHOTO - June 2009

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off (Parcel lines are as of October 2009)

100 50 0 100 Feet





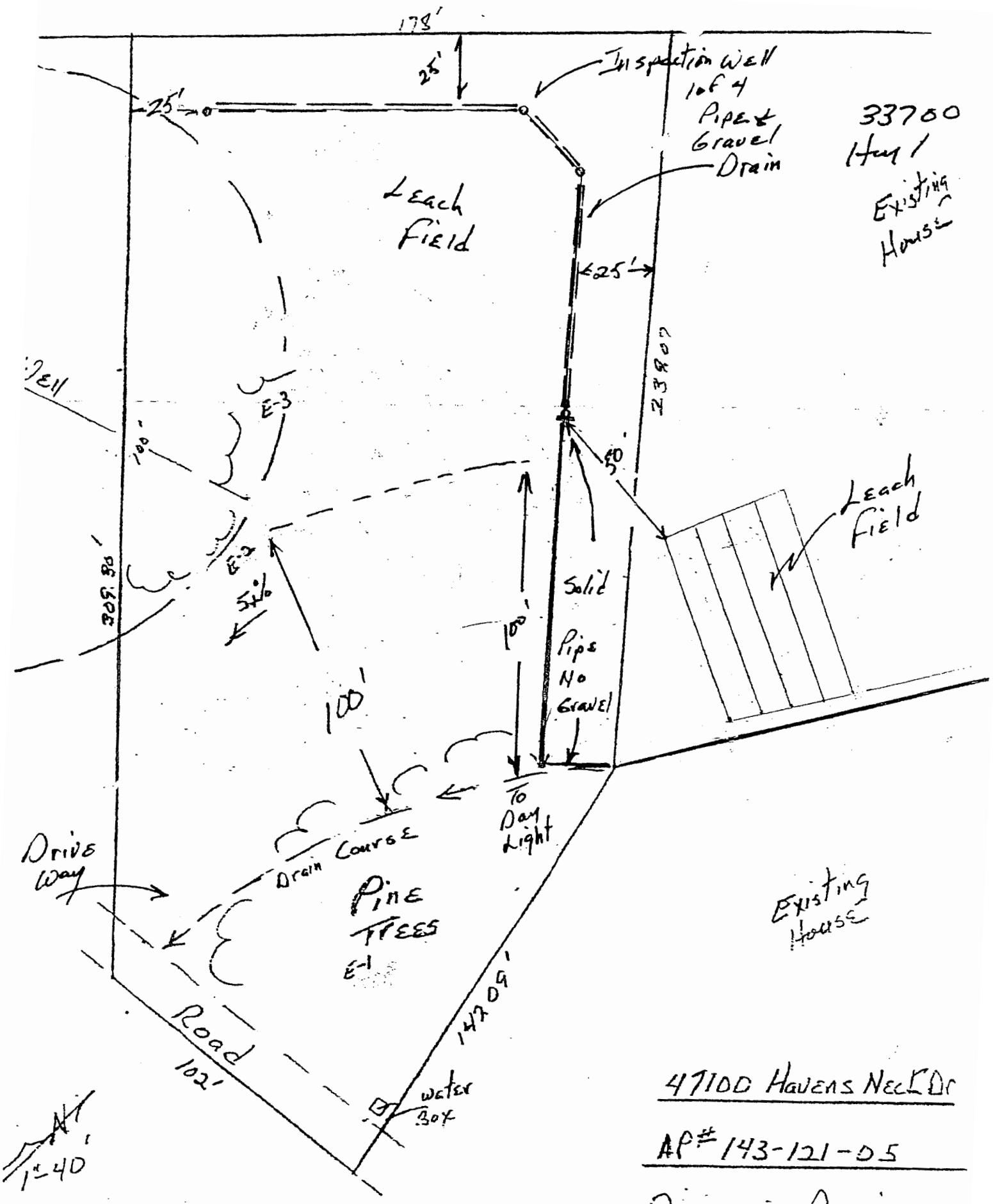
OWNER: BRADLEY, Douglas & Barbara
APNs: 143-121-05
ADDRESS: 47100 HAVEN'S NECK DRIVE

16 of 41

PHOTO OCTOBER 2009
CALIFORNIA COASTAL RECORDS PROJECT
COPYRIGHT resourcestrategies@usa.net

Not To Scale





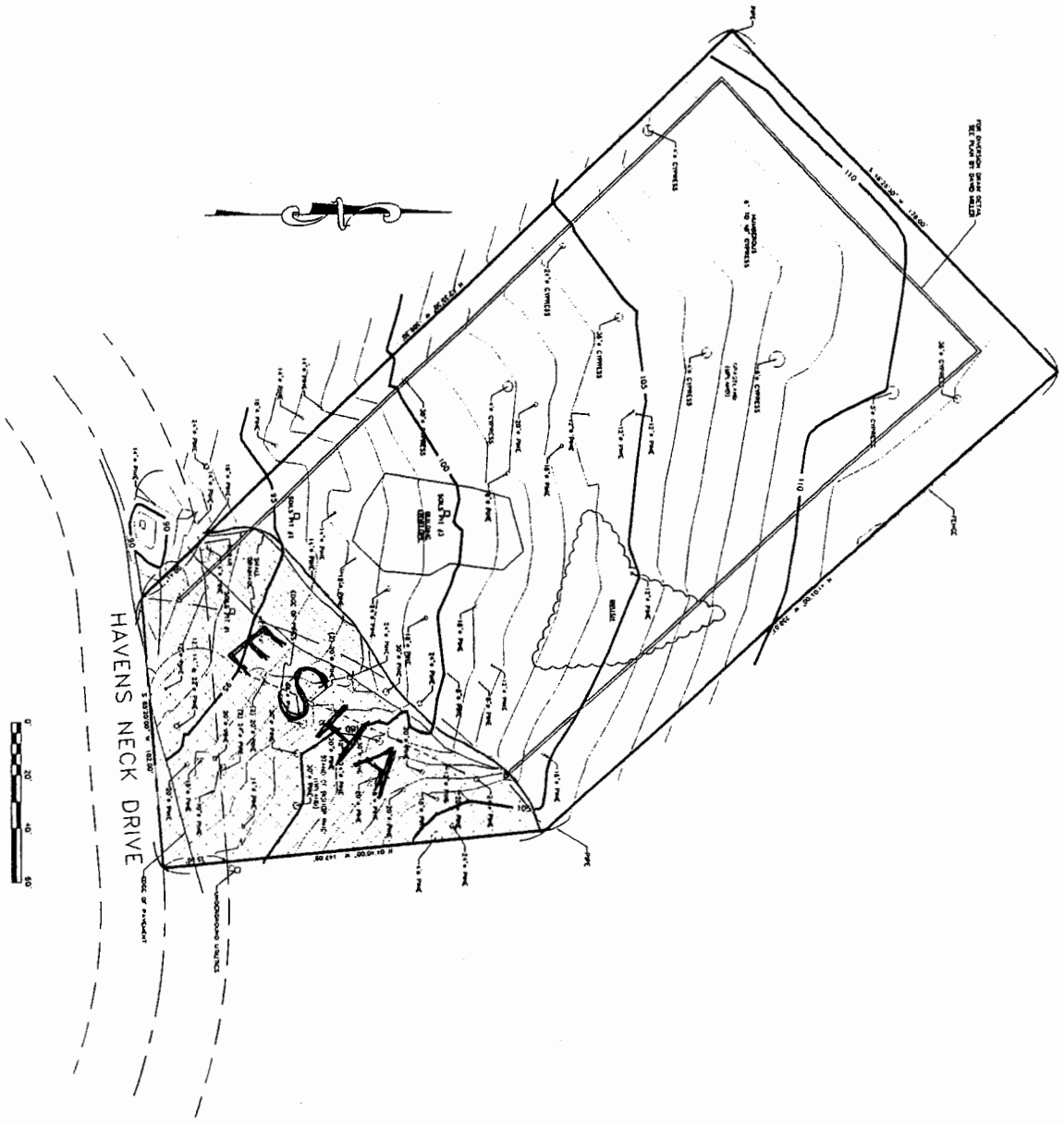
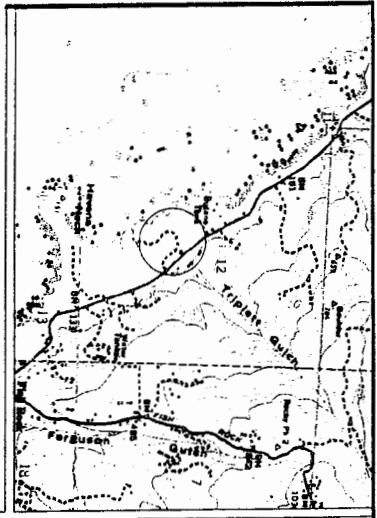
47100 HAVENS NECDR

