

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877



Th6.5a

MEMORANDUM

Date: May 11, 2011

To: Commissioners and Interested Parties

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

Subject: **Addendum to Commission Meeting for Thursday May 12, 2011
North Coast District Item Th6.5a, Appeal No. A-1-MEN-11-016 (Lane)**

Staff has prepared this addendum to the staff report published on April 28, 2011 for Appeal No. A-1-MEN-11-016. The addendum presents a supplement 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 April 28, 2011 staff report.

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

Text to be added appears in **bold underline**

A. Supplement the “Information Needed for *De Novo* Review” section beginning on Page 8 as follows:

8. Submittal of County Parcel and House Size Data for Surrounding Permitted Developments

As discussed above, the Commission must evaluate whether the size of the proposed development is consistent with the visual and natural resource policies of the Mendocino County certified LCP. As part of the visual impacts analysis, the Commission will examine the size and siting of surrounding developments that are visible from public vantage points

and that have been permitted either by the Coastal Commission under the Coastal Act, or by the County of Mendocino following certification of their LCP. Additionally, as part of the analysis of impacts to natural resources, the Commission will at minimum evaluate whether the size and location of the home are the least environmentally damaging alternative. Furthermore, depending upon the outcome of the information requested above, the Commission may also need to assess whether the applicant had a reasonable expectation to build a house and related development at the building footprint size that is currently proposed.

Therefore, the applicant must submit County records (typically obtained from the Office of the Tax Assessor and/or Planning and Building Services) that document total house ground cover square footage and garage ground cover square footage of other developed residential lots within the area surrounding the subject parcel that were present at the time of purchase of the subject parcel. The data shall be provided for all parcels with a zoning designation of RMR 40 or RR 5 that are north of Park Drive; south of MacKerricher State Park; and west of Highway One, and must include, but shall not be limited to the following:

- a. Assessor's Parcel Number;
- b. Parcel Physical Address;
- c. Parcel Owner Name;
- d. Whether the development is single-story or 2-story;
- e. Parcel size, in acres and square feet;
- f. Total house size, in square feet (including square footage of a second story, if applicable);
- g. Total garage size, in square feet (including square footage of a second story, if applicable);
- h. Total ground cover square footage (i.e., size of development footprints, excluding lofts and/or second stories) for house, garage, and related developments (e.g., decks, driveway, etc.); and
- i. Coastal development and building permit numbers for each parcel.

<p>REASON FOR CHANGES: Since publication of the staff report, staff has determined that as part of the analysis necessary to evaluate visual and natural resources impacts related to the size and siting of the proposed development, a comparison of development on parcels in the surrounding area will be necessary</p>
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to assess the visual effects of surrounding development from public vantage points. A comparison of house sizes in the surrounding area will additionally be necessary to evaluate feasible alternatives relative to minimizing impacts to visual resources and environmentally sensitive habitat. Furthermore, depending on the outcome of other information requested for *de novo* review of the application, the Commission may 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 build a home sized and located as currently proposed to make such determinations prior to holding a *de novo* hearing on the project. The additional information described above must be submitted to assist the Commission with this determination, and therefore staff is modifying the text of the staff report accordingly.

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Th6.5a

DATE: Prepared April 28, 2011 for the May 12, 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-11-016 (Lane)**, local permit # CDP 13-2010), Appeal by Commissioners Mark Stone and Esther Sanchez of Mendocino County decision approving a coastal development permit for the construction of a new two-story, 28-foot-tall, 3,000-square-foot single-family residence with a 792-square-foot attached garage and 792 square feet of patio/decks, roof mounted solar panels and skylights; installation of an onsite septic disposal system; development of an onsite water well, a rainwater collection tank, propane tank and enclosure; and improvements to and widening of the existing driveway to serve the development. The project site is located on 12.07 acres on the west side of Highway One and approximately 2,000 feet north of its intersection with Ward Avenue at 24938 North Highway One, Cleone (APN 069-142-01).

Appeal filed: April 20, 2011; 49th day: June 8, 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-11-016 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-11-016 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 March 24, 2011, the County of Mendocino approved Coastal Development Permit # CDP 13-2010 for the construction of a new two-story, 28-foot-tall, 3,000-square-foot single-family residence with a 792-square-foot attached garage and 792 square feet of patio/decks, roof mounted solar panels and skylights. The approved development includes

installation of an onsite septic disposal system, development of an onsite water well, a rainwater collection tank, propane tank and enclosure, and improvements to and widening of the existing driveway to serve the development. The parcel (APN 069-142-01) consists of 12.07 acres, on the west side of Highway One and approximately 2,000 feet north of its intersection with Ward Avenue at 24938 North Highway One, Cleone. A portion of the approved driveway improvements will occur on the adjacent parcel to the southeast, APN 069-142-02. The project site is located within sand dunes, which are recognized as an environmentally sensitive habitat area (ESHA). The sand dunes are part of an extensive sand dune system that extends into adjacent MacKerricher State Park and extends approximately 4 miles to the north.

In addition to consisting of sand dune ESHA, the County staff report indicates that the parcel contains several special-status species, including the federally-endangered Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*) and Howell's spineflower (*Chorizanthe howellii*); rare shoulderband snails (presumed *Noyo interressa*); and rare plants round headed Chinese houses (*Collinsia corymbosa*) and dark-eyed gilia (*Gillia millefoliata*). The County staff report indicates all special-status species occur more than 200 feet from the proposed development location. The County staff report includes a figure prepared by the consulting biologist and labeled as "Proposed Project ESHA map." The map shows the location of sensitive plant occurrences located in the northern portion of the parcel, more than 100 feet from the proposed development. The map includes two proposed development options: "Development Option A," which consists of a larger development footprint located farther into the property from the road; and "Development Option B," which consists of a smaller development footprint located closer to the road. The approved development is Development Option A.

The parcels are designated on the County general plan Coastal Plan Map as Remote Residential, Forty Acre Minimum (RMR-40). The parcels show a similar zoning designation as Remote Residential Zoning District on the Coastal Zoning Map (RMR:L-40). The County staff report indicates the single family residential development is a principally permitted use in the Remote Residential zoning district. MacKerricher State Park borders the parcel to the north, and sporadic residential development occurs to the east, south, and west.

The subject property is located within a designated Highly Scenic Area (HSA) and is adjacent to MacKerricher State Park. Although the development site is largely hidden from view of Highway One by vegetation and topography, the development site is visible from many locations within the adjoining state park. Notably, the County indicates the site is visible from the "Haul Road," a former timber roadway that is used extensively as a public access corridor through the park.

2. Appeal

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the approved development is located (1) within a designated "highly scenic area," which is a sensitive coastal resource area; 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) and visual resources.

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 the development (Exhibit No. 7), appellant's claims (Exhibit No. 6), 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 ESHA and visual resources as explained below.

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

The County staff report dated March 24, 2011 indicates the vacant parcel contains two types of Environmentally Sensitive Habitat Area (ESHA) features: 1) sand dunes; and 2) several rare plant species, including two federally-listed species. As cited in the policies above, CZC Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and specifically includes sand dunes and habitats of rare and endangered species.

The County staff report indicates that the development as approved is located more than 200 feet away from sensitive plant occurrences. With regard to siting the residential development within sand dune ESHA, the County refers to Mendocino County Coastal Zoning Code (CZC) Section 20.496.040(A) and notes that the single family residence is a permitted use in dune ESHA. CZC Section 20.496.040(A) indicates in applicable part that one single-family dwelling where adequate services are available consistent with the LCP policies and standards is permitted within dunes. CZC Section 20.496.040(B) goes on to state that "New development on dune parcels shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms. The County staff report states the following:

The proposed development is consistent with permitted uses and requirements for development in dune areas in that the proposed single-family residence and associated development have been located in the least environmentally damaging location and minimize the removal of natural vegetation and alteration of landforms. The proposed location is the flattest portion of the parcel in close proximity to existing road access, and will result in the least alteration of landforms.

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 County staff report includes an excerpt of the biological report prepared by the consultant. In a portion of the excerpt, the biologist states the following (emphasis added):

An alternative development site (Option B shown in Figure 5 and Appendix D) was investigated during preliminary site planning, which would place the residence as close as possible to Highway One and the southeastern corner of the Study Area. This location would reduce the length of the driveway and consequent surface area of sand dune to be impacted but would require more sand to be imported and dune features to be graded.

The previous owners imported gravel along the driveway so the entire driveway and the majority of the building foot print area has already been impacted to some extent therefore requiring less grading and altering of sand dune features.

A large dune mound in the potential development area for Option B would require significantly more excavation and removal of sand to accommodate construction of a residence. The proposed project (Option A) would require cut of approximately 420 cubic yards of sand, while Option B would require cut of 856 cubic yards of sand (Appendix D). Both options would require approximately 460 cubic yards of fill to prepare a development pad. Option B, requiring a net excavation of 396 cubic yards is therefore deemed more environmentally damaging alternative compared to the proposed project (Option A), which will only require a net 40 cubic yards of fill.

Option C addressed in Appendix D is the “no project” alternative. As described above, this alternative would still include some impacts as fill along the driveway and building pad were already created by previous owners of the property. No additional impacts from construction would occur, and no mitigation measures for the proposed project, such as invasive species control, would be implemented.

The biological evaluation contains several conflicting statements that appear to be the basis for the County’s findings relative to minimizing alteration of landforms. In paragraph one cited above, the evaluation indicates that the smaller development alternative (Option B) that could be located closer to the road would result in more sand being imported. Paragraph three indicates both options result in the same amount of fill, and that while Option B results in a net excavation of 396 cubic yards, Option A (the chosen alternative) results in a net 40 cubic yards of fill. The evaluation further justifies the larger footprint design that is located farther within the dune system by indicating previous fill activities occur in the driveway. There is no evidence of a permit on file for previous fill activities.

Therefore, the degree of factual and legal support for the County’s action is lacking, because it appears the conclusions regarding alteration of landforms were based upon flawed analysis. Regardless of conflicting statements related to the evaluation of alteration of landforms, the LCP policies also mandate consideration of siting the development in the least environmentally damaging location pursuant to LUP Policy 3.1-15 and CZC Section 20.496.040(B)(2), and consistent with other applicable Coastal Element policies and development standards of the division, pursuant to CZC Section 20.496.040(A)(2). These policies additionally require, among other things, that development be permitted in ESHA only if it is the least environmentally damaging alternative.

CZC Section 20.496.015 states that a project has the potential to impact an ESHA if development is proposed to be located within the ESHA. CZC Section 20.496.015(D) further restricts development in an ESHA in part, to only those instances where findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1). That section further indicates that no development shall be allowed in an ESHA unless: (a) the resource will not be significantly degraded by proposed development, (b) no feasible, environmentally less damaging alternative exists; and (c) all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. In addition, CZC Section 20.496.015(E) states that if findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.

While the County findings for the approved development address the alteration of landforms and conclude that the larger Option A minimizes alteration of landforms, the County findings fail to address how the approved larger development located farther from the road is the least environmentally damaging alternative, inconsistent with LUP Policy 3.1-15, CZC Section 20.496.040(B)(2), and CZC 20.532.100(A)(1)(b). As an alternative was identified that does not encroach as far into the dune habitat and thus would neither directly displace as much sand dune habitat nor affect as much adjacent sand dune habitat as the approved location, and as alternatives involving a smaller development footprint even within the approved location were not evaluated, there is insufficient basis to establish that the approved development is the least environmentally damaging alternative. Therefore, the degree of factual and legal support for the County's action is lacking, because project alternatives that might result in less environmental impact to sensitive dune ESHA were not adequately evaluated. Furthermore, while the County attached Special Condition 1a that restricts activities in ESHAs during and following construction to within the "development buffer" depicted on the Proposed Project ESHA map, there are no restrictions imposed limiting future development that could otherwise be exempted from a permit, and no requirements for a deed restriction or other notification to future landowners of the restrictions imposed on the site. The protection of ESHA in the coastal zone is an issue of statewide concern addressed by Section 30240 of the Coastal Act. Thus, the project as approved raises a substantial issue of conformance with CZC Section 20.532.100(A)(1)(c) that requires all feasible mitigation measures capable of reducing or eliminating project-related impacts to be implemented.

Therefore, because the County failed to adequately evaluate or represent less environmentally-damaging feasible alternatives and did not adopt all feasible mitigation measures for development in ESHA, the project as approved raises a substantial issue of conformance with the LCP policies regarding the protection of ESHA, including but not limited to LUP Policies 3.1-7, 3.1-15, CZC Sections 20.496.040, 20.496.015, and 20.532.100(A)(1).

B. Substantial Issue With Respect to Visual Resource Policies of the Certified LCP

The appellants allege that the approved amended development is inconsistent with LCP provisions pertaining to the protection of visual resources (see Appendix B). The project site is located within a designated "highly scenic area" as described in LUP Policies 3.5-1

and 3.5-3 and as mapped on LUP Map No. 12. The primary visual issues raised by the appeal are whether the development would visually blend with the surrounding areas such that it would be compatible with and subordinate to the character of the surrounding area.

LUP Visual Resources Policies No. 3.5-1 and CZC Section 20.504.015 state that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas; furthermore, new development in Highly Scenic Areas (HSAs) shall be subordinate to the character of the setting. LUP Policy No. 3.5-3 reiterates that new development in highly scenic areas shall be subordinate to the character of its setting.

The appeal raises a substantial issue of whether the approved amended development is subordinate to the character of its setting. The County determined that “The structure would be visible at a distance as seen looking eastward (away from the ocean) from the Haul Road. The structure would be back dropped by mature vegetation.” However, while vegetative buffering is helpful, the County’s approval does not include any provisions requiring replacement of mature vegetation that becomes decadent or damaged. The Haul Road is a public access feature situated amongst open dune lands located east of the ocean in MacKerricher State Park, and draws many visitors throughout the year. The lands north of the subject parcel are also undeveloped State Park lands. Mendocino CZC Section 20.504.015(C) requires that development permitted in highly scenic areas shall provide for the protection of coastal views from public areas that include coastal trails. In addition to these requirements, LUP 3.5-3 further requires that development be subordinate to the character of its setting.

By approving a 3,000 square-foot two-story residence plus 792-square-foot garage plus 792 square feet of accessory structures farther westward in the dunes without evaluating the visual impact of alternatives such as constructing a house with a smaller footprint, constructing a house closer to the road, constructing a one-story structure, and the “no project” alternative, the County in its findings failed to demonstrate how the approved development minimizes visual impacts and is subordinate to the character of its setting. Therefore, the degree of factual and legal support for the County’s action is lacking, because project alternatives and mitigation measures that might result in less environmental impact to visual resources were not adequately evaluated. In addition, the protection of views from MacKerricher State Park is an issue of statewide concern as the state park is a statewide resource used by residents and coastal tourists from California, the nation, and the world. Therefore the project as approved raises a substantial issue of conformance with LCP policies regarding the protection of visual resources including, but not limited to LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015.

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 ESHA and visual resources. The Commission finds a substantial issue exists, because (1) the County findings fail to address how the approved larger development

located farther from the road is the least environmentally damaging alternative; (2) the County failed to implement all feasible mitigation measures capable of reducing or eliminating project-related impacts; and (4) the County failed to address how the approved Option A development sited farther within the dunes was subordinate to the character of its setting, compared to other available options including siting the development closer to the road or reducing the height and/or size of the approved residence, inconsistent with the ESHA protection and visual resource provisions of the certified LCP including, but not limited to LUP Policies 3.1-7, 3.1-18, 3.5-1, 3.5-3, and 3.5-5, and CZC Sections 20.496, 20.504, 20.532.095, and 20.532.100.

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 Evidence of Adequate Water Supply and Sewer Capacity

LUP Policy 3.8-1 requires that the adequacy of water services, among others, be evaluated when coastal development permit applications are granted or modified. LUP Policy 3.1-15 states the following (emphasis added):

Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

New development on dune parcels shall be located in the least environmental damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms. No new parcels shall be created entirely within sand dune habitat. One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and that the proposed development is consistent with all other applicable policies of this Coastal Element and meets all applicable health standards.

Additionally, LUP Policy 3.9-1, and Coastal Zoning Code Section 20.532.095 require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit.

With regard to groundwater resources, the County staff report notes concerns with whether there was adequate water to serve the development, as “there may be potential for salt water intrusion this close to the ocean.” County staff suggested proof of water would be helpful, and received a letter from the well driller that states, “From what I saw of the site, based on neighboring well systems and site elevation, the chances of salt water intrusion and/or brackish water would be very highly unlikely at the proposed drill site (Freitas 2010).” The parcel is located in sand dunes adjacent to the shoreline (the proposed development would be sited approximately 1500 feet from the shoreline) west of Highway One. There is no indication whether onsite testing was conducted, or whether sea level rise was considered in this evaluation. Therefore, a hydrological study involving the drilling of a test water well(s) or other demonstration of proof of water by a qualified hydrologist is needed to evaluate whether adequate water will be available to serve development of the parcel, consistent with the certified LCP.

In terms of septic capacity, the County findings indicate that County Department of Environmental Health could clear the site for a proposed septic, but there is no documentation whether sea level rise was considered, or how adequate septic services could be provided in a sand dune system so close to sea level with relatively high groundwater levels. Therefore, evidence of adequate septic capacity that includes evaluation of sea level rise must also be provided.

2. **Submittal of Geotechnical Analysis**

LUP Policy 3.4-1 states the following (emphasis added):

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.

The County states the following in their findings regarding geologic hazards related to structure stability:

The project is to be located in sand dunes. Dune topography changes over time at a significantly faster rate than other landforms. Within 20 feet or so of the

proposed residence, the topography slopes as much as 50%. The average slope within the building footprint ranges between 10% and 20%. The applicants propose a slab on grade. According to the agent, the civil engineer has determined that this is the most feasible option, and offers the stability that the house requires.

There is no evidence that a geologic investigation and report of the site was conducted. The project site lies in an area of known poorly graded sands that may be subject to high ground water levels. Accordingly, a geotechnical report must be prepared that specifically addresses the liquefaction potential of these soils and, if necessary, provides mitigation recommendations.

3. Submittal of Current Botanical Report

The applicant's agent submitted documents to the Coastal Commission in May 2010 that included a "Proposed Project ESHA map." During a preliminary site visit on June 3, 2010, Commission staff noticed the presence of rare plants located outside of occurrence areas mapped on the Proposed Project ESHA map. No updated surveys were provided with the Notice of Final Action received at the Commission's office on April 6, 2011. Commission staff expressed this concern to the applicant's agent and biologist on April 5, 2011, after the agent notified Commission staff that the County approved the project. Subsequently, the biologist returned to the site on April 8, 2011 to survey for the species. Although the survey period was not floristically-appropriate, the biologist was able to confirm species visibility by referring to known occurrence sites. In a letter dated April 13, 2011, the biologist indicates that no plants were observed in the proposed building envelope (that was approved by the County). However, the biologist did not provide a map showing survey routes, and it is unclear whether areas within 100 feet of the building envelope were also surveyed. Therefore, a question still exists whether all sensitive plant occurrences have been mapped and evaluated in relation to the siting of the development that was approved by the County (Option A), or in relation to the alternative Option B site.

Therefore, to determine the presence and extent of all potential sensitive plant communities and habitat at the project site, a current botanical survey prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance of each alternative development site and connecting access roads as well as all potential ESHA buffer areas within 100 feet of the alternative development site and access roads must be provided. The survey should be prepared by a qualified biologist and should include, but not be limited to: (1) a map of all survey routes; and (2) an updated map documenting the location of all sensitive species occurrences 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.

4. Revised ESHA Buffer Analysis

CZC Section 20.496.010 defines ESHA and includes "sand dunes" and "habitats of rare and endangered plants and animals." Therefore, as ESHA, sand dunes 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.

If the updated botanical survey efforts identify sensitive plant resources within 100 feet of proposed development areas, a revised ESHA buffer analysis must be submitted that evaluates the buffer size necessary to protect the resources of the particular sensitive plants present from possible significant disruption caused by the proposed development. Therefore, if the alternatives analysis required under Item 5 below 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 shall depict buffers in relation to proposed development on a map. The revised buffer analysis shall 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 any direct impacts to rare plants. Additionally, the applicant shall consult and obtain 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. Submittal of Permit Evidence for Previous Driveway Fill

As described above, the County staff report includes an excerpt of the biological report prepared by the consultant. In a portion of the excerpt, the biologist states the following:

An alternative development site (Option B shown in Figure 5 and Appendix D) was investigated during preliminary site planning, which would place the residence as close as possible to Highway One and the southeastern corner of the Study Area. This location would reduce the length of the driveway and consequent surface area of sand dune to be impacted but would require more sand to be imported and dune features to be graded.

The previous owners imported gravel along the driveway so the entire driveway and the majority of the building foot print area has already been impacted to some extent therefore requiring less grading and altering of sand dune features.

...

Option C addressed in Appendix D is the “no project” alternative. As described above, this alternative would still include some impacts as fill along the

driveway and building pad were already created by previous owners of the property. No additional impacts from construction would occur, and no mitigation measures for the proposed project, such as invasive species control, would be implemented.

As indicated previously, there is no evidence of a permit on file for previous fill activities. The Commission does not allow previous unpermitted activities in ESHA to justify further impacts to ESHA. Instead, if fill activities were conducted in sand dune ESHA without the benefit of a permit, removal of fill may be necessary to achieve compliance with coastal development permit requirements. If the driveway and building pad fill is determined to be unpermitted but is added to the project description of the current application to serve the proposed development, the impacts of the driveway and building pad fill would have to be assessed to ensure consistency with CZC Section 20.532.100(A)(1)(c), which requires that all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. Therefore, the coastal development permit history for these previous fill activities must be provided. If evidence is not available that demonstrates authorization for previous fill activities, then the applicants must include any portion of the previous driveway and building pad fill that would be used to serve the current project as part of an amended project description, and the impacts of the previous fill and suitable mitigation measures must be evaluated.

5. Alternatives Analysis

As indicated above, CZC Section 20.496.015 states that a project has the potential to impact an ESHA if development is proposed to be located within the ESHA. CZC Section 20.496.015(D) further restricts development in an ESHA in part, to only those instances where findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1). That section further indicates that no development shall be allowed in an ESHA unless: (a) the resource will not be significantly degraded by proposed development, (b) no feasible, environmentally less damaging alternative exists; and (c) all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted.

Furthermore, CZC 20.496.020(A)(4)(f) requires among other things that development within ESHA shall minimize impervious surfaces. By approving a larger development that includes a 3,000-square-foot house plus 792-square-foot garage plus 792 square feet of accessory structures plus 830-foot-long, 10,700-square-foot driveway, the County failed in its findings to demonstrate how the larger structure located farther in the dune system (and thus requiring a longer driveway) minimized impervious surfaces to a greater extent than the smaller Option B located closer to the road, inconsistent with the ESHA development criteria policies for permitted development. In addition, while the County staff report indicates that a portion of existing gravel driveway will be improved and widened, the County findings are silent regarding whether the driveway material proposed as part of the 830-foot-long, 10,700-square-foot driveway for the approved development will be pervious or impervious.

In addition to ESHA protection policies that require development sited in ESHAs to minimize pervious surfaces and be the least environmentally damaging feasible alternative, LUP Visual Resources Policies No. 3.5-1 and CZC Section 20.504.015 state that permitted

development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas; furthermore, new development in Highly Scenic Areas (HSAs) shall be subordinate to the character of the setting. LUP Policy No. 3.5-3 reiterates that new development in highly scenic areas shall be subordinate to the character of its setting.

Therefore, an alternatives analysis must be provided that evaluates all development alternatives in relation to visual impacts and impacts to environmentally sensitive habitat areas, including but not limited to alternatives such as alternative development sites on the subject property, constructing a single-story structure, using smaller building envelopes, and the “no project” alternative. The alternatives analysis should address at minimum the feasibility of each alternative in relation to: (a) minimizing pervious surfaces; (b) minimizing impacts to ESHAs; and (c) ensuring the development is subordinate to the character of its setting. Alternative residence locations should also be evaluated that would minimize encroachment into ESHAs. The alternatives analysis must also 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, cut, and fill, type of materials to be used); (3) an analysis of dune ESHA impacts associated with each alternative (e.g., amount of vegetation requiring removal, amount of cut, fill, grading, total area of direct impacts, etc.); and (4) mitigation measures proposed for each alternative to minimize impacts to natural resources and sensitive habitats.

If the updated botanical survey efforts identify sensitive plant resources within 100 feet of proposed development areas, the alternatives analysis must also evaluate each alternative in relation to identifying the most feasible, least environmentally damaging alternative that avoids sensitive plant ESHA resources and related ESHA buffer requirements.

6. Evidence of Lot Legality

LUP Policy 3.1-15 states the following (emphasis added):

Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

New development on dune parcels shall be located in the least environmental damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms. No new parcels shall be created entirely within sand dune habitat. One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and that the proposed development is consistent with all other applicable policies of this Coastal Element and meets all applicable health standards.

Similarly, LUP Section 3.9-1 states in part:

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.

The County's findings are silent with regard to whether and how the subject site was determined to be a legal parcel and when the parcel was created in its current configuration. Therefore, evidence of the legality of the parcel is needed to determine the legal development potential of the subject property. This analysis must include, but is not limited to, the following:

- A. The historic chain of title for the affected parcel as well as all property in common contiguous ownership, *i.e.* any immediately adjacent property also owned by the applicant;
- B. An analysis of how the real property in question complies with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant thereto; and
- C. A copy of any County-issued Certificates of Compliance and an explanation of the basis upon which the certificate was issued by the County.

7. 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, depending on the outcome of the information requested above, the landowner(s) of the property that is the subject of A-1-MEN-11-016 may be required to provide additional information to enable the Commission 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. Upon receipt and review of the requested information above, Commission staff will notify the applicant whether the following specific information is required for the property that is subject to A-1-MEN-11-016 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.

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. Coastal Records Aerial Image
4. Assessor's Parcel Map
5. Site Plans
6. Appeal
7. Notice of Final Local Action and Findings for Approval

APPENDIX A

COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On March 24, 2011, the County of Mendocino approved Coastal Development Permit # CDP 13-2010 for the construction of a new two-story, 28-foot-tall, 3,000-square-foot single-family residence with a 792-square-foot attached garage and 792 square feet of patio/decks, roof mounted solar panels and skylights. The approved development includes installation of an onsite septic disposal system, development of an onsite water well, a rainwater collection tank, propane tank and enclosure, and improvements to and widening of the existing driveway to serve the development. The parcel (APN 069-142-01) consists of 12.07 acres located in a designated Highly Scenic Area (HSA), on the west side of Highway One and approximately 2,000 feet north of its intersection with Ward Avenue at 24938 North Highway One, Cleone. A portion of the approved driveway improvements will occur on the adjacent parcel to the southeast, APN 069-142-02. The project site is located within sand dunes, which are recognized as an environmentally sensitive habitat area (ESHA).

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.

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the approved development is located (1) within a designated "highly scenic area," which is a sensitive coastal resource area; and (2) between the sea and the first public road paralleling the sea.

1. Between the First Public Road and the Sea

The subject property is located between Highway One and the Pacific Ocean. The Post LCP Certification Permit and Appeal Jurisdiction Map for the area adopted by the Commission in May of 1992, designates Highway One as the first public road paralleling the sea. Therefore, as the approved development is located between the first public road

paralleling the sea and the sea, the subject development is appealable to the Commission pursuant to Section 30603(a)(1) of the Coastal Act.

2. Within a Sensitive Coastal Resource Area

Section 30116 of the Coastal Act defines Sensitive Coastal Resource Areas as follows:

"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following:

- (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.*
- (b) Areas possessing significant recreational value.*
- (c) Highly scenic areas. (emphasis added)*
- (d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.*
- (e) Special communities or neighborhoods which are significant visitor destination areas.*
- (f) Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.*
- (g) Areas where divisions of land could substantially impair or restrict coastal access.*

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP).

Section 30502 directs the Commission to designate SCRAs not later than September 1, 1977, pursuant to a report which must contain the following information:

- (1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area;*
- (2) A specific determination that the designated area is of regional or statewide significance;*
- (3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access;*
- (4) A map of the area indicating its size and location.*

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. Such Coastal Act provisions support the position that the Commission does not have the exclusive authority to designate SCRAs. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRAs, local government approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission.

The ability of local governments to designate SCRAs in LCPs is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRAs, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRAs. (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan).) The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRAs did not have the effect of preventing local governments from designating SCRAs through the LCP process. If the Commission's decision not to designate SCRAs rendered the Coastal Act provisions that relate to SCRAs moot, the Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRAs.

Although a city or county is not required to designate SCRAs in their LCP, at least four local governments have chosen to do so. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the Town of Mendocino (1992).

Designation of SCRAs in this manner is consistent with the reservation of local authority, under Section 30005, to enact certain regulations more protective of coastal resources than what is required by the Act. As noted above, the Coastal Act does not require local governments to designate SCRAs, but local governments are allowed to designate such areas.

The appeal of Mendocino County Coastal Development Permit (CDP) No. 13-2010 was accepted by the Commission in part, on the basis that the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the

Mendocino County Coastal Zoning Code (CZC), both define “Sensitive Coastal Resource Areas” to mean “those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity.” Subparts (c) of these sections include “highly scenic areas.” This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, “those [areas] identified on the Land Use Maps as they are adopted.” Adopted Land Use Map No. 12 designates the area inclusive of the site that is the subject of Mendocino County CDP No. 13-2010 as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

Section 30603 of the Coastal Act states that “after certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the Commission...” Included in the list of appealable developments are developments approved within sensitive coastal resource areas. Additionally, Division II of Title 20, Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code specifically includes developments approved “located in a sensitive coastal resource area” as among the types of developments appealable to the Coastal Commission.

Therefore, for all of the above reasons, the Commission finds that as (1) highly scenic areas are designated and mapped in the certified LCP as a sensitive coastal resource area, and (2) approved development located in a sensitive coastal resource area is specifically included among the types of development appealable to the Commission in the certified LCP, Mendocino County’s approval of local CDP No. 13-2010 is appealable to the Commission under Section 30603(a)(3) of the Coastal Act and Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code.

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 April 6, 2011 (Exhibit No. 7). 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 April 20, 2011 from Commissioners Mark Stone and Esther Sanchez (Exhibit No. 6). 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

A. 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.

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.

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.

(I) 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.

LUP Policy 3.1-15 states the following (emphasis added):

Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be

prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

New development on dune parcels shall be located in the least environmental damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms. No new parcels shall be created entirely within sand dune habitat. One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and that the proposed development is consistent with all other applicable policies of this Coastal Element and meets all applicable health standards.

CZC Section 20.496.040 “Dunes” states the following (emphasis added):

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

- (1) *Scientific, educational and passive recreational uses.*
- (2) *One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division.*
- (3) *Removal of sand, construction of fences or walls to impede sand movement and planting of vegetation for dune stabilization where necessary to protect existing structures. These projects shall be subject to provisions regarding sand extraction and shall be processed under conditional use permit procedures.*
- (4) *Footpaths to direct use and minimize adverse impacts where public access is permitted.*

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

- (1) *Motorized or non-motorized vehicle traffic is prohibited.*
- (2) *New development on dune parcels shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms.*
- (3) *No new parcels shall be created entirely in dune habitats.*
- (4) *All sand removal shall be subject to a Coastal Development Use Permit but shall not be allowed on vegetated dunes. (Ord. No. 3785 (part), adopted 1991)*

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...

B. Applicable LCP Policies Relating to the Protection of Visual Resources:

Land Use Plan (LUP) Policy 3.5-1 states, in applicable part, as follows:

...

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. [Emphasis added]

LUP Policy 3.5-3 states, in applicable part, as follows:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...

- Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

In addition to other visual policy requirements, new development west of Highway One in designated “highly scenic areas” is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within “highly scenic areas” will be analyzed for consistency of potential future development with visual resource policies

and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

LUP Policy 3.5-5 states as follows:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

Section 20.504.015, "Highly Scenic Areas," of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

...

(C) Development Criteria.

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

...

(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:

- (a) Near the toe of a slope;*
- (b) Below rather than on a ridge; and*
- (c) In or near a wooded area.*

...

(7) Minimize visual impacts of development on terraces by the following criteria:

- (a) Avoiding development, other than farm buildings, in large open areas if alternative site exists;*
- (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*
- (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*
- (d) Design development to be in scale with rural character of the area.*

...

(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

(11) Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991) [emphasis added].