AP# 143-121-05

Diversion Drain
8/3/10

VICINITY MAP

NO SCALE



NOTE:
- BASED ELEVATION
- OF A BENCHMARK
- SET BY THE
- SURVEYOR

	JOB: P09012.00	<p>TOPOGRAPHIC MAP</p> <p>LANDS OF BRADLEY</p> <p>LOT 5 OF HAVENS NECK SUBDIVISION</p> <p>ANCHOR RAY, CA</p>		<p>I.L. Welty & Associates</p> <p>703 North Main Street</p> <p>Fort Bragg, California 95437</p> <p>(707) 964-8865 (707) 964-5920 Fax</p> <p>www.ilwelty.com</p>
	DRAWN: EF			
	DATE: 5/09			
	SCALE: AS SHOWN			
APPROVED:				

Appendix A

Playalina Nelson, Botanical Consultant
P.O Box 5765
Santa Rosa, Ca. 95402
(707) 357-1134
playalina@gmail.com

November 28, 2010

County of Mendocino Department of Planning and Building Services
Teresa Spade, Planner II
790 South Franklin Street
Fort Bragg, CA. 95437

RE: Buffer Analysis as an addendum to the previously completed botanical report for the Coastal Development Permit Application No.: CDP 48-2007, APN 143-121-05, located at 47100 Havens Neck Drive.

Dear Teresa,

Based on Section 20.496.020 of the Division II of Title 20 – Coastal Zoning Code, Mendocino County, the following is a Buffer Analysis, as an addendum to the completed botanical report for the Bradley Property (June 16, 2010).

This buffer analysis is based on the diversion drain design dated 8/3/10, which is revised since the design was submitted as part of the botanical report. The proposed diversion drain would extend into the wetland for approximately 39' and replace approximately 76 sq.ft of the wetland in the far southeastern corner of the property. The trenching would be approximately 36" deep with 6" diameter piping. The majority of the piping would be perforated with the last 100' along the eastern boundary of the lot solid with no gravel.

The piping is designed to daylight into the existing drainage. Water from the diversion drain would flow into the existing drainage and then into the culvert in the northwest corner of the lot. No Bishop pine trees would be removed. The diversion drain would not extend into the Bishop-pine forest.

The diversion drain is expected to cause short term construction impacts. This Buffer Analysis addresses these short term impacts associated with the diversion drain. Mitigation measures have been included in section 1 (f) of this matrix. These measures include:

Mitigation measure a. The trenching should be hand dug. No heavy machinery shall be used on site to construct the ditch. This is to prevent unnecessary impacts to the ESHAs. Currently, there is no way to construct the diversion drain without extending into either the wetlands or the Bishop-pine forest.

Mitigation measure b. Wattles shall be placed along the northern side of the wetlands to prevent any run-off from entering the wetlands.

Mitigation measure c. Except for any necessary construction for the portion of the diversion drain that may extend into the wetland, no excess materials or equipment should be placed within the wetland. For protection, a temporary construction fence should be placed around the northern edge of the wetland which would also protect the Bishop pine forest.

Mitigation measure d. Following the implementation of the ditch, as best as possible, all excess soil should be used to fill the ditch. All excess soil that cannot be placed to fill the ditch should be taken off site. No soil or excess materials shall be placed into the wetland or Bishop pine forest. As best as possible, soil shall be placed back into the ditch and all native plants will be salvaged and placed over the ditch to become reestablished.

Any bare ground will be replanted with native plants and salvaged from onsite. These plants may include: tufted hair grass, wild strawberry, sedge and rush. Any native plants removed as a result of the ground disturbance should be replanted as soon as possible. Other plants used to revegetate bare areas should be divided and planted in the late fall and early winter. Revegetation work should be carried out by a qualified professional.

Mitigation measure e. The following invasive plants on the property shall be removed: *Cytisus scoparius* (scotch broom), *Erechtites minima* (New Zealand fireweed) and *Cirsium vulgare* (bull thistle). A basic invasive plant removal and monitoring plan should be completed that outlines goals and objectives for long term removal of the identified invasive plants. With out maintenance and monitoring, these plants will further spread and displace native plants and degrade the Northern Bishop pine forest and wetland. Also, any invasive plants that become established as a result of the ground disturbance should be removed.

Mitigation measure f. To ensure that these measures are performed, the appropriate site visits should be made by a qualified professional. A letter should be written and submitted to the County of Mendocino Planning and Building Department documenting the success of these mitigation measures and the protection of the wetland and the Bishop pine forest. A site visit should be performed in Spring 2011 to assess if invasive plants have become established and to determine the success of any revegetation efforts.

Thank you for your assistance with regards to this project and please let me know if you have any questions or if I can provide any more information.

Sincerely,

Playalina Nelson

BUFFER ZONE ANALYSIS

	Section 20.496.020 Coastal Zoning Ordinance
<i>(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such areas.</i>	The focus of this buffer matrix is to determine the least environmentally damaging alternative by considering all ecological factors involved with the proposed project. The proposed development is a diversion drain. At this time no other development is proposed.
<i>(1) Width. The width of the buffer area shall be a minimum of one hundred feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer areas shall not be less than fifty feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those use permitted in adjacent Environmentally Sensitive Habitat Areas.</i>	There is no buffer. The diversion drain extends partially into the wetland and to the edge of the Bishop-pine forest. No land divisions are proposed.
<i>(a) Biological Significance of Adjacent Lands. The degree of significance depends upon the habitat requirements of the species in the habitat area.</i>	The Bishop pine forest and wetlands extend on to adjacent parcels. The diversion drain will cause short term impacts that are mitigated as part of this Buffer Analysis.
<i>(b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in</i>	There is no buffer. There is no other location for the diversion drain. No sensitive plants or animals will be impacted. The trenching will cause short term ground

<i>part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development:</i>	disturbances.
<i>(b)(i) Nesting, feeding, breeding, resting or other habitat requirements of both resident and migratory fish and wildlife species</i>	No heavy machinery will be used. Hand trenching will be carried out. No trees will be removed or other roosting and nesting location will be impacted.
<i>(b)(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance</i>	Any wildlife species using or inhabiting the property are adapted to low levels of disturbance from the neighboring houses within the Haven's Neck Subdivision.
<i>(b)(iii) An assessment of the impact and activity levels of the proposed development</i>	With the implementation of the recommended mitigation measures the impact activity of the site will remain the same.
<i>(c) Susceptibility of Parcel to Erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided</i>	The trenching for the diversion drain will be 36" deep and approximately 1' wide and will not cause any erosion. Subsurface and above ground water will flow into the existing drainage. Bare ground will be replanted or will naturally revegetate. Straw wattles will be placed to prevent any run-off.
<i>(d) Use of Natural Topographic Features to Locate Development</i>	Based on design restrictions the diversion drain will be placed along the northwest and eastern boundaries of the property.
<i>(e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g. roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side roads, dikes, irrigation canals, flood control channels, etc. away from the ESHA.</i>	The diversion drain is designed to be located on the northwest and eastern boundaries of the property. There is a deep ditch that runs along the road. Currently there is no access on to the property off of Havens Neck Drive.
<i>(f) Lot Configuration and</i>	The parcel is within the Haven's Neck Subdivision. Every

<p><i>Location of Existing Development. Where an existing subdivision is present, similar buffer distances as existing may be used. However, mitigation measures shall be provided to provide additional protection.</i></p>	<p>parcel in the subdivision is developed except for the area in the center of the property that is designated as Open Space for the protection of the large wetlands and Bishop-pine forest. The surrounding parcels have minimal buffers from ESHAs. The following mitigation measures will reduce the expected impacts to a less than significant level:</p> <p><i>Mitigation measure a.</i> The trenching should be hand dug. No heavy machinery shall be used on site to construct the ditch. This is to prevent unnecessary impacts to the ESHAs. Currently, there is no way to construct the diversion drain without extending into either the wetlands or the Bishop-pine forest.</p> <p><i>Mitigation measure b.</i> Wattles shall be placed along the northern side of the wetlands to prevent any run-off from entering the wetlands.</p> <p><i>Mitigation measure c.</i> Except for any necessary construction for the portion of the diversion drain that may extend into the wetland, no excess materials or equipment should be placed within the wetland. For protection, a temporary construction fence should be placed around the northern edge of the wetland which would also protect the Bishop pine forest.</p> <p><i>Mitigation measure d.</i> Following the implementation of the ditch, as best as possible, all excess soil should be used to fill the ditch. All excess soil that cannot be placed to fill the ditch should be taken off site. No soil or excess materials shall be placed into the wetland or Bishop pine forest. As best as possible, soil shall be placed back into the ditch and all native plants will be salvaged and placed over the ditch to become reestablished.</p> <p>Any bare ground will be replanted with native plants and salvaged from onsite. These plants may include: tufted hair grass, wild strawberry, sedge and rush. Any native plants removed as a result of the ground disturbance should be replanted as soon as possible. Other plants used to revegetate bare areas should be divided and planted in the late fall and early winter. Revegetation work should be carried out by a qualified professional.</p> <p><i>Mitigation measure e.</i> The following invasive plants on the property shall be removed: <i>Cytisus scoparius</i> (scotch broom), <i>Erechtites minima</i> (New Zealand fireweed) and <i>Cirsium vulgare</i> (bull thistle). A basic invasive plant removal and monitoring plan should be completed that outlines goals and objectives for long term removal of the identified invasive plants. With out maintenance and monitoring, these plants will further spread and displace native plants and</p>
--	--

	<p>degrade the Northern Bishop pine forest and wetland. Also, any invasive plants that become established as a result of the ground disturbance should be removed.</p> <p><i>Mitigation measure f.</i> To ensure that these measures are performed, the appropriate site visits should be made by a qualified professional. A letter should be written and submitted to the County of Mendocino Planning and Building Department documenting the success of these mitigation measures and the protection of the wetland and the Bishop pine forest. A site visit should be performed in Spring 2011 to assess if invasive plants have become established and to determine the success of any revegetation efforts.</p>
<i>(g) Type and Scale of Development Proposed. Such evaluations will be made on a case-by-case basis depending upon the resources involved and the degree to which adjacent lands have been developed and the type of development in the area.</i>	As stated above the property is zoned for residential development and is part of a subdivision. Currently, only a diversion drain is proposed to lower the water table to make the property suitable for a future septic system.
<i>(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g. for a wetland from the landward edge of the wetland; for a stream from the landward edge of the riparian vegetation or the top of the bluff.)</i>	There is no buffer. The diversion drain extends into the wetlands and up to the edge of the Bishop-pine forest.
<i>(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.</i>	No land division is proposed on the subject lot. .
<i>(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:</i>	
<i>(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and</i>	The trench shall be hand dug. No heavy machinery shall be used until access on to the site is designed and approved. The one time trenching and placing of the pipe will be mitigated to a less than significant level with the proposed mitigation measures. And specifically, the proposed invasive plant removal will enhance and greatly improve the site. The

<i>maintain natural species diversity.</i>	functional capacity of the wetlands and the Bishop-pine forest will remain the same. Removing invasive plants will improve native plant diversity.
<i>(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.</i>	See (4)(e).
<i>(c) Development shall be sited and designed to prevent impacts, which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.</i>	Based on design restrictions there is no other location for the diversion drain. The function of the diversion drain is to lower the water table so that the site may be suitable for a septic system and then in the future a potential single family residence. Although the water table would be lowered, the diversion drain is designed to allow water to flow based on the existing topography either through subsurface water through the perforated piping or through the solid piping that would daylight into the existing drainage. The diversion drain is one time ground disturbance that with the proposed mitigation measures will be mitigated to a less than significant level. The recommended mitigation measures will prevent the degradation of the wetland and the Bishop pine forest.
<i>(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.</i>	See (4)(a).
<i>(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as</i>	There is no other location for the diversion drain. The proposed diversion drain would extend into the wetland for approximately 39' and replace approximately 76 sq.ft of the wetland in the far southeastern corner of the property. Based on the one time impact of the diversion drain and the

planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.	recommended mitigation measures; wetland creation of at least a 2:1 is not recommended at this time. The hydrological and biological function of the wetland will remain the same. Should any future development be proposed, than a wetland creation and management plan may need to be completed based on the scope and scale of future development on the property.
(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.	Mitigation measures are recommended as part of this Buffer Analysis to reduce these impacts to a less than significant level. It is expected that the vegetation will become reestablished following the ground disturbance and run-off will be mitigated with straw wattles. Noise will be minimal with the trenches dug by hand. Human intrusion will be eliminated with the placement of the temporary fencing.
(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.	Riparian vegetation will not be lost. The diversion drain will extend into the wetland and daylight into the existing drainage. The wetland function will remain the same and the vegetation will regrow where the piping will be. Bare ground will be replanted or will become naturally revegetated. There is no buffer distance from the edge of the diversion drain to the ESHAs.
(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.	There will be no above ground structures based on the proposed diversion drain.
(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.	The existing drainage pattern will remain the same. Water will flow into the existing drainage and then into the culvert that is in the northwest corner of the property.
(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to	The conveyance of water will remain the same. Above ground and subsurface water will flow in the same direction but the water table will be lowered to allow for a potential septic system. There will be no above ground structures. There will be no foundations or areas impervious structures that would cause increased run-off. Bared ground will become reestablished with vegetation.

<p>convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.</p>	
<p>(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.</p>	<p>This buffer analysis has provided appropriate mitigation measures that, if adopted, are intended to reduce potential impacts that may occur as result of the proposed development to a less-than-significant level. These mitigation measures are proposed to address both short and long term impacts of the diversion drain. There should be oversight to ensure that the mitigation measures are successfully implemented.</p>



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

790 SOUTH FRANKLIN STREET • FORT BRAGG • CALIFORNIA • 95437

IGNACIO GONZALEZ, DIRECTOR

Telephone 707-964-5379

FAX 707-961-2427

www.co.mendocino.ca.us/planning

RECEIVED

JUL 12 2010

CALIFORNIA
COASTAL COMMISSION

July 9, 2010

Planning-Ukiah
DOT
Environmental Health
Building Inspection (FB)
Assessor

Dept of Fish & Game
Army Corps of Engineers
✓ Coastal Commission
US Fish & Wildlife Svc
N Gualala Water Co

GMAC
Pt Arena City Hall

*CASE#: CDP #48-2007
OWNER: Douglas & Barbara Bradley
REQUEST: Install a groundwater intercept drain to prepare the site for testing associated with a design for a potential future on-site septic disposal system.
APPEALABLE AREA: Yes
LOCATION: In the Coastal Zone, 1 ½± miles north of Anchor Bay, on the north side of Haven's Neck Drive, approximately 500 feet north of its intersection with Highway One at 47100 Haven's Neck Drive (APN 143-121-05).
*PROJECT COORDINATOR: Teresa Spade
RESPONSE DUE DATE: July 26, 2010

*PLEASE NOTE THE CASE NUMBER AND NAME OF PROJECT COORDINATOR WITH ALL CORRESPONDENCE TO THIS DEPARTMENT.

Attached to this form is information describing the above noted project(s). The County Department of Planning and Building Services is soliciting your input, which will be used in staff analysis. If we do not receive a response within fifteen (15) days, we will assume no response is forthcoming.

You are invited to comment on any aspect of the proposed project(s). Please address any concerns or recommendations on environmental considerations and specific information regarding permits you may require to the project coordinator at the above address.