CZC Section 20.504.020 states, in applicable part, as follows:

...
(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

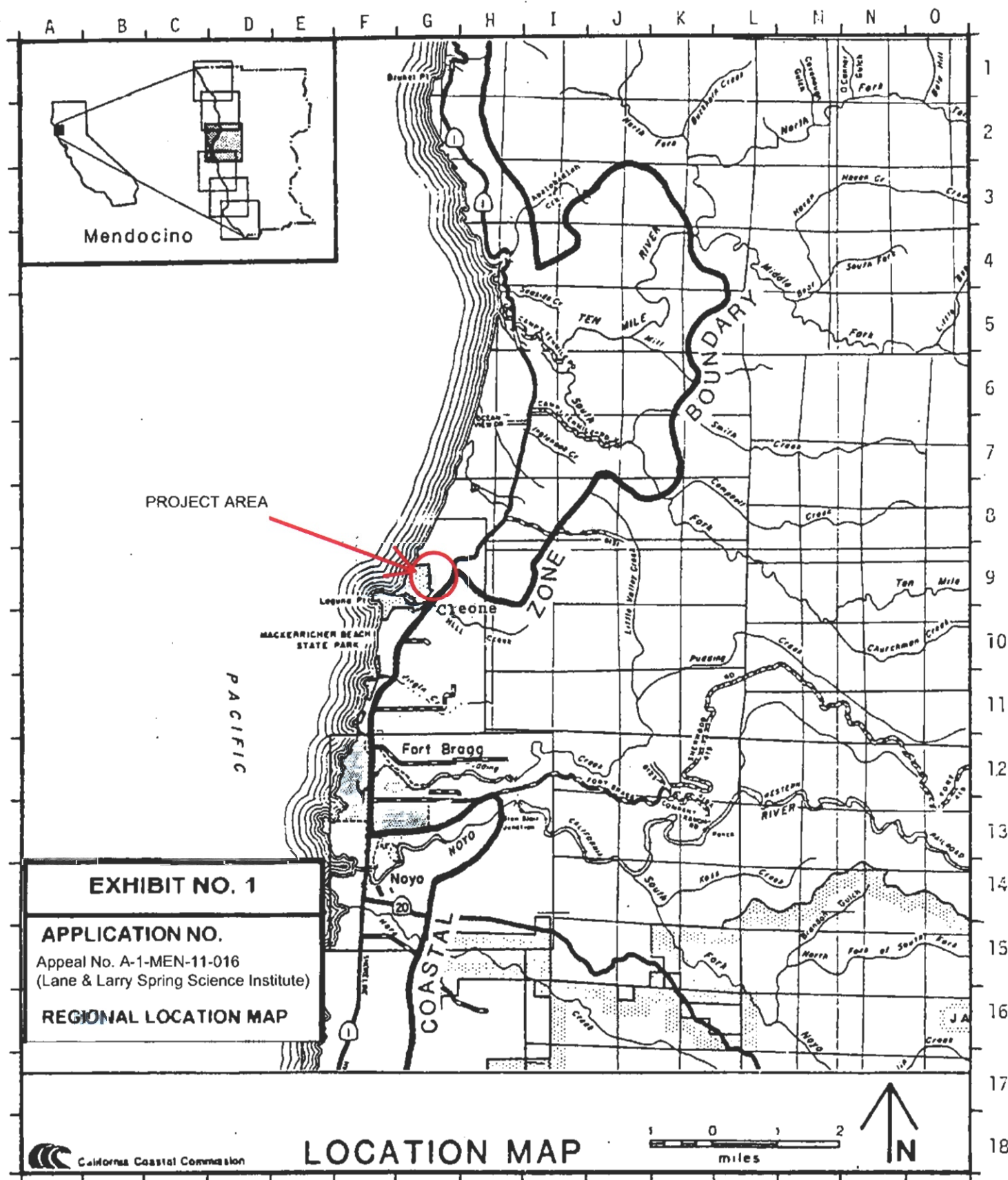
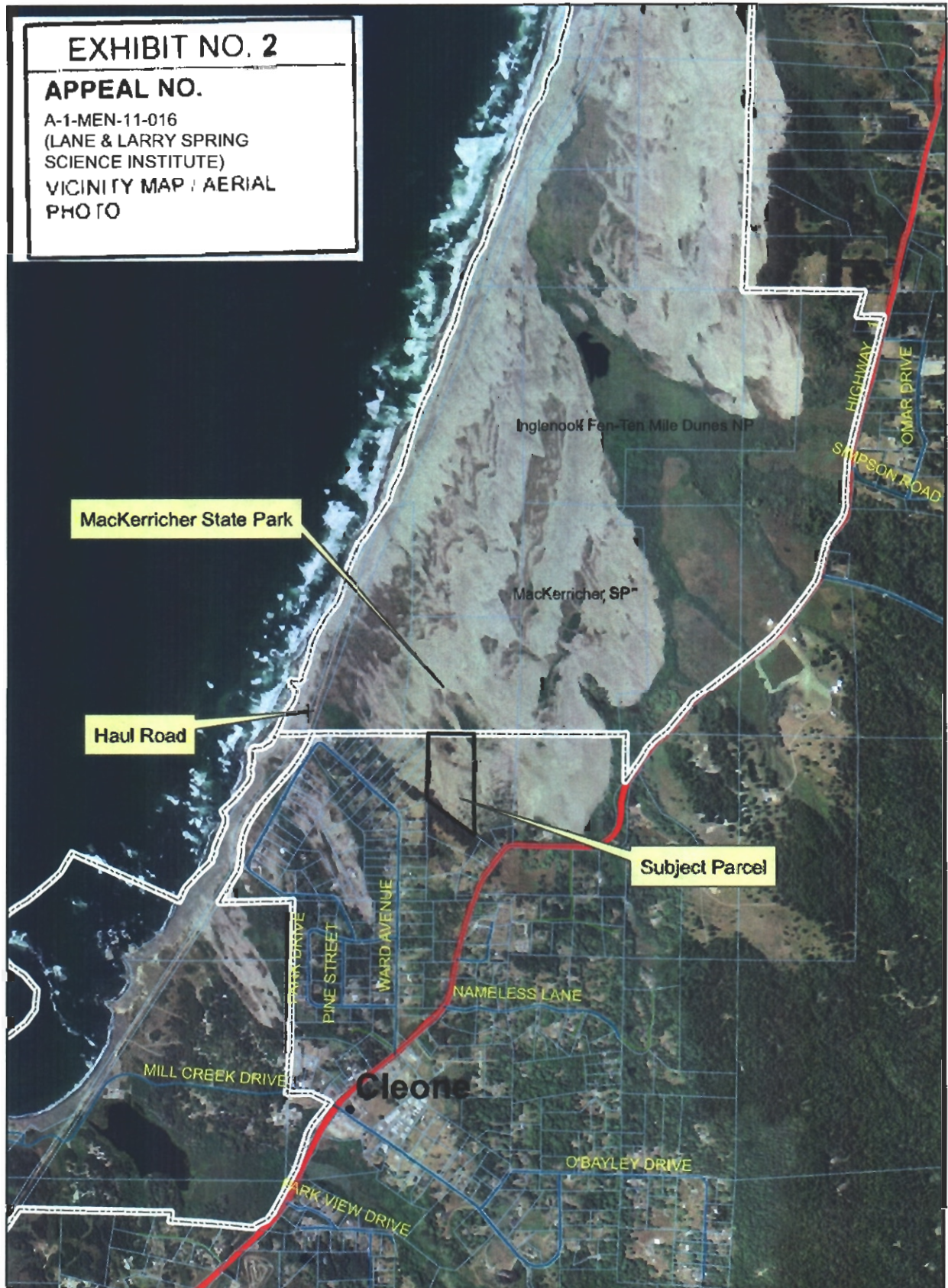


EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-11-016
(LANE & LARRY SPRING
SCIENCE INSTITUTE)
VICINITY MAP / AERIAL
PHOTO



 = State Parks Boundary



2009 Aerial Imagery of APN 069-142-01 & -02
Image source: California Coastal Records Project, Image 200902737
Copyright (C) 2002-2010 Kenneth & Gabrielle Adelman,
California Coastal Records Project, www.Californiacoastline.org

EXHIBIT NO. 3

APPEAL NO. A-1-MEN-11-016
(Lane & Larry Spring
Science Institute)

COASTAL RECORDS
AERIAL IMAGERY

EXHIBIT NO. 4

APPEAL NO.
A-1-MEN-11-016
(Lane & Larry Spring
Science Institute)

ASSESSOR'S PARCEL MAP

Por. N.1/2 of Sec. 20, T.19N. R.17W., MDB & M

Clean Acres, Units 3 & 4

Pcl. Map C2 D17 P23

" " C2 D19 P28, 19

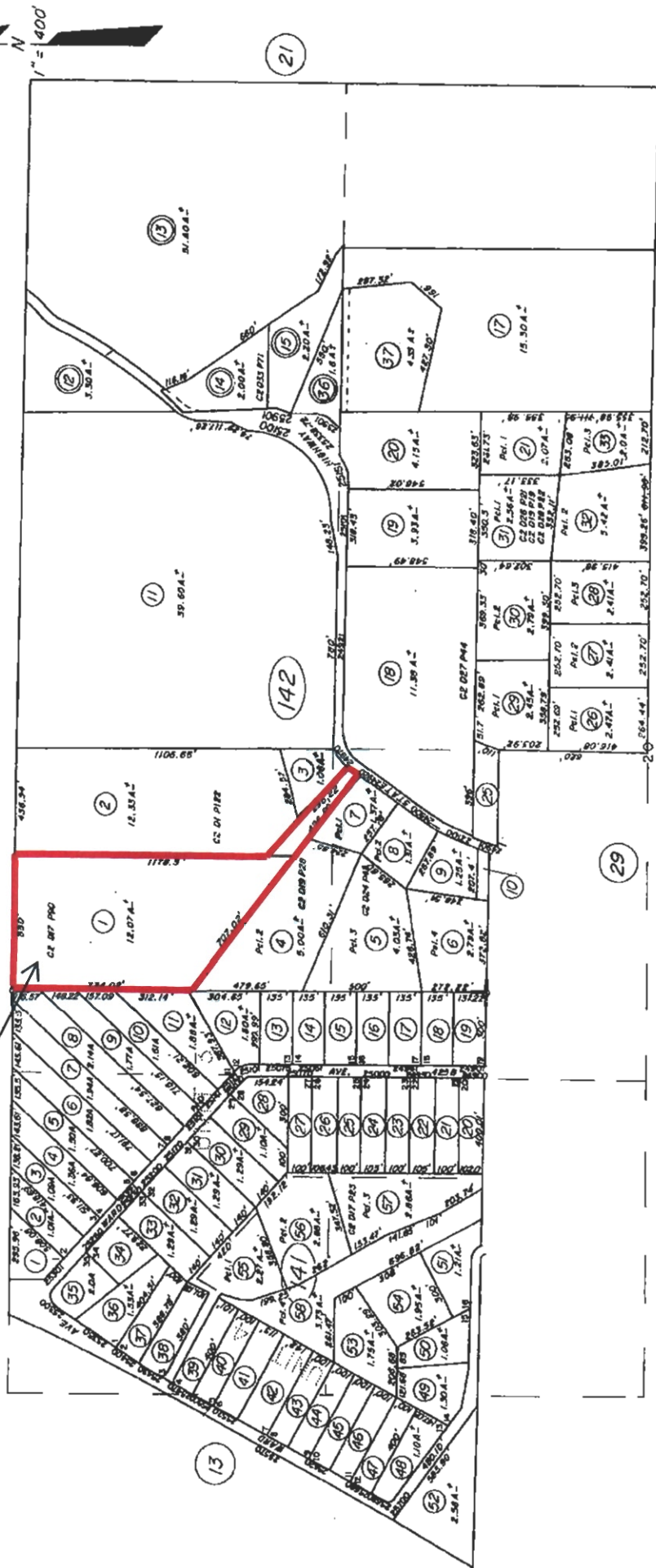
" " C2 D24 P49

" " C2 D26 P21

" " C2 D27 P43, 44

" " C2 D28 P22

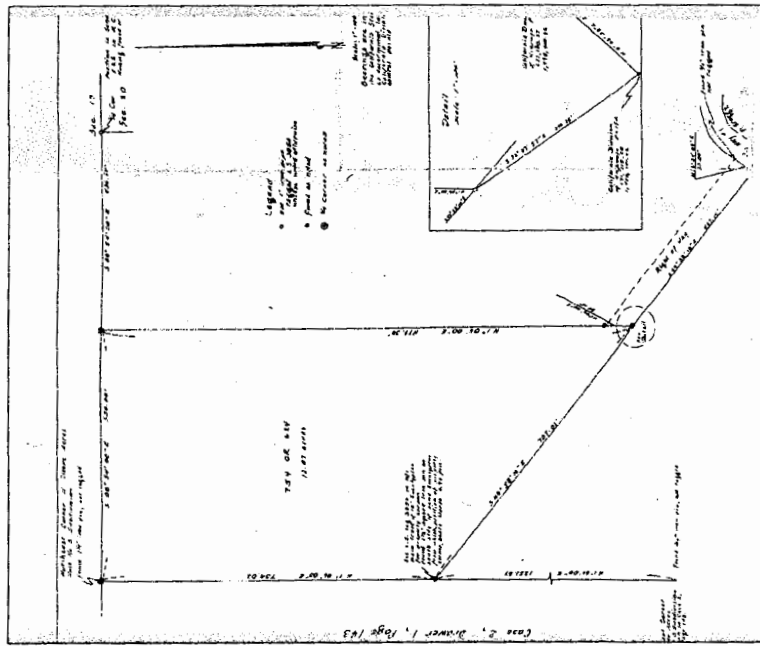
Subject Parcels



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

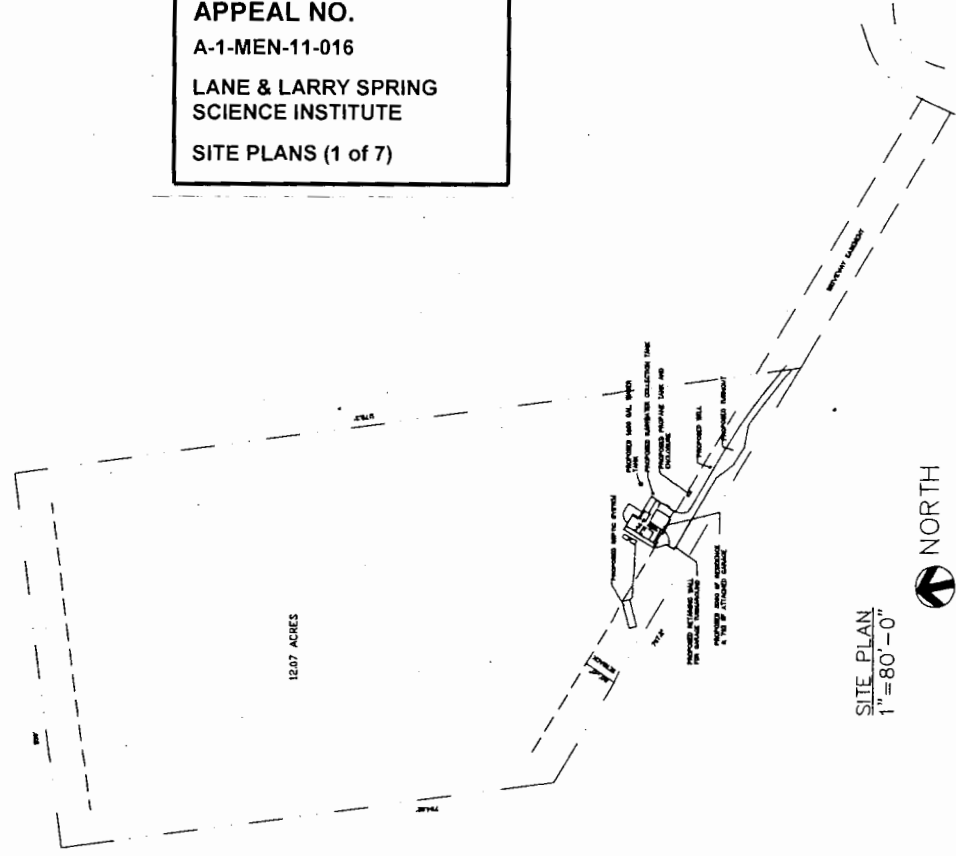
Assessor's Map
County of Mendocino, Calif.
March, 1975

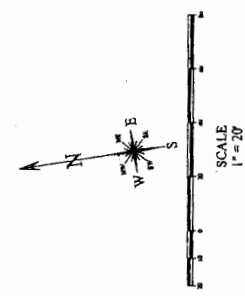
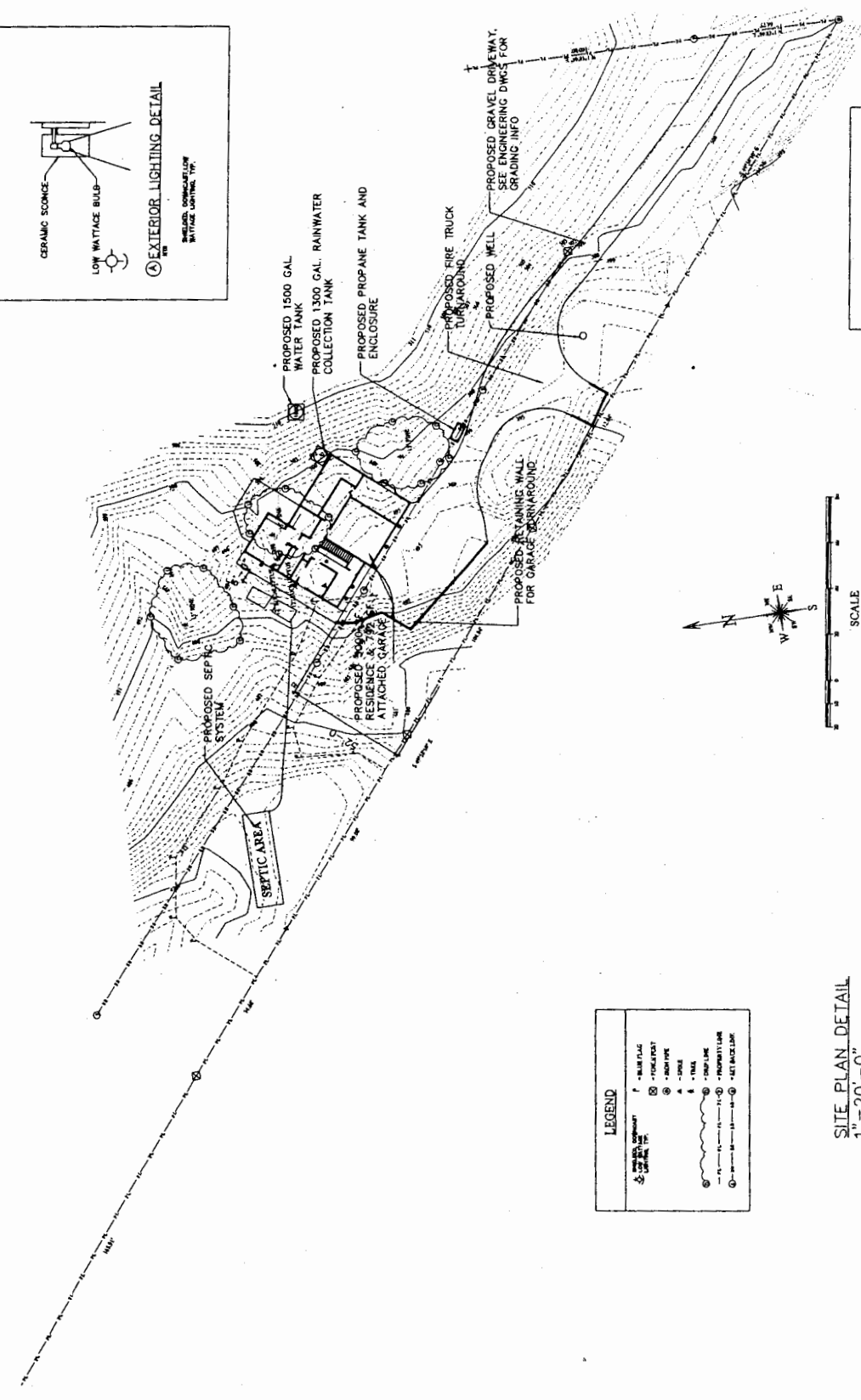
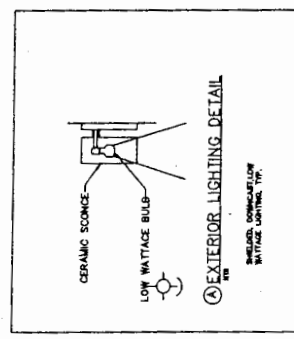
PROPOSED RESIDENCE FOR RICHARD LANE



SITE INFORMATION BASED ON SITE PLAN
PREPARED BY DAVE PAOLI, C.E.