REVIEWED BY: Name _____ Department _____ Date _____

_____ No Comment

_____ Comment to follow

_____ Comments attached or Below

COASTAL DEVELOPMENT PERMIT REVIEW SHEET

<input checked="" type="checkbox"/> STANDARD	<input type="checkbox"/> ADMINISTRATIVE	<input type="checkbox"/> MODIFICATION	CDP # 48-2007
<input type="checkbox"/> USE PERMIT	<input type="checkbox"/> VARIANCE	<input type="checkbox"/> _____	DATE FILED: 9-10-07
APPEALABLE AREA: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	GOV'T CODE DATE:		

OWNER: Douglas D. & Barbara A. Bradley

APPLICANT: Douglas D. Bradley

REQUEST: Install a groundwater intercept drain to prepare the site for testing associated with a design for a potential future on-site septic disposal system.

LOCATION: In the Coastal Zone, 1 ½ miles north of Anchor Bay, on the north side of Haven's Neck Drive, approximately 500 feet north of its intersection with Highway One at 47100 Haven's Neck Drive (APN 143-121-05).

STREET ADDRESS: 47100 Haven's Neck Drive APN: 143-121-05

GENERAL PLAN: RR-5 [RR-1] ZONING: RR: L-5 [RR: L-1] PARCEL SIZE: 1.3± acres

EXISTING USES: Undeveloped SUPERVISORIAL DISTRICT: 5

TOWNSHIP: RANGE: SECTION: USGS QUAD#:

RELATED CASES:

PERMITS ON HOLD PENDING CDP:

REFERRAL AGENCIES:

<input checked="" type="checkbox"/> Planning (Ukiah)	<input checked="" type="checkbox"/> Coastal Commission	<input type="checkbox"/> Sewer District
<input checked="" type="checkbox"/> Environmental Health (FB)	<input type="checkbox"/> Caltrans	<input checked="" type="checkbox"/> Water District NGWC
<input checked="" type="checkbox"/> Building Inspection (FB)	<input checked="" type="checkbox"/> Northwest Information Center	<input type="checkbox"/> Fire District
<input checked="" type="checkbox"/> Transportation	<input checked="" type="checkbox"/> Department of Fish & Game	<input type="checkbox"/> Community Svcs
<input type="checkbox"/> MHRB	<input type="checkbox"/> Department of Parks & Recreation	<input type="checkbox"/> City Planning
<input checked="" type="checkbox"/> Assessor	<input type="checkbox"/> RWQCB	<input type="checkbox"/> School District
<input type="checkbox"/> County Water Agency	<input checked="" type="checkbox"/> US Fish & Wildlife Service	<input type="checkbox"/>
<input type="checkbox"/> Air Quality Management District	<input checked="" type="checkbox"/> Army Corps of Engineers	<input type="checkbox"/>
<input type="checkbox"/> ALUC	<input type="checkbox"/> Trails Advisory Council	<input type="checkbox"/> Friends of Schooner Gulch
<input checked="" type="checkbox"/> Gualala Municipal Advisory Council	<input type="checkbox"/> Native Plant Society	<input checked="" type="checkbox"/> Point Arena City Hall

ADDITIONAL INFORMATION:

ASSESSOR'S PARCEL #: 143-121-05

PROJECT COORDINATOR: Teresa Spade

PREPARED BY: TS

DATE: 7-7-10

ENVIRONMENTAL DATA
(To be completed by Planner)

ENVIRONMENTAL DATA

- | Yes | No | |
|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. CDP Exemption or CDP Exclusion. |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. LUP Map Number. 30 Anchor Bay |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 3. Blufftop Parcel. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. Highly Scenic Area: East or West of Hwy 1. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 5. Adjacent to State Forest/Park/Recreation Area. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. Within/Adjacent to Agriculture Preserve or Timberland Production. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 7. Within Mendocino Historic Preservation District: Zone A or B: |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 8. Alquist-Priolo Earthquake Fault Zone (Manchester to Gualala). |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 9. Floodplain/Floodway Map. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 10. Natural Diversity Data Base. coast lotus present, also NBPF |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 11. ESHA - Riparian, Wetland, Rare Plants, Sand Dunes, Pygmy Vegetation/Soils. wetlands & NBPF |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 12. Building Envelopes/Buffer Zones. Development proposed in wetlands & NBPF |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 13. Geotechnical Hazards: Coastal Bluff, >20% Slopes. |
| <input type="checkbox"/> | <input type="checkbox"/> | 14. Coastal Groundwater Study Zone: CWR |
| <input type="checkbox"/> | <input type="checkbox"/> | 15. Fire Hazard Severity Classification: <input type="checkbox"/> LRA <input type="checkbox"/> SRA-CDF# n/a Moderate, High, Very High |

CEQA Status: _____

ADDITIONAL INFORMATION:

COUNTY OF MENDOCINO
DEPT OF PLANNING & BUILDING SERVICES
790 SOUTH FRANKLIN STREET
FORT BRAGG, CA 95437
Telephone: 707-964-5379

Case No(s) 48-2007
CDF No(s) _____
Date Filed _____
Fee _____
Receipt No. _____
Received by _____
Office Use Only

COASTAL DEVELOPMENT PERMIT APPLICATION FORM

Name of Applicant <u>Douglas D. Bradley</u>	Name of Owner(s) <u>Douglas D. Bradley and Barbara A. Bradley</u>	Name of Agent _____
Mailing Address <u>P.O. BOX 784 DIABLO, CA. 94528</u>	Mailing Address <u>1047 CRYSTAL DR. FRANKFORT, MI 49635</u>	Mailing Address _____
Telephone Number <u>925-837-8716</u>	Telephone Number <u>231-352-5406 or 925-837-8716</u>	Telephone Number _____

Project Description:

Install Groundwater Intercept Drain to prepare for
approved septic system.

Living Directions

The site is located on the North (N/S/E/W) side of Havens Neck Drive (name road)
approximately 300 (feet/miles) North (N/S/E/W) of its intersection with
CA State Hwy 1 (provide nearest major intersection).

Assessor's Parcel Number(s)

143-121-05

Parcel Size

1.308

☐ Square Feet
☒ Acres

Street Address of Project

47100 Havens Neck Drive
Gualala, CA 95445

Please note: Before submittal, please verify correct street address with the Planning Division in Ukiah.

COASTAL DEVELOPMENT PERMIT APPLICATION QUESTIONNAIRE

The purpose of this questionnaire is to relate information concerning your application to the Planning & Building Services Department and other agencies who will be reviewing your project proposal. The more detail that is provided, the easier it will be to promptly process your application. Please answer all questions. Those questions which do not pertain to your project, please indicate "Not Applicable" or "N/A".

1. Describe your project and include secondary improvements such as wells, septic systems, grading, vegetation removal, roads, driveways, propane tanks, oil tanks, water storage tanks, solar panels, etc.

Install Groundwater Intercept Drain to prepare for approved septic system; type to be determined after drain system and wet weather testing.

2. If the project is residential, please complete the following:

TYPE OF UNIT		NUMBER OF STRUCTURES/UNITS	EXISTING SQ. FEET PER STRUCTURE	PROPOSED SQ. FEET PER STRUCTURE	TOTAL SQ. FEET PER STRUCTURE
<input type="checkbox"/>	Single Family				
<input type="checkbox"/>	Mobile Home				
<input type="checkbox"/>	Duplex/Multifamily				
<input type="checkbox"/>	Detached Structures				
	(List individually)				

— N/A

- Are there existing structures on the property? ☐ Yes ☒ No
If yes, describe below and identify the use of each structure on the site plan.

Utilities will be supplied to the site as follows:

- A. Electricity
- ☐ Utility Company (service exists to the parcel).
- ☐ Utility Company (requires extension of services to site: _____ feet _____ miles)
- ☐ On Site generation, Specify: _____
- ☐ None

- B. Gas
☐ Utility Company/Tank
☐ None

- C. Telephone: ☐ Yes ☐ No

5. Will there be any new exterior lighting? ☐ Yes ☒ No
If yes, provide lighting details and specifications for all exterior lighting fixtures. Please ensure that all fixtures are downcast and shielded. Identify the location of all exterior lighting on the site plan and building plans.

6. What will be the method of sewage disposal?

- ☐ Community sewage system, specify supplier _____
☒ Septic Tank (indicate primary + replacement leachfields on plot plan) *Note: Not part of this project; for future use.*
☐ Other, specify _____

7. What will be the domestic water source?

- ☒ Community water system, specify supplier Bower Water Co.
☐ Well ☐ On-site ☐ Off-site
☐ Spring ☐ On-site ☐ Off-site
☐ Other, specify _____

8. Is any grading or road/driveway construction planned? ☐ Yes ☒ No

Estimate the amount of grading in cubic yards: _____ c.y. If greater than 50 cubic yards or if greater than 2 feet of cut or 1 foot of fill will result, please provide a grading plan.

Estimate the length of the proposed road/driveway: _____ feet.

Describe the terrain to be traversed (e.g., steep, moderate slope, flat, etc.).

9. Will vegetation be removed on areas other than the building sites and roads? ☐ Yes ☒ No
If yes, explain:

How many trees will be removed to implement the project: _____. Indicate on the site plan all trees to be removed which are greater than 12-inches in diameter (measured four feet from the ground). If applicable, please indicate on the site plan the size, location and species of all on-site trees that provide screening from public view areas.

10. Will the proposed development be visible from:

- A. State Highway 1? ☐ Yes ☒ No
B. Park, beach, or recreation area? ☐ Yes ☐ No

If you answered yes to either question, explain.

Project Height. Maximum height of structure(s): _____ feet N/A

Describe all exterior materials and colors of all proposed structures:

Siding material _____	Color _____
Trim material _____	Color _____
Chimney material _____	Color _____
Roofing material _____	Color _____
Window frame material _____	Color _____
Door material _____	Color _____
Fencing material _____	Color _____
Retaining walls material _____	Color _____
Other exterior materials _____	Color _____

N/A

Are there any water courses, anadromous fish streams, sand dunes, rookeries, marine mammal haul-out areas, wetlands, riparian areas, pygmy vegetation, rare or endangered plants, animals or habitat which support rare and endangered species located on the project site or within 100 feet of the project site?

Small seasonal riparian area close to front (South
border) of lot

If the project is commercial, industrial, or institutional, complete the following:

Total square footage of all structures: _____
Estimated employees per shift: _____
Estimated shifts per day: _____
Type of loading facilities proposed: _____

Will the proposed project be phased? ☐ Yes ☐ No

If Yes, explain your plans for phasing.

N/A

Parking will be provided as follows:

Number of Spaces Existing: _____ Proposed: _____ Total: _____

Number of standard spaces: _____ Size: _____

Number of handicapped spaces: _____ Size: _____

N/A

- Effective Jan 1 2003

Mendocino County Division of Environmental Health

Policy 42.11.04

GROUNDWATER INTERCEPT DRAINS

Intent and Benefit

The intent of this policy is for the Division to become more thorough and proactive in the testing, design and construction inspection of groundwater intercept drains (GID). The benefit will be that greater assurance can be given the applicant that a critical system component has been properly evaluated, designed and installed to minimum standards.

Background

There are very minimal standards for the testing, design and construction of intercept drains. The standard of practice was to allow the complete installation of the intercept drain prior to construction inspection. Once completely installed, construction inspections are of little value. The critical inspection control points are deeply buried.

Statement of the Problem

In some cases intercept drains are not effective in lowering the water table as expected. However, because testing in the specific drain area is not required and construction inspections are not thorough, it is difficult to pinpoint the cause of the drain failure when it occurs.

If the drain is a critical system component then it is deserving of specific and thorough evaluation and design. It must also be inspected during construction at critical control points to measure construction compliance with the design plans and specifications.

Implementation

A) TESTING

A good groundwater intercept drain design will depend on adequate testing. In order to reasonably assure the drain will key into the impermeable layer along the alignment, it is the policy of DEH to require 3 test profiles. One at each of the two ends and a third at the mid-point of the gravel filled portion of the intercept drain alignment. This can be accomplished with either a backhoe or hand auger. The depth to the impermeable soil layer shall be reported in the SER.

B) DESIGN

Certain design factors are important to the initial and continued satisfactory operation of the groundwater intercept drain.

1. It is the policy of DEH to require that the bottom of the drain extend a minimum of 1 foot into the impermeable layer or down to the soil/rock interface of hard bedrock. This is to assure that the invert of the drainpipe is at or below the impermeable layer.
2. The drain pipe shall be a minimum of 3 inch rigid perforated drain pipe on a minimum grade of 0.25% (3 inches per 100ft) and placed on a minimum 3 inch gravel base (maximum 6 inch gravel base). This is to insure the pipe is not imbedded or crushed into the trench bottom reducing its carrying capacity.

GROUNDWATER INTERCEPT DRAINS

3. The GID trench width may be 12 inches or less and gravel may be 1 1/2" or 3/4" size.
4. The perforated drainpipe shall have screw capped clean-outs brought up to natural grade at the two ends and the mid point, if the mid-point is the high point and outlets on both sides. Clean-outs insure that continuity can always be checked, maintenance performed and the line flushed as needed.
5. The outlet shall be covered with a screen or perforated pipe that has maximum of 1/4 inch openings. This is to assure that rodents or other animals do not block the drain with their nests. Outlets are encouraged at both ends of the GID. The proposed drain discharge point shall not adversely impact down-slope sewage systems or other neighboring improvements.
6. GID drawings shall be provided showing scaled cross-sectional and plan views.
7. Groundwater monitoring well(s) shall be installed down-slope of the GID to monitor the GID effectiveness.

C) INSPECTIONS

DEH inspection of the groundwater intercept drain shall include the following critical control points as a minimum. Alternately, a qualified professional designer may inspect and certify to DEH these same critical control points as a minimum.

OPEN TRENCH

1. The length of the open trench (prior to the placement of the drain rock) shall be inspected for the presence of the impermeable layer being keyed into and the depth of the drain per design. This may require phased inspections and close coordination between EH staff and the contractor. The minimum slope (0.25%) of the trench bottom shall be verified at this time with an eye level, or builder's level or laser level.
2. Do not enter the trench if greater than 5' deep or if it appears unstable in anyway.
3. The type of drainpipe used, gravel bedding and filter fabric or other specified materials shall be checked for compliance with the specifications.

FILLED TRENCH

4. The presence and proper location of clean-outs shall be checked in addition to the final lift of the gravel fill to the specified elevation.
5. The presence of a proper rodent screen shall be checked at the time of final inspection.
6. The presence of ground water monitoring wells installed to the depth of the impervious layer on the down-slope side of the GID shall be verified.

D) ALTERNATE OPERATIONAL DEMONSTRATION

A GID may be approved without DEH (or a qualified professional designer) inspection if it can:
1) be demonstrated to the satisfaction of DEH to have effectively lowered ground water to Basin Plan criteria, and demonstrated compliant through groundwater monitoring at the two ends of the most distant proposed trench location and 2) be shown that the installation of cleanouts, screened outlets and monitoring wells are consistent with this policy.

Effective Date: 1/1/2005

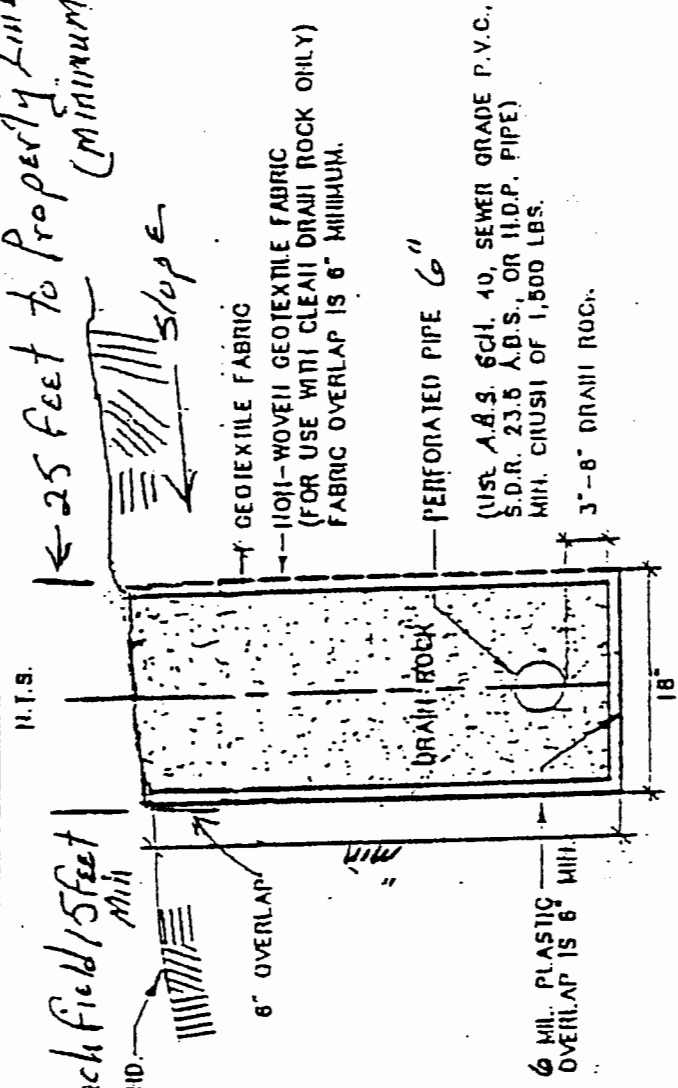
Revised Date: _____

Note:

Director's Initials JDR

INTERCEPTOR DRAIN DETAIL

DRAIN CROSS SECTION



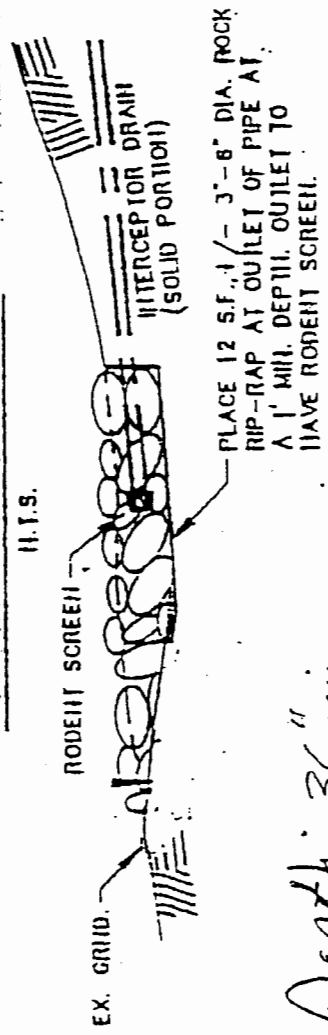
DRAIN ROCK ALTERNATIVES

- 1) DRAIN ROCK TO CONFORM TO CAL. TRANS STD. SPECS. FOR CLASS 2 PERMEABLE MATERIAL. (SEE CHART)
- 2) CLASS 2 PERMEABLE MATERIAL SHALL HAVE A DURABILITY INDEX OF NOT LESS THAN 40 AND A SAND EQUIVALENT VALUE OF NOT LESS THAN 75.
- 3) ANY CLEAN DRAIN ROCK (3/4" - 1 1/2" DIA.) OR WASHED #4 GRAVEL AND A NON-WOVEN GEOTEXTILE FABRIC WEIGHING AT LEAST 4 OUNCES PER SQ. YD.

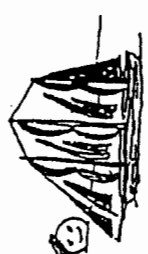
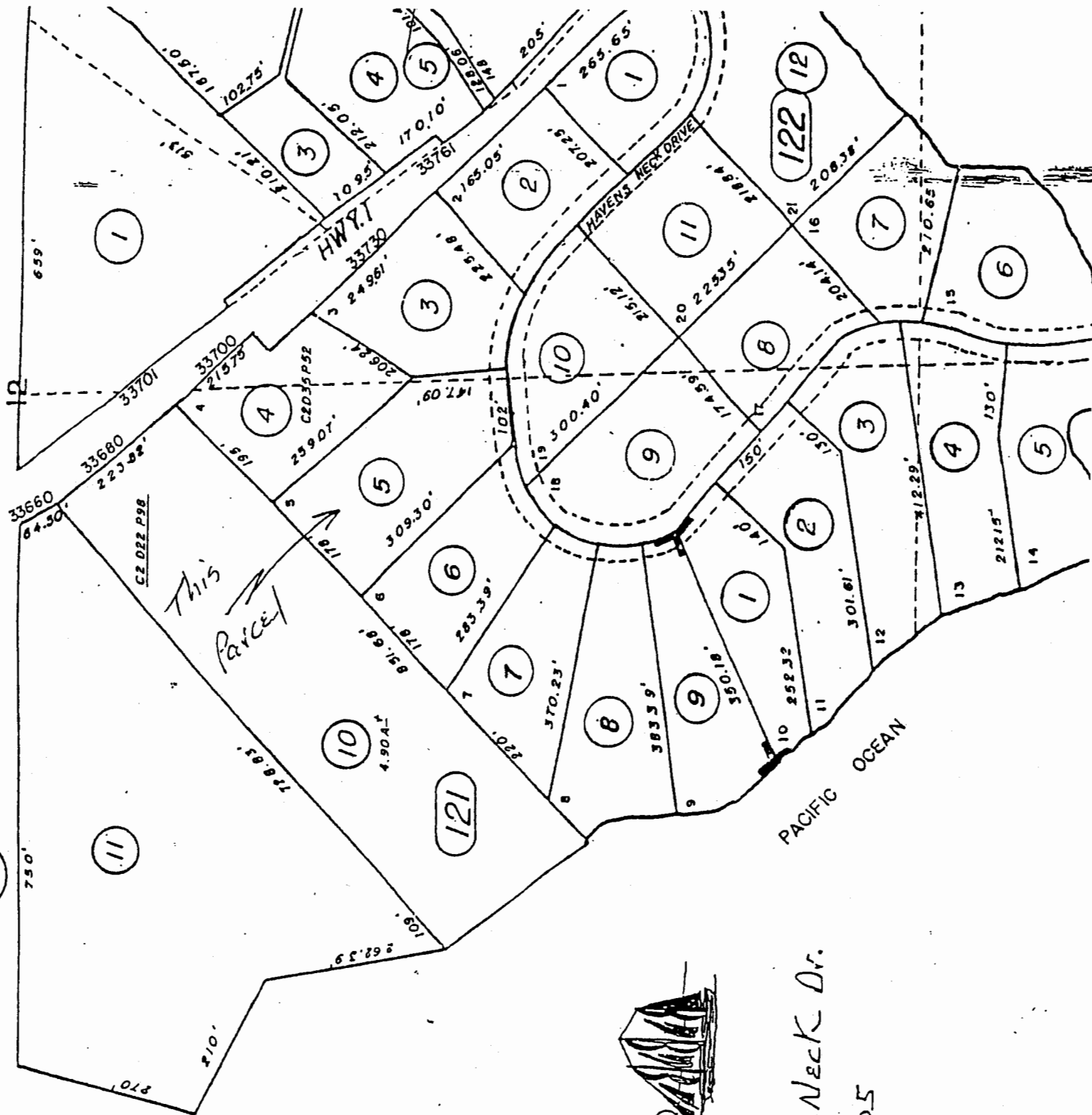
CLASS 2

SIEVE SIZE	% PASSING
1	100
3/4"	80-100
3/8"	40-100
10. 4	25-40
10. 0	18-33
10. 20	5-15
10. 50	0-7
10. 100	0-3

DRAIN OUTLET DETAIL



Drain Depth: 36"