EXHIBIT NO. 5
APPEAL NO.
A-1-MEN-11-016
LANE & LARRY SPRING
SCIENCE INSTITUTE
SITE PLANS (1 of 7)





LEGEND

—	PROPERTY LINE
—	EXISTING DRIVEWAY
—	PROPOSED DRIVEWAY
—	PROPOSED PROPANE TANK AND ENCLOSURE
—	PROPOSED FIRE TRUCK TURNAROUND
—	PROPOSED GRAVEL DRIVEWAY
—	PROPOSED WELL
—	PROPOSED RETAINING WALL
—	PROPOSED SEPTIC SYSTEM
—	PROPOSED 1500 GAL. WATER TANK
—	PROPOSED 1300 GAL. RAINWATER COLLECTION TANK
—	PROPOSED 3000 GAL. RESIDENCE & ATTACHED GARAGE

SITE PLAN DETAIL

1"=20'-0"

SITE INFORMATION BASED ON SITE PLAN
PREPARED BY DAVE PAUL C.E.

Art & Architecture

Debra Lennox, AIA

LEED AP

10100 33rd Ave
Campbell, CA 95008
408.857.0770
debra@artandarchitecture.com

SITE PLAN

LANE RESIDENCE

2424 N. HIGHWAY 1, FORT BRAGG, CA 95437

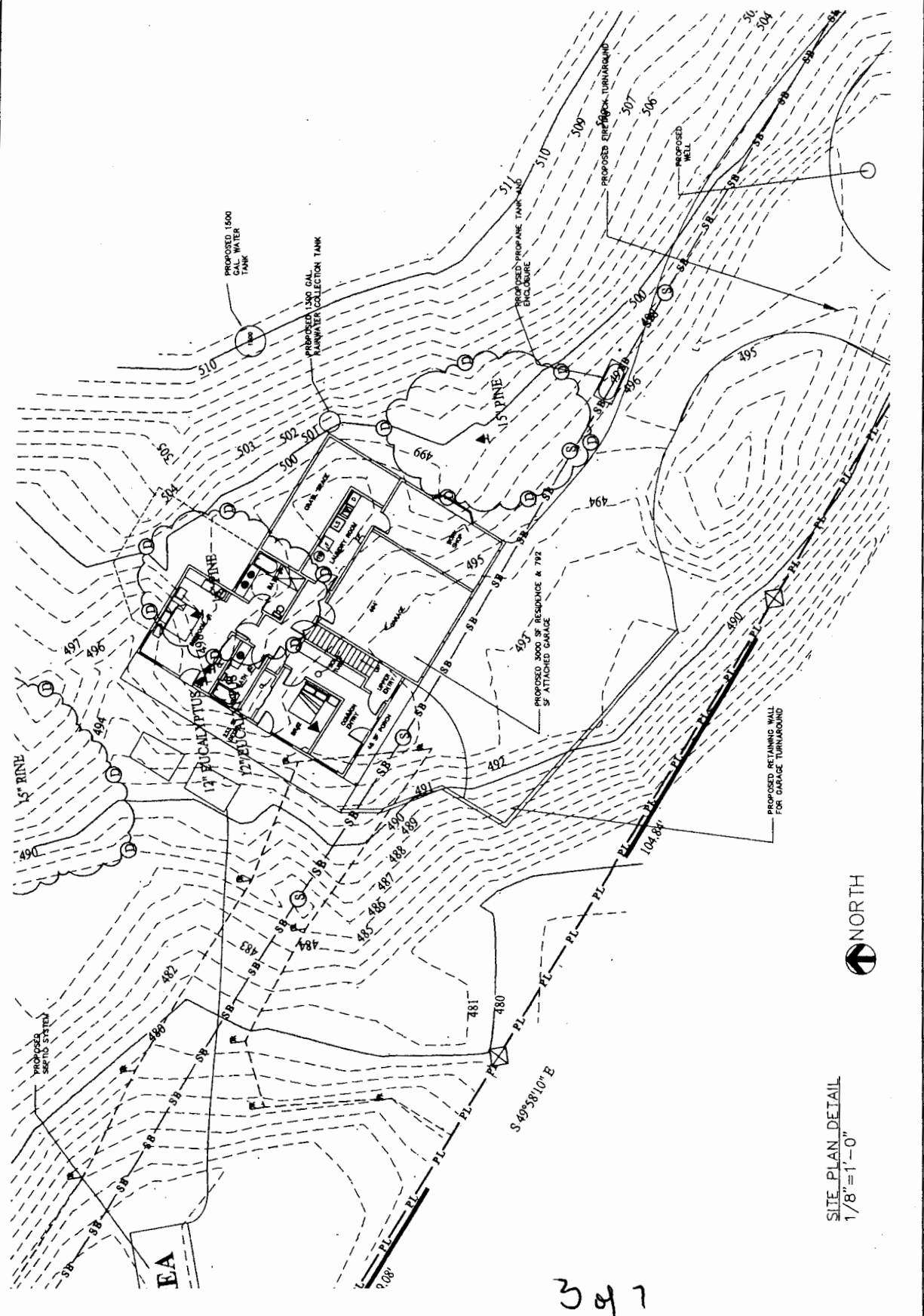
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A1.2

DATE: 10/20/11

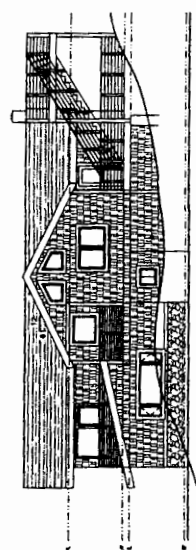
SCALE: 1/8"=1'-0"

PROJECT: LANE RESIDENCE

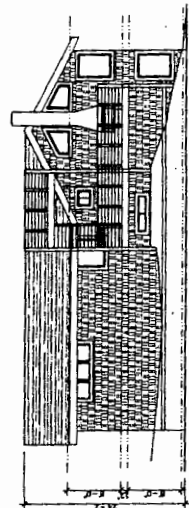


391

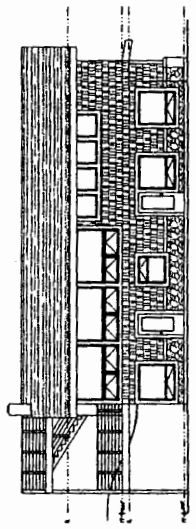




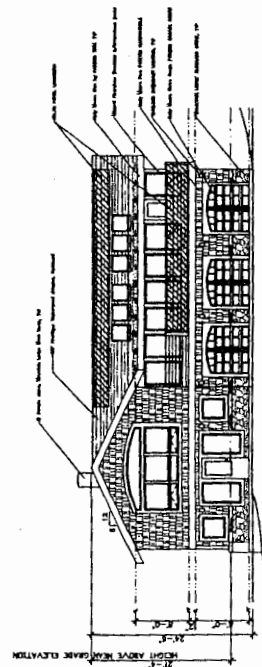
EAST ELEVATION
1/8"=1'-0"



NORTH ELEVATION
1/8"=1'-0"



WEST ELEVATION
1/8"=1'-0"



SOUTH ELEVATION
1/8"=1'-0"

747

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

RECEIVED

APR 20 2011

CALIFORNIA
COASTAL COMMISSION

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Construct a new 3,000 square foot single family residence with a 792 square foot attached garage and 792 square feet of patio/decks, roof mounted solar panels and skylights. Associated development includes installation of an onsite septic disposal system, development of an onsite water well, a rainwater collection tank, propane tank and enclosure, and improvements to and widening of existing driveway to serve the development.

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

24938 North Highway One, Fort Bragg (Mendocino County), A.P.N. 069-142-01

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

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

EXHIBIT NO. 6

APPEAL NO.

A-1-MEN-11-016

LANE & LARRY SPRING
SCIENCE INSTITUTE

APPEAL (1 of 18)

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-11-016

DATE FILED:

4/20/11

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: March 24, 2011

7. Local government's file number (if any): CDP# 13-2010

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:

Richard Lane
P.O. Box 746
Fort Bragg, CA 95437

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) The Larry Spring Science Institute
c/o Michael Bolinsky
1119 Rocky Brook Drive
Cedar Hill, TX 75104

(2) Amy Wynn Coastal Development Permits
703 North Main Street
Fort Bragg, CA 95437

(3) Matt Richmond
WRA, Inc.- North Coast Office
282 S. Main
Willits, CA 95490

(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.



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

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

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

SECTION V. Certification

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

Signed: _____ Signature on File _____
Appellant or Agent _____

Date: April 20, 2011

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

Signed: _____

Date: _____

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: April 20, 2011

Signed: _____

Date: _____

ATTACHMENT A

SECTION I. Appellant(s)

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

(760) 435-0971
2. Mark Stone
County Government Center
701 Ocean Street, Suite 500
Santa Cruz, CA 95060

(831) 454-2200

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 a designated "highly scenic area," which is a sensitive coastal resource area; and (2) between the sea and the first public road paralleling the sea.

BACKGROUND:

On March 24, 2011, the County of Mendocino approved Coastal Development Permit # CDP 13-2010 for the construction of a new two-story, 28-foot-tall, 3,000-square-foot single-family residence with a 792-square-foot attached garage and 792 square feet of patio/decks, roof mounted solar panels and skylights. The approved development includes installation of an onsite septic disposal system, development of an onsite water well, a rainwater collection tank, propane tank and enclosure, and improvements to and widening of the existing driveway to serve the development. The parcel (APN 069-142-01) consists of 12.07 acres located in a designated Highly Scenic Area (HSA), on the west side of Highway One and approximately 2,000 feet north of its intersection with Ward Avenue at 24938 North Highway One, Cleone. A portion of the approved driveway improvements will occur on the adjacent parcel to the southeast, APN 069-142-02. The project site is located within sand dunes, which are recognized as an environmentally sensitive habitat area (ESHA).

According to the County staff report, the parcel contains several special-status species, including the federally-endangered Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*) and Howell's spineflower (*Chorizanthe howellii*); rare shoulderband snails (presumed *Noyo interressa*); and rare plants round headed Chinese houses (*Collinsia corymbosa*) and dark-eyed gilia (*Gillia millefoliata*). The County staff report indicates all special-status species occur more than 200 feet from the proposed development location. The County staff report includes a figure prepared by the consulting biologist and labeled as "Proposed Project ESHA map." The map shows the location of sensitive plant occurrences located in the northern portion of the parcel, more than

100 feet from the proposed development. The map includes two proposed development options: "Development Option A," which consists of a larger development footprint located farther into the property from the road; and "Development Option B," which consists of a smaller development footprint located closer to the road.

The parcels are designated on the County general plan Coastal Plan Map as Remote Residential, Forty Acre Minimum (RMR-40). The parcels show a similar zoning designation as Remote Residential Zoning District on the Coastal Zoning Map (RMR:L-40). The County staff report indicates the single family residential development is a principally permitted use in the Remote Residential zoning district. MacKerricher State Park borders the parcel to the north, and sporadic residential development occurs to the east, south, and west.

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" and "Visual 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:

A. 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.

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.*

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.

CZC Section 20.496.040 “Dunes” states the following (**emphasis added**):

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

- (1) Scientific, educational and passive recreational uses.*
- (2) One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division.*
- (3) Removal of sand, construction of fences or walls to impede sand movement and planting of vegetation for dune stabilization where necessary to protect existing structures. These projects shall be subject to provisions regarding sand extraction and shall be processed under conditional use permit procedures.*
- (4) Footpaths to direct use and minimize adverse impacts where public access is permitted.*

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

- (1) Motorized or non-motorized vehicle traffic is prohibited.*
- (2) New development on dune parcels shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms.*
- (3) No new parcels shall be created entirely in dune habitats.*
- (4) All sand removal shall be subject to a Coastal Development Use Permit but shall not be allowed on vegetated dunes. (Ord. No. 3785 (part), adopted 1991)*

LUP Policy 3.1-15 states the following (**emphasis added**):

Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

New development on dune parcels shall be located in the least environmental damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms. No new parcels shall be created entirely within sand dune habitat. One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and that the proposed development is consistent with all other applicable policies of this Coastal Element and meets all applicable health standards.

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 March 24, 2011 indicates the vacant parcel is located within a designated Highly Scenic Area, and contains two types of Environmentally Sensitive Habitat Area (ESHA) features: 1) sand dunes; and 2) several rare plant species, including two federally-listed species. As cited in the policies above, CZC Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and specifically includes sand dunes and habitats of rare and endangered species.

The County staff report indicates that the development as approved is located more than 200 feet away from sensitive plant occurrences. With regard to siting the residential development within sand dune ESHA, the County refers to Mendocino County Coastal Zoning Code (CZC) Section 20.496.040(A) and notes that the single family residence is a permitted use in dune ESHA. The County staff report states the following:

The proposed development is consistent with permitted uses and requirements for development in dune areas in that the proposed single-family residence and associated development have been located in the least environmentally damaging location and minimize the removal of natural vegetation and alteration of landforms. The proposed location is the flattest portion of the parcel in close proximity to existing road access, and will result in the least alteration of landforms.

The County staff report includes an excerpt of the biological report prepared by the consultant. In a portion of the excerpt, the biologist states the following (emphasis added):

An alternative development site (Option B shown in Figure 5 and Appendix D) was investigated during preliminary site planning, which would place the residence as close as possible to Highway One and the southeastern corner of the Study Area. This location would reduce the length of the driveway and consequent surface area of sand dune to be impacted but would require more sand to be imported and dune features to be graded.

The previous owners imported gravel along the driveway so the entire driveway and the majority of the building foot print area has already been impacted to some extent therefore requiring less grading and altering of sand dune features.

A large dune mound in the potential development area for Option B would require significantly more excavation and removal of sand to accommodate construction of a residence. The proposed project (Option A) would require cut of approximately 420 cubic yards of sand, while Option B would require cut of 856 cubic yards of sand (Appendix D). Both options would require approximately 460 cubic yards of fill to prepare a development pad. Option B, requiring a net excavation of 396 cubic yards is therefore deemed more environmentally damaging alternative compared to the proposed project (Option A), which will only require a net 40 cubic yards of fill.

Option C addressed in Appendix D is the "no project" alternative. As described above, this alternative would still include some impacts as fill along the driveway and building pad were already created by previous owners of the property. No additional impacts from construction would occur, and no mitigation measures for the proposed project, such as invasive species control, would be implemented.

The biological evaluation contains several conflicting statements that appear to be the basis for the County's findings relative to minimizing alteration of landforms. In paragraph one cited above, the evaluation indicates that the smaller development alternative (Option B) that could be located closer to the road would result in more sand being imported. Paragraph three indicates both options result in the same amount of fill, and that while Option B results in a net excavation of 396 cubic yards, Option A (the chosen alternative) results in a net 40 cubic yards of fill. The evaluation further justifies the larger footprint design that is located farther within the dune system by indicating previous fill activities occur in the driveway. There is no evidence of a permit on file for previous fill activities.

Regardless of conflicting statements related to the evaluation of alteration of landforms, the LCP policies also mandate consideration of siting the development in the least environmentally damaging location pursuant to LUP Policy 3.1-15 and CZC Section 20.496.040(B)(2), and consistent with other applicable Coastal Element policies and development standards of the division, pursuant to CZC Section 20.496.040(A)(2). These policies additionally require, among other things, that development be permitted in ESHA only if it is the least environmentally damaging alternative.