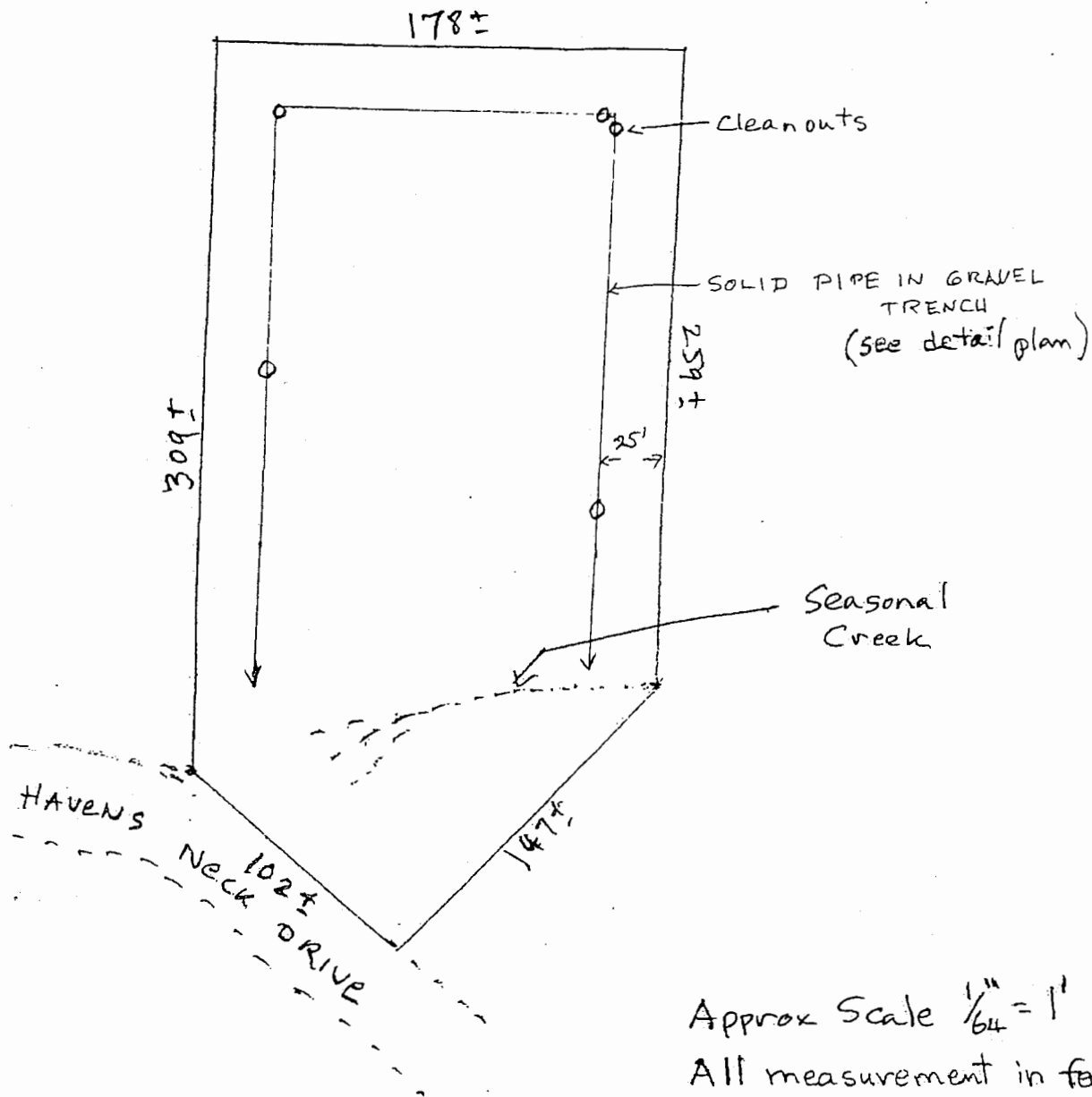
47100 Havens Neck Dr.
AP# 143-121-05

3-30-90

DIE PLAN

parcel 143-121-05
M. docino County

47100 Havens Neck Drive
Gualala, CA. 95445



Approx Scale $\frac{1}{64}'' = 1'$
All measurement in feet.

Playalina Nelson, Botanical Consultant
P.O. Box 5765
Santa Rosa, Ca. 95402
(707) 357-1134
playalina@gmail.com

November 28, 2010

County of Mendocino Department of Planning and Building Services
Teresa Spade, Planner II
790 South Franklin Street
Fort Bragg, CA. 95437

EXHIBIT NO. 7

APPEAL NO.

A-1-MEN-11-001

BRADLEY

**BIOLOGICAL DOCUMENTS
PREPARED BY CONSULTANT
(1 of 9)**

RE: Buffer Analysis as an addendum to the previously completed botanical report for the Coastal Development Permit Application No.: CDP 48-2007, APN 143-121-05, located at 47100 Havens Neck Drive.

Dear Teresa,

Based on Section 20.496.020 of the Division II of Title 20 – Coastal Zoning Code, Mendocino County, the following is a Buffer Analysis, as an addendum to the completed botanical report for the Bradley Property (June 16, 2010).

This buffer analysis is based on the diversion drain design dated 8/3/10, which is revised since the design was submitted as part of the botanical report. The proposed diversion drain would extend into the wetland for approximately 39' and replace approximately 76 sq.ft of the wetland in the far southeastern corner of the property. The trenching would be approximately 36" deep with 6" diameter piping. The majority of the piping would be perforated with the last 100' along the eastern boundary of the lot solid with no gravel.

The piping is designed to daylight into the existing drainage. Water from the diversion drain would flow into the existing drainage and then into the culvert in the northwest corner of the lot. No Bishop pine trees would be removed. The diversion drain would not extend into the Bishop-pine forest.

The diversion drain is expected to cause short term construction impacts. This Buffer Analysis addresses these short term impacts associated with the diversion drain. Mitigation measures have been included in section 1 (f) of this matrix. These measures include:

Mitigation measure a. The trenching should be hand dug. No heavy machinery shall be used on site to construct the ditch. This is to prevent unnecessary impacts to the ESHAs. Currently, there is no way to construct the diversion drain without extending into either the wetlands or the Bishop-pine forest.

Mitigation measure b. Wattles shall be placed along the northern side of the wetlands to prevent any run-off from entering the wetlands.

Mitigation measure c. Except for any necessary construction for the portion of the diversion drain that may extend into the wetland, no excess materials or equipment should be placed within the wetland. For protection, a temporary construction fence should be placed around the northern edge of the wetland which would also protect the Bishop pine forest.

Mitigation measure d. Following the implementation of the ditch, as best as possible, all excess soil should be used to fill the ditch. All excess soil that cannot be placed to fill the ditch should be taken off site. No soil or excess materials shall be placed into the wetland or Bishop pine forest. As best as possible, soil shall be placed back into the ditch and all native plants will be salvaged and placed over the ditch to become reestablished.

Any bare ground will be replanted with native plants and salvaged from onsite. These plants may include: tufted hair grass, wild strawberry, sedge and rush. Any native plants removed as a result of the ground disturbance should be replanted as soon as possible. Other plants used to revegetate bare areas should be divided and planted in the late fall and early winter. Revegetation work should be carried out by a qualified professional.

Mitigation measure e. The following invasive plants on the property shall be removed: *Cytisus scoparius* (scotch broom), *Erechtites minima* (New Zealand fireweed) and *Cirsium vulgare* (bull thistle). A basic invasive plant removal and monitoring plan should be completed that outlines goals and objectives for long term removal of the identified invasive plants. With out maintenance and monitoring, these plants will further spread and displace native plants and degrade the Northern Bishop pine forest and wetland. Also, any invasive plants that become established as a result of the ground disturbance should be removed.

Mitigation measure f. To ensure that these measures are performed, the appropriate site visits should be made by a qualified professional. A letter should be written and submitted to the County of Mendocino Planning and Building Department documenting the success of these mitigation measures and the protection of the wetland and the Bishop pine forest. A site visit should be performed in Spring 2011 to assess if invasive plants have become established and to determine the success of any revegetation efforts.

Thank you for your assistance with regards to this project and please let me know if you have any questions or if I can provide any more information.

Sincerely,

Playalina Nelson

BUFFER ZONE ANALYSIS

	Section 20.496.020 Coastal Zoning Ordinance
<i>(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such areas.</i>	The focus of this buffer matrix is to determine the least environmentally damaging alternative by considering all ecological factors involved with the proposed project. The proposed development is a diversion drain. At this time no other development is proposed.
<i>(1) Width. The width of the buffer area shall be a minimum of one hundred feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer areas shall not be less than fifty feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those use permitted in adjacent Environmentally Sensitive Habitat Areas.</i>	There is no buffer. The diversion drain extends partially into the wetland and to the edge of the Bishop-pine forest. No land divisions are proposed.
<i>(a) Biological Significance of Adjacent Lands. The degree of significance depends upon the habitat requirements of the species in the habitat area.</i>	The Bishop pine forest and wetlands extend on to adjacent parcels. The diversion drain will cause short term impacts that are mitigated as part of this Buffer Analysis.
<i>(b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in</i>	There is no buffer. There is no other location for the diversion drain. No sensitive plants or animals will be impacted. The trenching will cause short term ground

<i>part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development.</i>	disturbances.
<i>(b)(i) Nesting, feeding, breeding, resting or other habitat requirements of both resident and migratory fish and wildlife species</i>	No heavy machinery will be used. Hand trenching will be carried out. No trees will be removed or other roosting and nesting location will be impacted.
<i>(b)(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance</i>	Any wildlife species using or inhabiting the property are adapted to low levels of disturbance from the neighboring houses within the Haven's Neck Subdivision.
<i>(b)(iii) An assessment of the impact and activity levels of the proposed development</i>	With the implementation of the recommended mitigation measures the impact activity of the site will remain the same.

<i>(c) Susceptibility of Parcel to Erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided</i>	The trenching for the diversion drain will be 36" deep and approximately 1' wide and will not cause any erosion. Subsurface and above ground water will flow into the existing drainage. Bare ground will be replanted or will naturally revegetate. Straw wattles will be placed to prevent any run-off.
<i>(d) Use of Natural Topographic Features to Locate Development</i>	Based on design restrictions the diversion drain will be placed along the northwest and eastern boundaries of the property.
<i>(e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g. roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side roads, dikes, irrigation canals, flood control channels, etc. away from the ESHA.</i>	The diversion drain is designed to be located on the northwest and eastern boundaries of the property. There is a deep ditch that runs along the road. Currently there is no access on to the property off of Havens Neck Drive.
<i>(f) Lot Configuration and</i>	The parcel is within the Haven's Neck Subdivision. Every

<p><i>Location of Existing Development. Where an existing subdivision is present, similar buffer distances as existing may be used. However, mitigation measures shall be provided to provide additional protection.</i></p>	<p>parcel in the subdivision is developed except for the area in the center of the property that is designated as Open Space for the protection of the large wetlands and Bishop-pine forest. The surrounding parcels have minimal buffers from ESHAs. The following mitigation measures will reduce the expected impacts to a less than significant level:</p> <p><i>Mitigation measure a.</i> The trenching should be hand dug. No heavy machinery shall be used on site to construct the ditch. This is to prevent unnecessary impacts to the ESHAs. Currently, there is no way to construct the diversion drain without extending into either the wetlands or the Bishop-pine forest.</p> <p><i>Mitigation measure b.</i> Wattles shall be placed along the northern side of the wetlands to prevent any run-off from entering the wetlands.</p> <p><i>Mitigation measure c.</i> Except for any necessary construction for the portion of the diversion drain that may extend into the wetland, no excess materials or equipment should be placed within the wetland. For protection, a temporary construction fence should be placed around the northern edge of the wetland which would also protect the Bishop pine forest.</p> <p><i>Mitigation measure d.</i> Following the implementation of the ditch, as best as possible, all excess soil should be used to fill the ditch. All excess soil that cannot be placed to fill the ditch should be taken off site. No soil or excess materials shall be placed into the wetland or Bishop pine forest. As best as possible, soil shall be placed back into the ditch and all native plants will be salvaged and placed over the ditch to become reestablished.</p> <p>Any bare ground will be replanted with native plants and salvaged from onsite. These plants may include: tufted hair grass, wild strawberry, sedge and rush. Any native plants removed as a result of the ground disturbance should be replanted as soon as possible. Other plants used to revegetate bare areas should be divided and planted in the late fall and early winter. Revegetation work should be carried out by a qualified professional.</p> <p><i>Mitigation measure e.</i> The following invasive plants on the property shall be removed: <i>Cytisus scoparius</i> (scotch broom), <i>Erechtites minima</i> (New Zealand fireweed) and <i>Cirsium vulgare</i> (bull thistle). A basic invasive plant removal and monitoring plan should be completed that outlines goals and objectives for long term removal of the identified invasive plants. With out maintenance and monitoring, these plants will further spread and displace native plants and</p>
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	<p>degrade the Northern Bishop pine forest and wetland. Also, any invasive plants that become established as a result of the ground disturbance should be removed.</p> <p><i>Mitigation measure f.</i> To ensure that these measures are performed, the appropriate site visits should be made by a qualified professional. A letter should be written and submitted to the County of Mendocino Planning and Building Department documenting the success of these mitigation measures and the protection of the wetland and the Bishop pine forest. A site visit should be performed in Spring 2011 to assess if invasive plants have become established and to determine the success of any revegetation efforts.</p>
<i>(g) Type and Scale of Development Proposed. Such evaluations will be made on a case-by-case basis depending upon the resources involved and the degree to which adjacent lands have been developed and the type of development in the area.</i>	As stated above the property is zoned for residential development and is part of a subdivision. Currently, only a diversion drain is proposed to lower the water table to make the property suitable for a future septic system.
<i>(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g. for a wetland from the landward edge of the wetland; for a stream from the landward edge of the riparian vegetation or the top of the bluff.)</i>	There is no buffer. The diversion drain extends into the wetlands and up to the edge of the Bishop-pine forest.
<i>(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.</i>	No land division is proposed on the subject lot. .
<i>(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:</i>	
<i>(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and</i>	The trench shall be hand dug. No heavy machinery shall be used until access on to the site is designed and approved. The one time trenching and placing of the pipe will be mitigated to a less than significant level with the proposed mitigation measures. And specifically, the proposed invasive plant removal will enhance and greatly improve the site. The

maintain natural species diversity.	functional capacity of the wetlands and the Bishop-pine forest will remain the same. Removing invasive plants will improve native plant diversity.
(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.	See (4)(e).
(c) Development shall be sited and designed to prevent impacts, which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.	Based on design restrictions there is no other location for the diversion drain. The function of the diversion drain is to lower the water table so that the site may be suitable for a septic system and then in the future a potential single family residence. Although the water table would be lowered, the diversion drain is designed to allow water to flow based on the existing topography either through subsurface water through the perforated piping or through the solid piping that would daylight into the existing drainage. The diversion drain is one time ground disturbance that with the proposed mitigation measures will be mitigated to a less than significant level. The recommended mitigation measures will prevent the degradation of the wetland and the Bishop pine forest.
(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.	See (4)(a).
(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as	There is no other location for the diversion drain. The proposed diversion drain would extend into the wetland for approximately 39' and replace approximately 76 sq.ft of the wetland in the far southeastern corner of the property. Based on the one time impact of the diversion drain and the

planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.	recommended mitigation measures; wetland creation of at least a 2:1 is not recommended at this time. The hydrological and biological function of the wetland will remain the same. Should any future development be proposed, than a wetland creation and management plan may need to be completed based on the scope and scale of future development on the property.
(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.	Mitigation measures are recommended as part of this Buffer Analysis to reduce these impacts to a less than significant level. It is expected that the vegetation will become reestablished following the ground disturbance and run-off will be mitigated with straw wattles. Noise will be minimal with the trenches dug by hand. Human intrusion will be eliminated with the placement of the temporary fencing.
(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.	Riparian vegetation will not be lost. The diversion drain will extend into the wetland and daylight into the existing drainage. The wetland function will remain the same and the vegetation will regrow where the piping will be. Bare ground will be replanted or will become naturally revegetated. There is no buffer distance from the edge of the diversion drain to the ESHAs.
(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.	There will be no above ground structures based on the proposed diversion drain.
(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.	The existing drainage pattern will remain the same. Water will flow into the existing drainage and then into the culvert that is in the northwest corner of the property.
(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to	The conveyance of water will remain the same. Above ground and subsurface water will flow in the same direction but the water table will be lowered to allow for a potential septic system. There will be no above ground structures. There will be no foundations or areas impervious structures that would cause increased run-off. Bared ground will become reestablished with vegetation.

<p>convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.</p>	
<p>(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.</p>	<p>This buffer analysis has provided appropriate mitigation measures that, if adopted, are intended to reduce potential impacts that may occur as result of the proposed development to a less-than-significant level. These mitigation measures are proposed to address both short and long term impacts of the diversion drain. There should be oversight to ensure that the mitigation measures are successfully implemented.</p>