CZC Section 20.496.015 states that a project has the potential to impact an ESHA if development is proposed to be located within the ESHA. CZC Section 20.496.015(D) further restricts development in an ESHA in part, to only those instances where findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1). That section further indicates that no development shall be allowed in an ESHA unless: (a) the resource will not be significantly degraded by proposed development, (b) no feasible, environmentally less damaging alternative exists; and (c) all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. In addition, CZC Section 20.496.015(E) states that if findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.

While the County findings for the approved development address the alteration of landforms and conclude that the larger Option A minimizes alteration of landforms, the County findings fail to address how the approved larger development located farther from the road is the least environmentally damaging alternative, inconsistent with LUP Policy 3.1-15, CZC Section

20.496.040(B)(2), and CZC 20.532.100(A)(1)(b). As an alternative was identified that does not encroach as far into the dune habitat, and as alternatives involving a smaller development footprint were not evaluated, there is insufficient basis to establish that the approved development is the least environmentally damaging alternative. Furthermore, while the County attached Special Condition 1a that restricts activities in ESHAs during and following construction to within the "development buffer" depicted on the Proposed Project ESHA map, there are no restrictions imposed limiting future development that could otherwise be exempted from a permit, and no requirements for a deed restriction or other notification to future landowners of the restrictions imposed on the site. Thus, the project is inconsistent with CZC Section 20.532.100(A)(1)(c) that requires all feasible mitigation measures capable of reducing or eliminating project-related impacts to be implemented.

Therefore, the project as approved is inconsistent with the LCP policies regarding the protection of ESHA, including but not limited to LUP Policies 3.1-7, 3.1-15, CZC Sections 20.496.040, 20.496.015, and 20.532.100(A)(1).

B. Inconsistencies with LUP Visual Resources Policies and Coastal Zoning Code Regulations Regarding Visual Resources and Highly Scenic Areas

LCP Policies on the Protection of Visual Resources:

Land Use Plan (LUP) Policy 3.5-1 states, in applicable part, as follows:

...

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. [Emphasis added]

LUP Policy 3.5-3 states, in applicable part, as follows:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land

and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

LUP Policy 3.5-5 states as follows:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

Section 20.504.015, "Highly Scenic Areas," of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

...

(C) Development Criteria.

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

...

(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:

- (a) Near the toe of a slope;*
 - (b) Below rather than on a ridge; and*
 - (c) In or near a wooded area.*
- ...

(7) Minimize visual impacts of development on terraces by the following criteria:

- (a) Avoiding development, other than farm buildings, in large open areas if alternative site exists;*
 - (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*
 - (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*
 - (d) Design development to be in scale with rural character of the area.*
- ...

(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

(11) Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991) [emphasis added].

CZC Section 20.504.020 states, in applicable part, as follows:

(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

Discussion:

LUP Visual Resources Policy No. 3.5-1 and CZC Section 20.504.015 state that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas; furthermore, new development in Highly Scenic Areas (HSAs) shall be subordinate to the character of the setting.

The development conditionally approved by the County is inconsistent with the above cited LUP Visual Resources policies and Coastal Zoning Code Regulation standards because the development is within a designated highly scenic area, and the development is not subordinate to the character of the setting. The county determined that "The structure would be visible at a distance as seen looking eastward (away from the ocean) from the Haul Road. The structure would be back dropped by mature vegetation." However, while vegetative buffering is helpful, the County's approval does not include any provisions requiring replacement of mature vegetation if it becomes decadent or damaged. The Haul Road is a public access feature situated amongst open dune lands located east of the ocean in MacKerricher State Park, and draws many visitors throughout the year. The lands north of the subject parcel are also undeveloped State Park lands. Mendocino CZC Section 20.504.015(C) requires that development permitted in highly scenic areas shall provide for the protection of coastal views from public areas that include coastal trails. In addition to these requirements, LUP 3.5-3 further requires that development be subordinate to the character of its setting.

By approving a 3,000 square-foot two-story residence plus 792-square-foot garage plus 792 square feet of accessory structures farther westward in the dunes, when alternative options were available (including a smaller footprint house closer to the road, a one-story structure, and the "no project" alternative), the County in its findings failed to address how the approved development was subordinate to the character of its setting. The project as approved is therefore

inconsistent with LCP policies regarding the protection of visual resources including, but not limited to LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015.

CONCLUSION:

Therefore, because (1) the County findings fail to address how the approved larger development located farther from the road is the least environmentally damaging alternative; (2) the County failed to implement all feasible mitigation measures capable of reducing or eliminating project-related impacts; (3) the County failed to demonstrate how the approved Option A development within ESHA minimized impervious surfaces compared to the smaller footprint of Option B; and (4) the County failed to address how the approved Option A development sited farther within the dunes was subordinate to the character of its setting, compared to other available options to site development closer to the road, the project, as approved by the County, is inconsistent with the ESHA protection and visual resource provisions of the certified LCP including, but not limited to LUP Policies 3.1-7, 3.1-18, 3.5-1, 3.5-3, and 3.5-5, and CZC Sections 20.496, 20.504, 20.532.095, and 20.532.100.



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

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CALIFORNIA
COASTAL COMMISSION

April 4, 2011

EXHIBIT NO. 7

APPEAL NO.

A-1-MEN-11-016

LANE & LARRY SPRING
SCIENCE INSTITUTE

NOTICE OF FINAL LOCAL
ACTION & FINDINGS (1 of 35)

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 #13-2010

OWNER: Richard Lane & The Larry Spring Science Institute

APPLICANT: Richard Lane

AGENT: Amy Wynn Coastal Development Permits

REQUEST: Construct a new 3000 sq. foot single family residence with a 792 sq. foot attached garage and 792 sq. feet of patio/decks, roof mounted solar panels and skylights. Associated development includes installation of an onsite septic disposal system, development of an onsite water well, a rainwater collection tank, propane tank and enclosure, and improvements to and widening of existing driveway to serve the development.

LOCATION: In the Coastal Zone, in Cleone, on the west side of Highway One, approximately 2,000 feet north of its intersection with Ward Avenue at 24938 North Highway One (APN 069-142-01). A portion of driveway improvements to occur at APN 069-142-02.

PROJECT COORDINATOR: Teresa Spade

HEARING DATE: March 24, 2011

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.

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CEP #13-2010 HEARING DATE: 3-24-11

OWNER: Lane

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 ADDED CMO # 9 TO PG CPA-10

9 THE APPLICANT SHALL MAINTAIN AN APPROPRIATE SETBACK FROM THE NEIGHBORING WELL ON THE HANSE PROPERTY TO THE SOUTH AS DETERMINED BY THE DIV. OF ENV. HEALTH SO AS TO ENSURE THAT ROADWAY IMPROVEMENTS DO NOT IMPACT THE ESTABLISHED WELL. TEMPORARY CONSTRUCTION FENCING SHALL BE ESTABLISHED SO AS TO DELINEATE THE SETBACKS AND SHALL NOT BE REMOVED UNTIL SUCH TIME AS A FINAL INSPECTION / FINAL OCCUPANCY IS ISSUED.

[Signature] Nash
Signed: Coastal Permit Administrator



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

790 SOUTH FRANKLIN STREET • FORT BRAGG • CALIFORNIA • 95437

notice lane cdp 13-2010
IGNACIO GONZALEZ, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
www.co.mendocino.ca.us/planning

March 11, 2011

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

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Thursday, March 24, 2011 in the Division of Environmental Health 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 #13-2010
DATE FILED: 4/29/2010
OWNERS: Richard Lane & The Larry Spring Science Institute
APPLICANT: Richard Lane
AGENT: Amy Wynn Coastal Development Permits
REQUEST: Construct a new 3000 sq. foot single family residence with a 792 sq. foot attached garage and 792 sq. feet of patio/decks, roof mounted solar panels and skylights. Associated development includes installation of an onsite septic disposal system, development of an onsite water well, a rainwater collection tank, propane tank and enclosure, and improvements to and widening of existing driveway to serve the development.
LOCATION: In the Coastal Zone, in Cleone, on the west side of Highway One, approximately 2,000 feet north of its intersection with Ward Avenue at 24938 North Highway One (APN 069-142-01). A portion of driveway improvements to occur at APN 069-142-02.
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# 13-2010 (Lane)
March 24, 2011
CPA-1**

OWNERS:

Richard Lane
PO Box 746
Fort Bragg, CA 95437

The Larry Spring Science Institute
c/o Michael Bolinsky
1119 Rocky Brook Drive
Cedar Hill, TX 75104

APPLICANT:

Richard Lane
PO Box 746
Fort Bragg, CA 95437

AGENT:

Amy Wynn Coastal Development Permits
703 North Main Street
Fort Bragg, CA 95437

REQUEST:

Construct a new 3000 sq. foot single family residence with a 792 sq. foot attached garage and 792 sq. feet of patio/decks, roof mounted solar panels and skylights. Associated development includes installation of an onsite septic disposal system, development of an onsite water well, a rainwater collection tank, propane tank and enclosure, and improvements to and widening of existing driveway to serve the development.

LOCATION:

In the Coastal Zone, in Cleone, on the west side of Highway One, approximately 2,000 feet north of its intersection with Ward Avenue at 24938 North Highway One (APN 069-142-01). A portion of driveway improvements to occur at APN 069-142-02.

APPEALABLE AREA:

Yes – West if 1st Public Road, Highly Scenic Area

PERMIT TYPE:

Standard

TOTAL ACREAGE:

12.07 acres

GENERAL PLAN:

RMR-40

ZONING:

RMR: L-40

EXISTING USES:

Undeveloped

ADJACENT ZONING:

North: Open Space
East: RMR 40
South: RR-5 [RR-2]
West: RR-5 [RR-1]

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SURROUNDING LAND USES: North: MacKerricher State Park
East, South & West: Residential

SUPERVISORIAL DISTRICT: 4

CA COASTAL RECORDS PROJECT: Image 200902739

ENVIRONMENTAL DETERMINATION: Categorically Exempt from CEQA, Class 3(a)(d)(e)

PROJECT DESCRIPTION: The applicant proposes construction of a new 3000 sq. foot single family residence with a 792 sq. foot attached garage and 792 sq. feet of patio/decks, roof mounted solar panels and skylights on an undeveloped property in the dunes. Associated development includes installation of an onsite septic disposal system, development of an onsite water well, a rainwater collection tank, propane tank and enclosure, and improvements to and widening of existing driveway to serve the development. A portion of the driveway improvements are to occur on the adjacent parcel to the southeast.

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.

Land Use

The parcel is classified on the Coastal Plan Map and zoned as Remote Residential, Forty Acres Minimum (RMR: L-40). The proposed single family residence and associated development are permitted uses within the Remote Residential Zoning District, and are consistent with the Remote Residential land use classification.

The required yard setbacks for a parcel in an RMR zone are 50 feet from all property lines. As shown on the Site Plan, the structure is in compliance with setbacks required by the County Zoning Code.

The site is within a designated highly scenic area, therefore the height limit is 18 feet above average natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The proposed residence would not affect views to the ocean and, as shown on the Coastal Records Project website, is located in an area where two story structures are common. The proposed 28 foot maximum height of the residence is therefore in compliance with the height limit.

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. The closest lateral access is located about ½ mile west along the Haul Road in MacKerricher State Park. The closest vertical access is located about ¾ mile south along Mill Creek Drive, west of the highway, to the Haul Road. There are trails that run through the site, however staff is unaware of any prescriptive rights at this location, and has not seen or heard of anyone using this property to access the beach. It is unlikely that the proposed residential development would detrimentally impact public access.

Hazards

The property is in an area that has a "moderate" fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention. The Department of Forestry has submitted recommended conditions of approval (CDF# 355-09) for address standards, driveway standards, and defensible space standards. Standard Condition #4 is recommended to achieve compliance with CDF fire safe standards.

The project is to be located in sand dunes. Dune topography changes over time at a significantly faster rate than other landforms. Within 20 feet or so of the proposed residence, the topography slopes as much as 50%. The average slope within the building footprint ranges between 10% and 20%. The applicants propose a slab on grade. According to the agent, the civil engineer has determined that this is the most feasible option, and offers the stability that the house requires. Grading is estimated at about 400 cubic yards cut and 450 cubic yards fill. The proposed development is on the flattest part of the property within a close vicinity to the road access. This is the least impacting location in terms of grading that would be required for the development.

The property is not located in a 100 year flood zone, and is not in the vicinity of any known fault lines. According to the California Emergency Management Agency/California Geological Survey Maps from June 2009, the tsunami inundation zone boundary is located approximately at the Haul Road, which is about 2,000 feet west of the project site.

Visual Resources

The applicant proposes a two-story residence with a maximum height of 28 feet above grade. The structure would be visible at a distance as seen looking eastward (away from the ocean) from the Haul Road. The structure would be back dropped by mature vegetation. The parcel is located in a designated "Highly Scenic Area" west of Hwy 1 and the proposed project is subject to the following development criteria:

Coastal Element Policy 3.5-1 provides general guidelines for all development in the coastal zone, requiring that:

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

Policy 3.5-3 of the Coastal Element states:

Any development permitted in (highly scenic) areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

**STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT**

**CDP# 13-2010 (Lane)
March 24, 2011
CPA-4**

Section 20.504.015(C)(2) of the Coastal Zoning Code requires:

In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

The proposed development is located in an area where two-story structures that exceed the 18 foot height limitation are common, as shown in the Coastal Records Project photo. The 28 foot height would not affect public views to the ocean or be out of character with surrounding structures.

Section 20.504.015(C)(3) also requires:

New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof material shall be selected to blend in hue and brightness with their surroundings.

The proposed exterior materials and colors are outlined in Table 1.

Table 1. Proposed exterior materials and colors.

	Material	Color
Siding	Hardie Shingle	Kelly Moore Fern
Trim	Hardie Trim	Kelly Moore Glen Ivy
Water Board	El Dorado Stone Veneer	Mountain Ledge Mesa Verde
Chimney	El Dorado Stone Veneer	Mountain Ledge Mesa Verde
Roofing	GAF Comp Shingle, Timberline Prestique	Barkwood
Skylight	Velux, flat fixed	Glass
Window Frames	Milgard Fiberglass Wood Clad	Brownstone
PV Panels	flat, low reflectivity	Blue cells on aluminum frame
Doors	wood & glass	Kelly Moore Bistro Brown

The agent has provided color samples, which are located in the project file. The proposed colors are medium to dark natural colors that would blend well with the natural environment and are consistent with colors of surrounding structures. The skylights and solar panels would be located on the south elevation, which would not be visible from the Haul Road.

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

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

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

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

Exterior lighting is proposed as Bellacor Nautical Distressed Copper, Dark Sky Compliant. The model number has not been provided, however an illustration was provided by the agent (located in the project

file) - the illustration clearly shows the proposed model to be fully downcast and shielded. Staff recommends Special Condition Number 1, assuring the proposed materials and colors will be consistent with the intent of the visual resource requirements for the life of the project.

Natural Resources

The proposed project is located in coastal dunes.

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.

Section 20.496.010 of the Mendocino County Coastal Zoning Code states in part:

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.

Section 20.496.040(A) of the Mendocino County Coastal Zoning Code outlines activities permitted in dunes and includes "One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division."

Section 20.496.040(B) outlines requirements for developments in dune areas as follows:

- (1) Motorized or non-motorized vehicle traffic is prohibited.
- (2) New development on dune parcels shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms.
- (3) No new parcels shall be created entirely in dune habitats.
- (4) All sand removal shall be subject to a Coastal Development Use Permit but shall not be allowed on vegetated dunes.

The proposed development is consistent with permitted uses and requirements for development in dune areas in that the proposed single-family residence and associated development have been located in the least environmentally damaging location and minimize the removal of natural vegetation and alteration of landforms. The proposed location is the flattest portion of the parcel in close proximity to existing road access, and will result in the least alteration of landforms.

The property was surveyed for other potential Environmentally Sensitive Habitat Areas by Matt Richmond of WRA Environmental Consultants as outlined in his report, dated April 2010. Four rare plant species were documented at the site, and one wildlife species was documented at the site. Potential exists for three other wildlife species to be present. Rare plants and wildlife species status and presence is outlined in Table 2.

Table 2. Species present or potentially present that warrant protection.

Species	# of Individuals Documented	Protective Status	Distance from Impact Area
Menzies' Wallflower (<i>Erysimum menziesii</i> ssp. <i>menziesii</i>)	12	Federally Endangered	620 feet
Howell's Spineflower (<i>Chorizanthe howellii</i>)	225	Federally Endangered	640 feet
Round Headed Chinese Houses (<i>Collinsia corymbosa</i>)	310	G1 S1.2	810 feet
Dark Eyed Gilia (<i>Gilia millefoliata</i>)	160	G2 S2.2	550 feet
White-tailed Kite (<i>Elanus leucurus</i>)	Potential Nesting Habitat	Nesting Bird Treaty Act	None Documented
Rufous Hummingbird (<i>Selasphorus rufus</i>)	Potential Nesting Habitat	Nesting Bird Treaty Act	None Documented
Globose Dune Beetle (<i>Coelus globosus</i>)	High Potential for Occurrence	State Listed	None Documented
Shoulderband Snails (presumed <i>Noyo intersessa</i>)	Observed on Parcel	State Listed	200+ feet

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.

As outlined in Table 2, all documented species of concern were found well away from the proposed development area, however the proposed development occurs within the dunes, which is listed as an Environmentally Sensitive Habitat Area. Standards for determining permitted development within the buffer area are outlined in Section 20.496.020(A)(4) of the Mendocino County Coastal Zoning Code. Referred to as a portion of a Reduced Buffer Analysis, this section is analyzed by the biologist to guide in determining appropriateness of development and mitigation measures. This section of reduced buffer analysis was performed by Matt Richmond and included in his report. Staff has included the analysis as Appendix A of this report. In general, the analysis indicates that the project location and proposal are the least impacting option and there is no other least impacting location for development. Further, the analysis indicates, that with measures proposed by Matt Richmond, the project will not have any substantial detrimental impacts on natural resources.

The mitigation measures outlined in Matt Richmond's report are recommended to be required as a condition of approval of the Coastal Development Permit, and are reiterated as Special Condition Number 2.

Section 20.532.100 of the MCCZC states as follows:

Sec. 20.532.100 Supplemental Findings.

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

(A) Resource Protection Impact Findings.

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

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

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

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

The project meets the requirements outlined above in that there is no feasible, less environmentally damaging alternative to the project proposed, and that mitigation measures have been provided to minimize adverse environmental effects. The supplemental findings are included as findings at the end of this report.

Archaeological/Cultural Resources

The applicant submitted an archaeological survey report with the application. The report, by Thad Van Bueren, dated June 13, 2009, was reviewed by the Mendocino County Archaeological Commission on June 9, 2010, at which time the survey was accepted, noting that no cultural, historical or archaeological sites were observed. 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 Dunes, as shown in the 1982 Coastal Groundwater Study prepared by the Department of Water Resources. Water is to be provided by an on-site well. As the property is located in the dunes, staff had concerns that there may not be adequate water to serve the proposed development, as there may be potential for salt water intrusion this close to the ocean. Staff suggested to the agent that proof of water may be helpful in this case. In response, the agent provided a letter from the well driller, James J. Freitas of Coastal Well Drilling, in which he states as follows:

I met with Amy, and she had shown me where they would like to drill for a potable water source. She had also expressed to me that your office had concerns of the possibility of salt water intrusion. From what I saw of the site, based on neighboring well systems and site elevation, the chances of salt water intrusion and/or brackish water would be very highly unlikely at the proposed drill site (Freitas 2010).

The application proposes a new on-site sewage disposal system, designed to support the proposed three bedroom residence. Carly Williams of the Division of Environmental Health (DEH) responded to our referral by notifying us that DEH can clear this Coastal Development Permit.

No adverse impacts to groundwater resources are anticipated.

Transportation/Circulation

The project would use an existing encroachment onto Highway One. The application was referred to Caltrans for comment. Caltrans responded by indicating that the existing encroachment will need to be upgraded, and that any work within the Caltrans right-of-way, including driveway improvements, vegetation control, and drainage modifications, will require an approved encroachment permit from Caltrans. Standard Condition Number Four is recommended to assure compliance with this condition.

The project will contribute incrementally to traffic volumes on local and regional roadways, however such incremental increases were considered when the Local Coastal Plan land use designations were assigned to the site.

Zoning Requirements

The project complies with the zoning requirements for the Remote Residential District set forth in Chapter 20.380, and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

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

FINDINGS:

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

7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.
8. Environmentally Sensitive Habitat Areas:
 - a. The resource as identified will not be significantly degraded by the proposed development.
 - b. There is no feasible less environmentally damaging alternative.
 - c. All feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted.

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.

COASTAL ACT COMPLIANCE SPECIAL CONDITIONS:

- 1. The approved exterior materials and colors shall be maintained for the life of the structure unless different materials and/or colors are approved by the Coastal Permit Administrator. Exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded in compliance with Section 20.504.035 of the MCCZC, for the life of the structure.
- 2. The following Coastal Act compliance measures shall be implemented to protect on-site natural resources of concern from development and disturbance resulting from the project:
 - 1a: RESTRICTED ACTIVITIES IN ESHAs. No activities shall be allowed that would disturb vegetation, topography, or hydrology beyond the designated development buffer shown in Exhibit F, both during and following construction. Some examples of these activities are vehicle parking or storage of other heavy materials, regular foot traffic, and clearing of vegetation. However, certain vegetation removal activities may be permitted, including native plant restoration activities and pruning or removal of hazardous or diseased trees or thinning of trees if deemed beneficial to the ESHA by a certified arborist or qualified biologist.

Solid materials, including wood, masonry/rock, glass, paper, or other materials shall not be stored outside of the limit of permanent construction impacts shown as the development buffer in Exhibit F. Solid waste materials should be properly disposed of offsite. Fluid materials, including concrete, wash water, fuels, lubricants, or other fluid materials used during construction shall not be disposed of onsite and shall be stored or confined as necessary to prevent spillage into natural habitats including the onsite ESHAs. If a spill of such materials occurs, the area shall be cleaned immediately and

contaminated materials disposed of properly. The affected area shall be restored to its natural condition.

Mitigation Measure 1b: LIMIT OF CONSTRUCTION IMPACTS. Prior to any ground disturbance and vegetation clearing, combination silt fence and construction fence shall be installed around the limit of the development area, including septic fields, as shown in Figure 5. Fence locations and any ESHA boundaries in the vicinity of construction must be determined and flagged by a qualified biologist, and shall be placed such that construction impacts to native plants are minimized. No grading, placement of fill material, or other ground disturbance may occur beyond the designated construction impact area. This fencing may only be removed once all construction activities are completed.

Mitigation Measure 1c: STAFF EDUCATION. Prior to construction, project contractors should be informed of the sensitive resources within the Study Area. Furthermore, the significance of the mitigation measures and fencing and flagging of ESHAs shall be clearly explained to all parties working within the Study Area both during and following construction.

Mitigation Measure 1d: EXTERIOR LIGHTING. Exterior lighting on the north- and west-facing sides of the development area shall be avoided or shaded such that lights do not shine upwards or sideways toward native dune habitat and the adjacent State Park.

Mitigation Measure 1e: RESTORATION OF TEMPORARILY IMPACTED VEGETATION. All disturbed ground remaining after construction, including the septic fields, shall be replanted under the guidance of a qualified biologist or landscaper with knowledge of native plants and restoration. Only native dune mat or other appropriate dune species shall be used, and they should be installed at a density appropriate to the sandy substrate. Planting should occur in the winter months to reduce the need for irrigation, and irrigation of these plants should not be continued once the native species are established (typically after one to two years). Revegetation of these areas should be monitored by a qualified biologist annually for three years and corrective measures taken as necessary to achieve establishment of native vegetation at similar densities to surrounding native habitats.

Mitigation Measure 1f: LIMIT THE POTENTIAL FOR IMPORTING INVASIVE AND NON-NATIVE PLANT SPECIES. All construction vehicles undercarriage and tires (tracks) shall be cleaned via pressure washing to remove any dirt or debris which may harbor invasive or non-native species prior to driving on the site. This shall occur each time a vehicle leaves the site and returns, but only if the vehicle is used at a different job site. If the vehicle is not used at a different job site then the need for cleaning is not necessary.

Mitigation Measure 2: PRE-CONSTRUCTION SURVEYS. The bird breeding season typically extends from February to August. Ideally, the clearing of vegetation and the initiation of construction can be done in the non-breeding season between September and January. If these activities cannot be done in the non-breeding season, a qualified biologist shall perform pre-construction breeding bird surveys

within 14 days of the onset of construction or clearing of vegetation. If active breeding bird nests are observed, no ground disturbance activities shall occur within a minimum 100-foot exclusion zone. These exclusion zones may vary depending on species, habitat and level of disturbance. The exclusion zone shall remain in place around the active nest until all young are no longer dependent upon the nest. A biologist should monitor the nest site weekly during the breeding season to ensure the buffer is sufficient to protect the nest site from potential disturbance.

Mitigation Measure 3: PRE-CONSTRUCTION SURVEYS. Prior to the initiation of ground disturbance, a preconstruction survey shall be performed by a qualified biologist to determine the presence of Tenmile shoulderband snails and Globose dune beetle. If these species are found, they shall be relocated at least 100 feet from the proposed project footprint. Additionally, vegetation removed for the proposed project shall be stored within the Study Area for at least three days to insure that special status invertebrate adult or larvae have the opportunity to leave the vegetation voluntarily prior to removal.

Mitigation Measure 4a: LANDSCAPING RESTRICTIONS. Prior to issuance of the building permit, the applicant shall submit for approval by the Planning Division, a landscaping plan in compliance with this condition: Since the entire impact area is located within a sand dune ESHA, no non-native plants shall be installed on the property, with the exception of gardens used for food production. Landscaping and revegetation within temporarily impacted areas both during and following construction will ideally consist of native dune mat species. Otherwise they should be native coastal species present in the Study Area (Appendix B of the Biological Report), or species native to coastal Mendocino County. When possible, planting should be of local stock to preserve local genetic diversity. The local CNPS chapter, a qualified biologist, or a landscaper with knowledge of native plant communities should be consulted to identify appropriate species for planting.

Mitigation Measure 4b: SIGNAGE. To discourage activities outside of the development area, four to six permanent signs shall be placed at regular intervals along the northern and western boundaries of the development area. Signs shall indicate that the undeveloped areas are an ESHA and that any vehicle use, storage of materials, or vegetation clearing (other than restoration activities) are prohibited.

Mitigation Measure 4c: REPLANTING OF SEPTIC AREA. During the construction of the septic area/leach fields, the contractor shall remove at least the upper 8 inches (surface layer) of sand within the "native plant restoration area". This surface layer of sand shall be stockpiled and used for backfill following installation of the septic area. The remaining underlying sands (sub-surface layer) to be removed during the installation of the septic area shall be stockpiled in a second location. Following the installation of the septic area/leach fields, the area shall be backfilled with the stockpiled surface layers to serve as the new sub-surface layer. The stockpiled sub-surface layer sand will then be placed on top to serve as the new surface layer. The applicant shall plant vegetation within the septic area, consisting only of native dune species. Such species may include but are not limited to: yellow sand verbena (*Abronia latifolia*), dune sagebush (*Artemisia pycnocephala*), beach primrose (*Camissonia cherianthifolia*), coast eriogonum (*Eriogonum latifolia*), California poppy (*Eschscholzia californica*) beach

STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT

CDP# 13-2010 (Lane)
March 24, 2011
CPA-13

gumweed (*Grindelia stricta*), silky beach pea (*Lathyrus littoralis*), and seashore lupine (*Lupinus littoralis*).

The optimal time to plant dune species is during the winter after approximately 10 inches of rain have fallen. This allows the plants to establish easier due to the moist soil conditions and eliminates the need for irrigation.

Mitigation Measure 4d: REVEGETATION. All temporarily impacted areas, such as the septic fields and around the driveway and house, should be monitored for invasion of non-native species for three years following construction. Any new occurrence of species that could threaten adjacent native dune habitats, such as the highly invasive European beach grass or various broom species, should be eradicated from the disturbed areas. Follow-up and monitoring should occur for at least three years to prevent introduction of new species or weed populations.

Staff Report Prepared By:

March 11, 2011
Date

Teresa Spade
Teresa Spade
Planner II

Attachments: Exhibit A Location Map
Exhibit B Zoning Display Map
Exhibit C Coastal Groundwater Resources
Exhibit D California Natural Diversity Database Rarefind Map
Exhibit E Orthophoto
Exhibit F ESHA Map
Exhibit G Site Plan
Exhibit H Site Plan Detail
Exhibit I Site Plan Detail 2
Exhibit J Floor Plan
Exhibit K First Floor Plan
Exhibit L North and East Elevations
Exhibit M South and West Elevations

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.

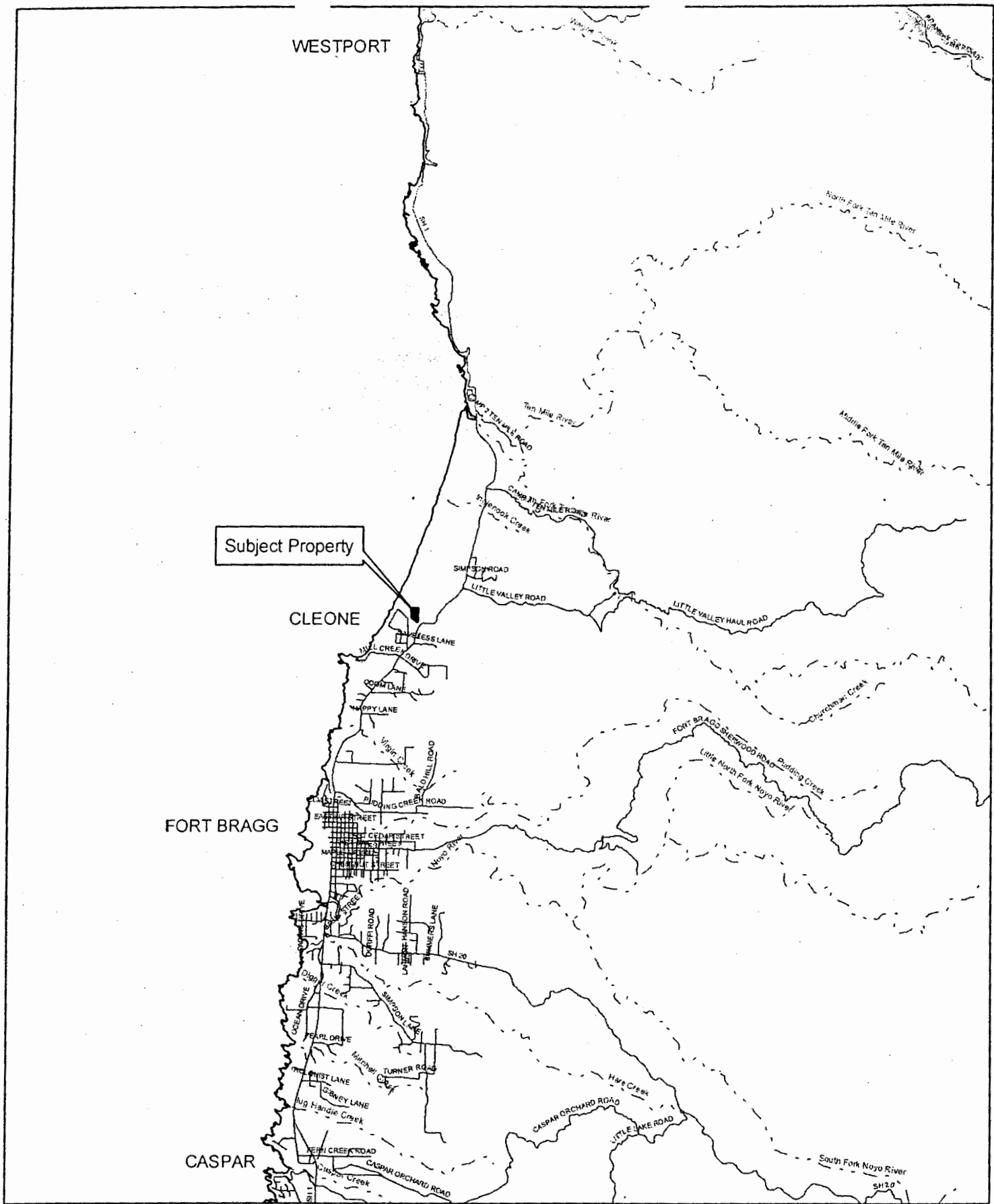
Appeal Fee: \$945 (For an appeal to the Mendocino County Board of Supervisors.)

**STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT**

**CDP# 13-2010 (Lane)
March 24, 2011
CPA-14**

SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning – Ukiah	No comment
Department of Transportation	No comment.
Environmental Health – Fort Bragg	DEH can clear (2-17-11).
Building Inspection – Fort Bragg	No comment.
Arch Commission	Survey accepted.
Assessor	No response.
USFWS	No response.
Department of Fish & Game	No response.
Coastal Commission	No response.
Dept. of Parks & Recreation	No response.



OWNER: LANE, Richard
CASE: CDP 13-2010
APNs: 06-142-01

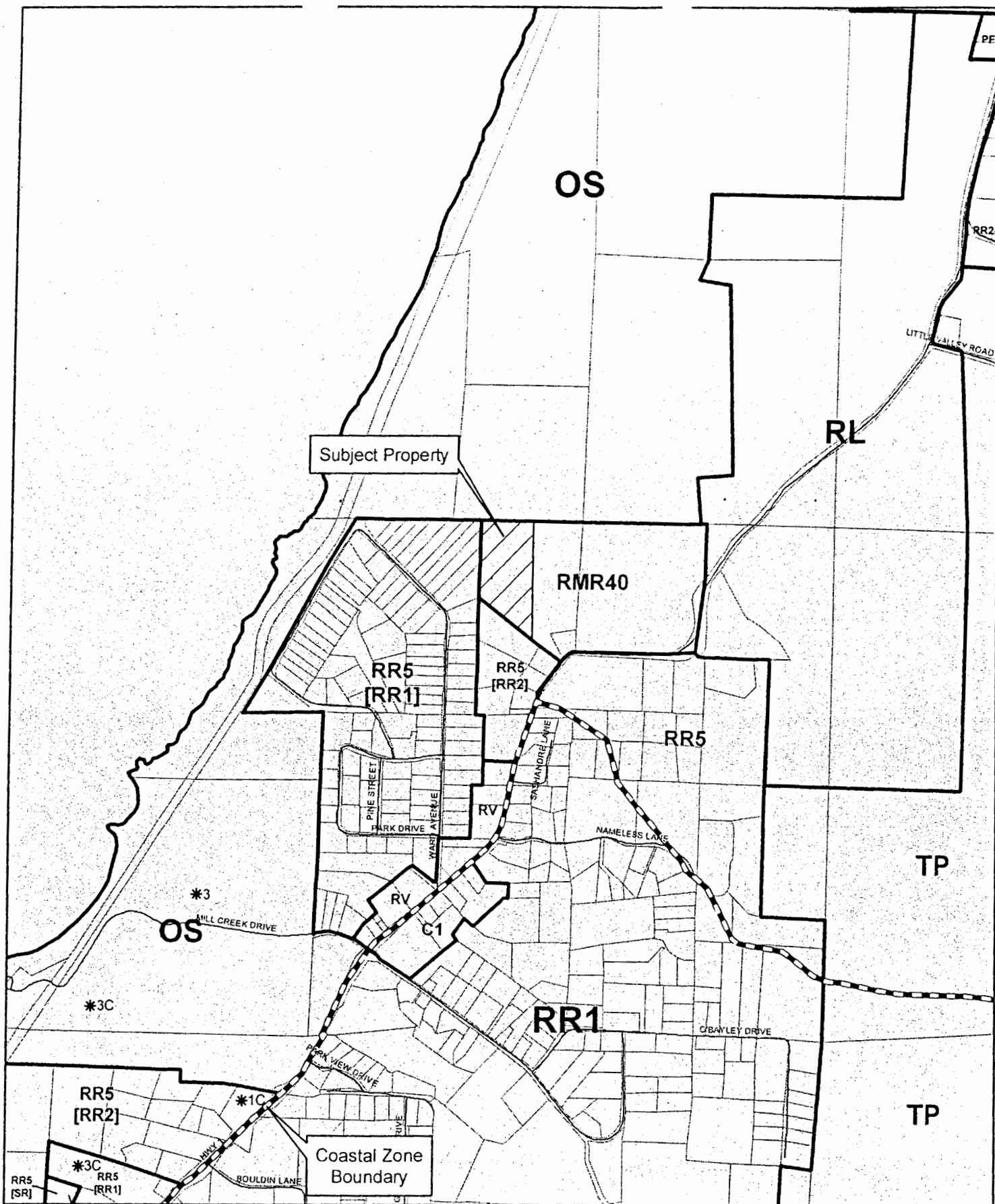
18 of 35

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 December 2008)

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Feet

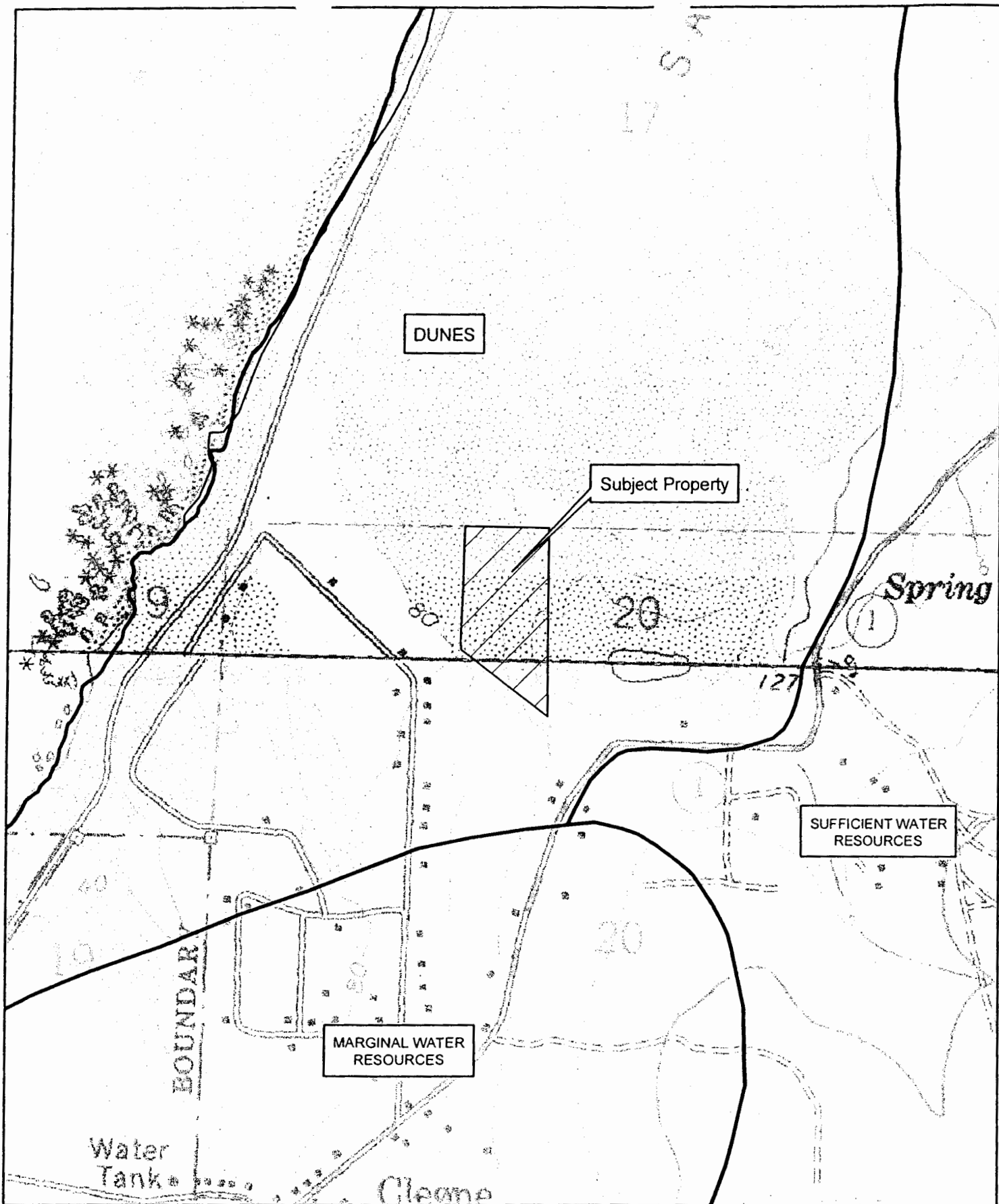




OWNER: LANE, Richard
CASE: CDP 13-2010
APNs: 06-142-01

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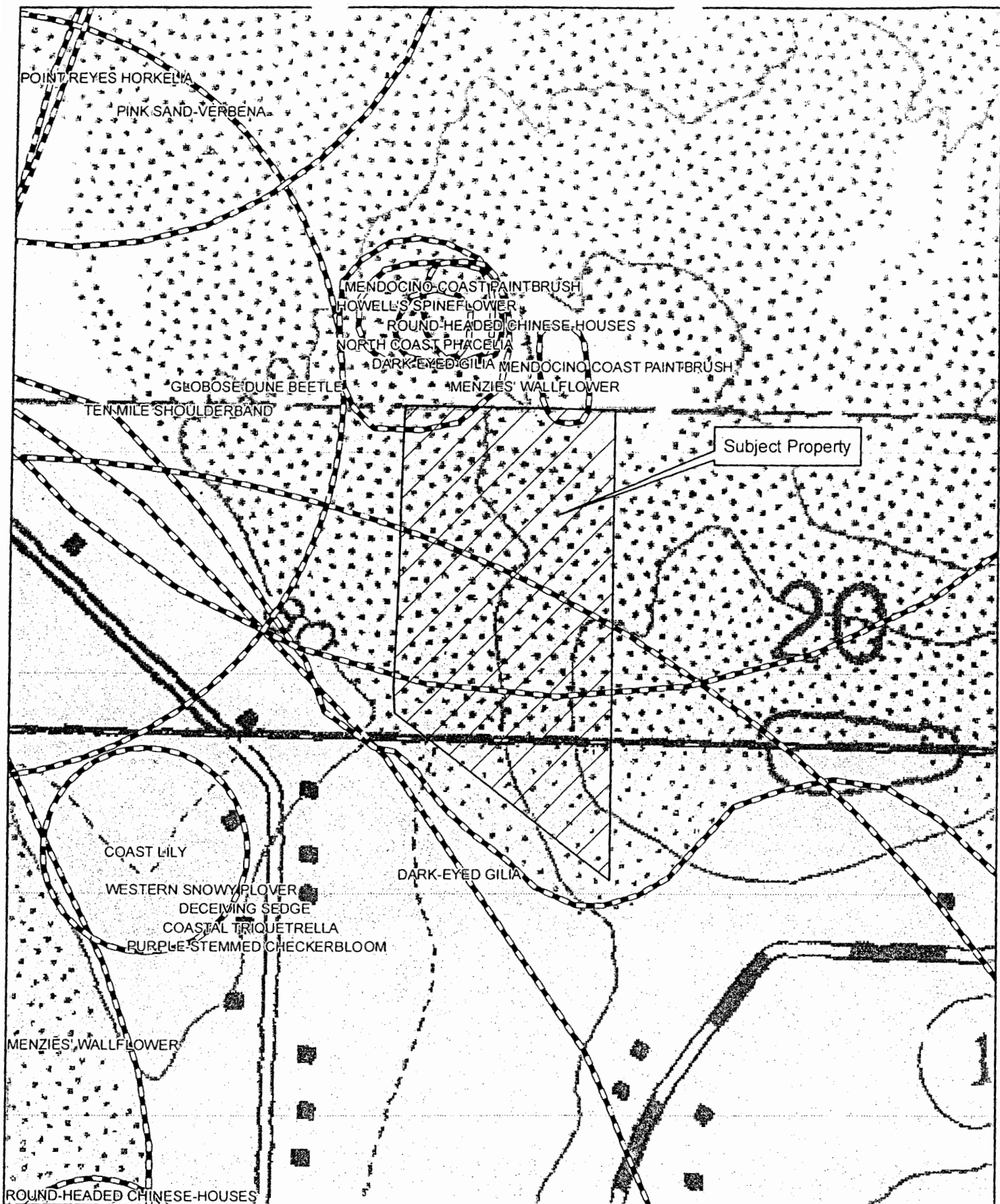
ZONING DISPLAY MAP



OWNER: LANE, Richard
CASE: CDP 13-2010
APNs: 06-142-01

COASTAL GROUND WATER RESOURCES


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OWNER: LANE, Richard
CASE: CDP 13-2010
APNs: 06-142-01

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CALIFORNIA NATURAL DIVERSITY
DATABASE RAREFIND (Jan 2010)



Subject Property

OWNER: LANE, Richard
CASE: CDP 13-2010
APNs: 06-142-01

22 of 35

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 December 2008)

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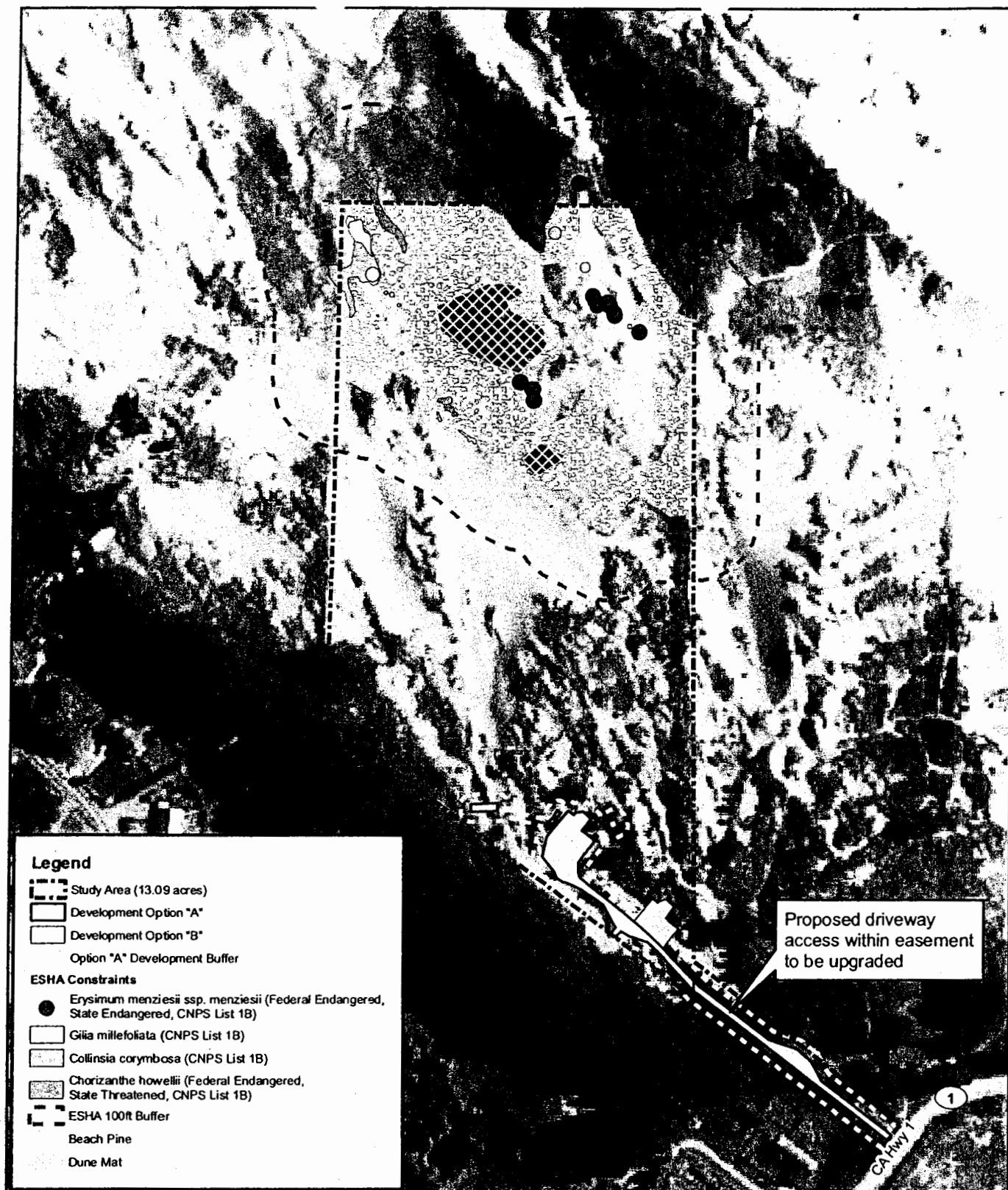


Figure 5. Proposed Project ESHA Map

24938 Highway 1
(APN 069-142-01)
Mendocino County, California



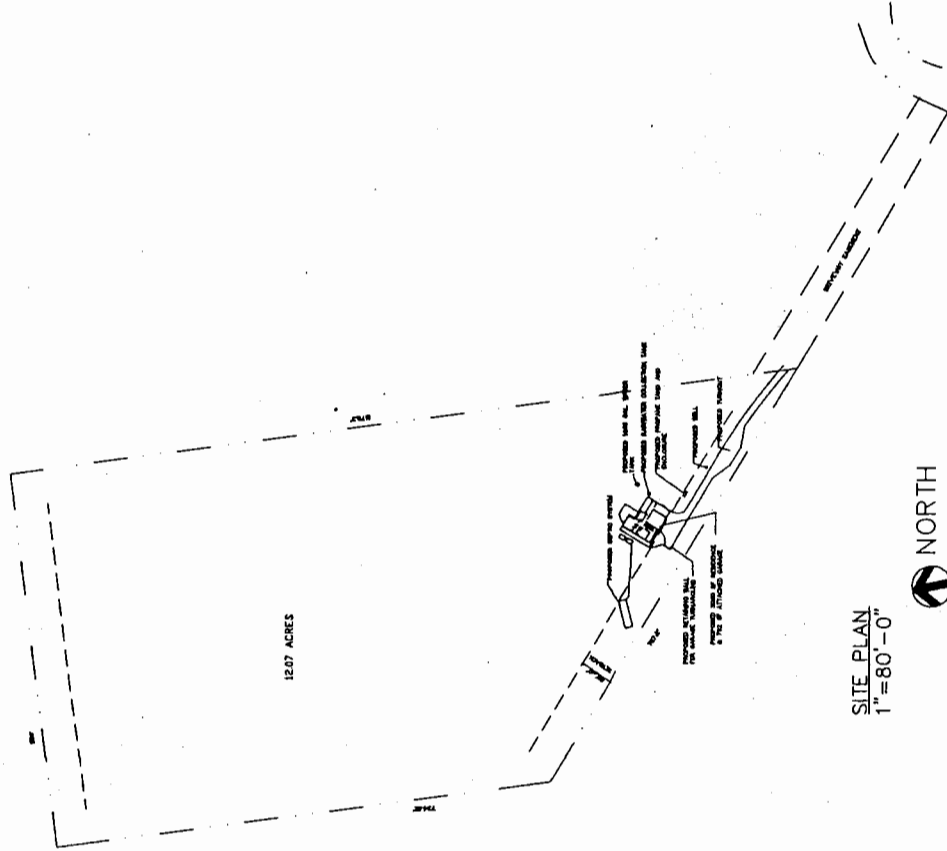
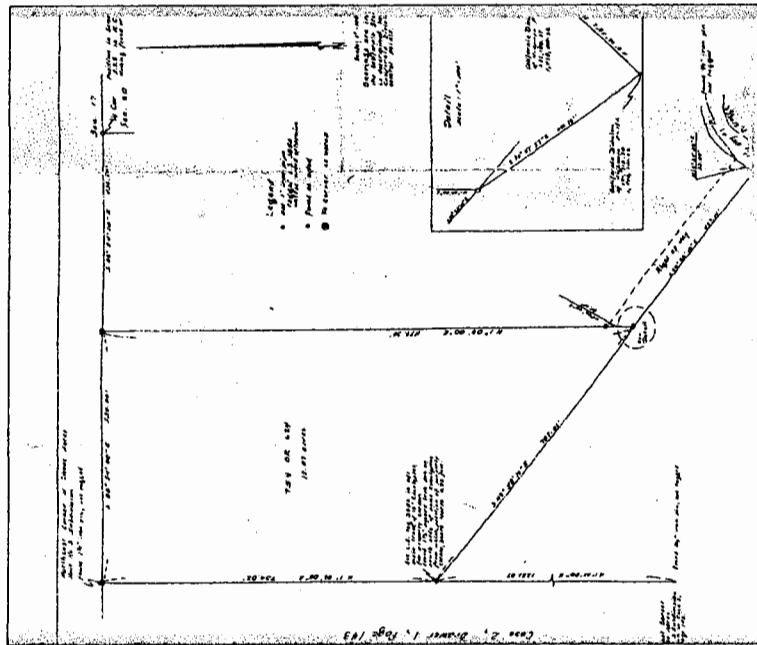
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ENVIRONMENTAL CONSULTANTS

Map Date: March 2010
Map By: Sundaram Gillespie
Base Source: NAIP, 2005
Filepath: L:\ACAD\2000\200005\GIS\Map\Fig5_ESHA.mxd

PROPOSED RESIDENCE FOR RICHARD LANE



Debra Lennox, AIA
LEED AP
NO. 337
707-957-0720
www.dbi-art.com

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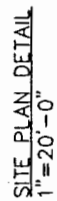
LANE RESIDENCE
SHEET

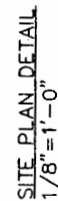
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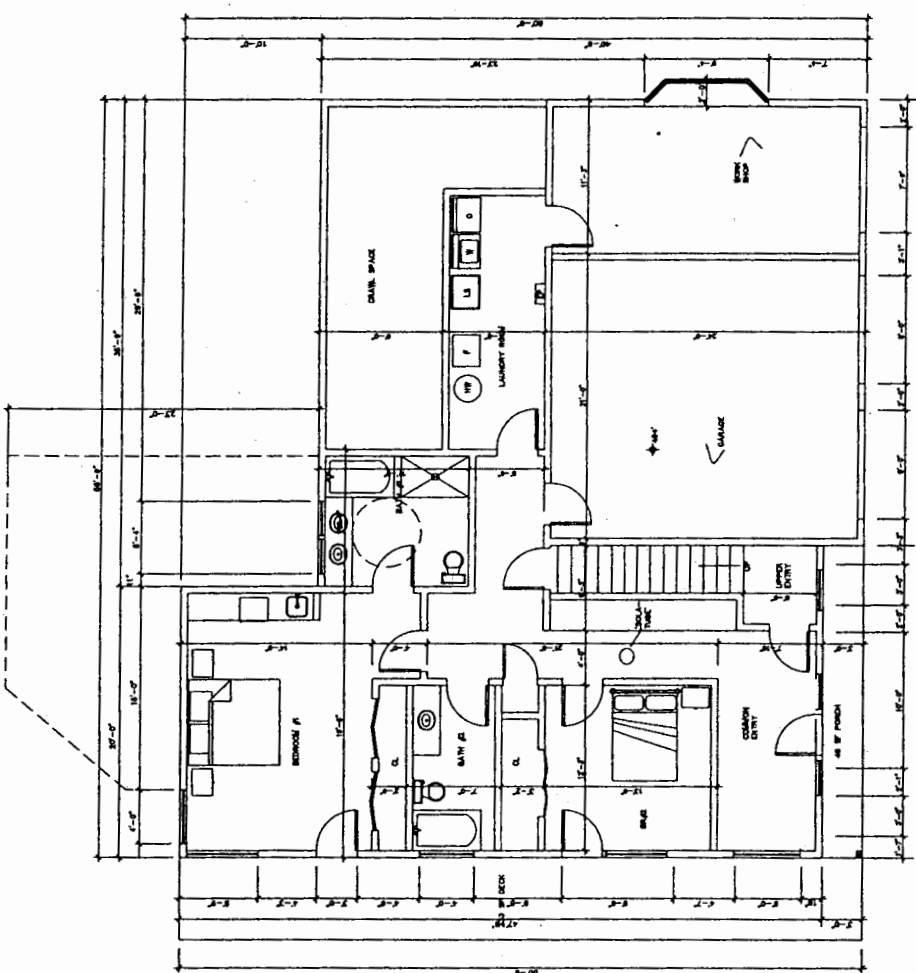
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FIRST FLOOR PLAN
 1/4" = 1'-0"
 NORTH

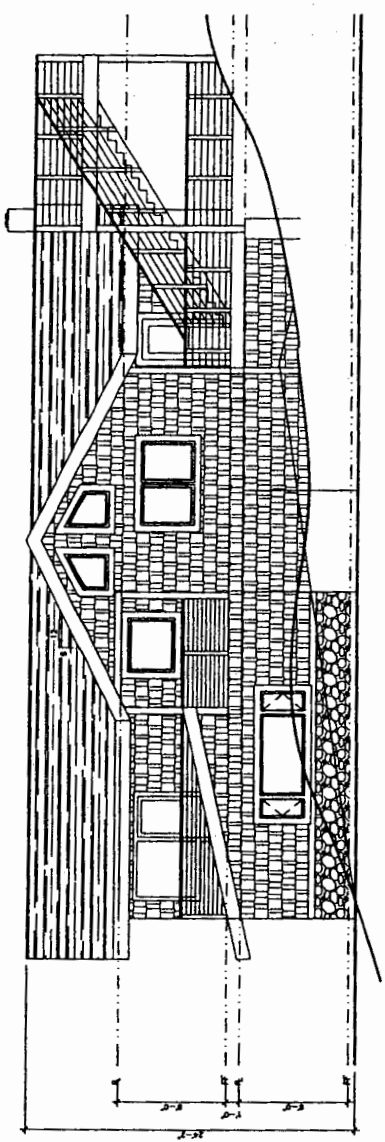


Debra Lennox, AIA
 100 Bona Vista
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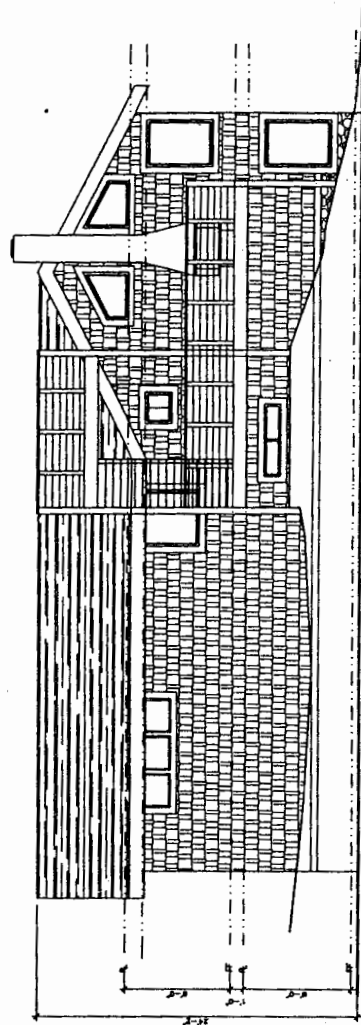
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ELEVATIONS
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 2430 N. HIGHWAY 1, PORT BRUCE, CA 94457
 949-451-0150

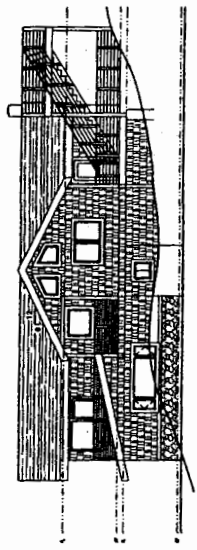
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 DRAWN BY: JLD
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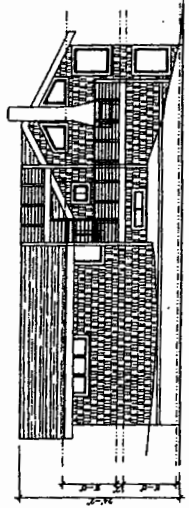
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 1/4" = 1'-0"



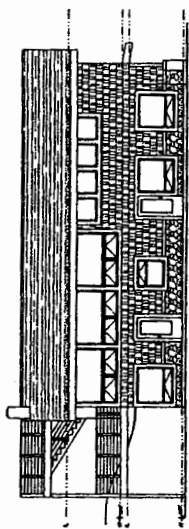
NORTH ELEVATION
 1/4" = 1'-0"



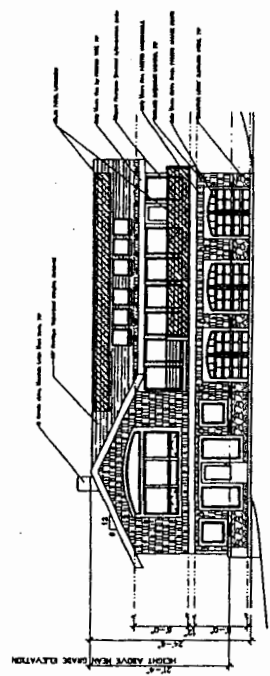
EAST ELEVATION
1/8"=1'-0"



NORTH ELEVATION
1/8"=1'-0"



WEST ELEVATION
1/8"=1'-0"



SOUTH ELEVATION
1/8"=1'-0"

APPENDIX A

An alternative development site (Option B shown in Figure 5 and Appendix D) was investigated during preliminary site planning, which would place the residence as close as possible to Highway One and the southeastern corner of the Study Area. This location would reduce the length of the driveway and consequent surface area of sand dune to be impacted but would require more sand to be imported and dune features to be graded.

The previous owners imported gravel along the driveway so the entire driveway and the majority of the building foot print area has already been impacted to some extent therefore requiring less grading and altering of sand dune features.

A large dune mound in the potential development area for Option B would require significantly more excavation and removal of sand to accommodate construction of a residence. The proposed project (Option A) would require cut of approximately 420 cubic yards of sand, while Option B would require cut of 856 cubic yards of sand (Appendix D). Both options would require approximately 460 cubic yards of fill to prepare a development pad. Option B, requiring a net excavation of 396 cubic yards is therefore deemed more environmentally damaging alternative compared to the proposed project (Option A), which will only require a net 40 cubic yards of fill.

Option C addressed in Appendix D is the "no project" alternative. As described above, this alternative would still include some impacts as fill along the driveway and building pad were already created by previous owners of the property. No additional impacts from construction would occur, and no mitigation measures for the proposed project, such as invasive species control, would be implemented.

7.0 ESHA IMPACT ANALYSIS

The Mendocino LCP Zoning Code, Section 20.496.040, lists restrictions for development in sand dune ESHAs. Table 1 evaluates the proposed project with respect to the development criteria provided in the Zoning Code. In addition, projects that propose construction with a buffer of less than 100 feet from an ESHA must provide information that indicates a lesser buffer distance will not have a significant adverse impact on the habitat. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. The buffer zone analysis utilizing Mendocino County LCP Zoning Code, Section 20.496.020 is provided in Table 2.

Table 1. Sand Dune Development Criteria Analysis Mendocino County Coastal Zoning Code Section 20.496.040	
(A) Development and activities permitted in dunes shall be limited to the following:	
1. Scientific, educational and passive recreational uses.	Not applicable.
2. One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division.	A single-family residence is proposed and the project CDP application includes driveway access, septic fields, and a well and water storage that will comply with all CDP permit conditions.

3. Removal of sand, construction of fences or walls to impede sand movement and planting of vegetation for dune stabilization where necessary to protect existing structures. These projects shall be subject to provisions regarding sand extraction and shall be processed under conditional use permit procedures.	The proposed project does not include removal or control of sand other than what is necessary for construction of the residence and associated structures. Option A would not result in the export of sand. Option B would result in significant sand export (396 cubic yards).
4. Footpaths to direct use and minimize adverse impacts where public access is permitted.	No footpaths or other impacts are proposed outside of the proposed development area shown in Figure 5.
(B) Requirements for development in dune areas are as follows:	
1. Motorized or non-motorized vehicle traffic is prohibited.	Recommended mitigation measures in Section 8.0 reiterate the prohibition of vehicle use in undeveloped portions of the Study Area.
2. New development on dune parcels shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms.	The proposed project would utilize a relatively flat and disturbed portion of the Study Area, where invasive and non-native species are dominant. The residence would be placed as close as feasible to existing roads and development areas to minimize excavation of dunes and maximize the distance from special status plants and rare natural communities located several hundred feet to the north. An alternative development site was investigated and determined to be more environmentally damaging, as described in Section 6.0.
3. No new parcels shall be created entirely in dune habitats.	No subdivision of the subject parcel is proposed.
4. All sand removal shall be subject to a Coastal Development Use Permit but shall not be allowed on vegetated dunes.	While development is proposed for a vegetated portion of the dunes, this is believed to be the least environmentally-damaging location. Placement of a residence in unvegetated dunes on the Study Area would require development closer to several ESHAs and farther from access points, requiring additional impacts for utility services, driveways, etc. The vegetated area to be impacted is dominated almost exclusively by non-native and invasive species. Mitigation proposed below would aim to restore non-native dune communities on the site to prevent expansion of invasive species into the dune mat community to the north. Option A does not result in sand removal while Option B would.

Table 2. ESHA Development Criteria Analysis

Mendocino County Coastal Zoning Code Section 20.496.020

(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 areas.

Section 4: Development within 50 feet of ESHAs

<p>4. Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:</p> <p>(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.</p>	<p>Development at the southern end of the sand dune habitat is expected to be compatible with the continuance of the surrounding dune areas and improve upon the native-dominated habitats farther north, if the protective mitigation measures described in Section 8.0 are followed. These measures include protection of undeveloped areas from vehicle and excessive foot traffic, a restriction on the planting of invasive species, and control of existing invasive species to prevent further spread.</p>
<p>4 (b). Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.</p>	<p>The entire Study Area consists of sand dunes, so there is no other feasible site that could avoid this ESHA. No other ESHAs or 100 foot buffers are proposed to be impacted.</p>
<p>4 (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 the natural stream channels.</p>	<p>The development site was located to utilize an existing relatively flat area, close to Highway 1, existing development, and areas planted with eucalyptus. As described in Section 6.0, an alternative site was examined that would place the house closer to Highway One, but would require removal of approximately 400 cubic yards of sand. The proposed site will therefore better prevent impacts to dunes and dune vegetation.</p>
<p>4 (d). Same as 4 (a).</p>	<p>Same as 4 (a).</p>
<p>4 (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.</p>	<p>As described under 4 (b) and in Table 1, the entire Study Area supports sand dunes, and a single-family residence is a permitted LCP use in dunes. The proposed residence site is the most feasible alternative and would require less grading than an alternative that moves the residence closer to Highway One. Mitigation measures in Section 8.0 are proposed to improve and protect the dune habitats surrounding the development area. This would be accomplished by controlling introduction of weeds in the work and reducing the spread of invasive species such as broom into native-dominated dune areas farther north.</p>

<p>4 (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.</p>	<p>The project is proposed for an area that will minimize alteration of existing dune topography while keeping development close to the site entrance. This will minimize the total project footprint and prevent removal of vegetation closer to undisturbed areas and native-dominated habitat.</p> <p>Permanent fencing will also be installed to prevent vehicles or excessive foot traffic beyond the developed areas. A single family residence is not expected to significantly increase noise and other disturbance compared to current levels from the highway and existing residences on adjacent parcels.</p>
<p>4 (g). Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of 1:1 to restore the protective values of the buffer area.</p>	<p>The proposed project would not impact any riparian vegetation.</p>
<p>4 (h). Aboveground structures shall allow peak surface water flows from a 100 year flood to pass with no significant impediment.</p>	<p>No streams are located near the proposed project</p>
<p>4 (i). Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.</p>	<p>The proposed development would be located on a small portion of the 12.7-acre property, close to existing disturbed areas. The project would not have a significant impact on native dune communities at the north end of the Study Area, and mitigation measures recommended include restrictions on impacts to undeveloped dune areas from activities such as off-road vehicles. No wetlands will be impacted by the proposed project.</p>
<p>4 (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.</p>	<p>The Study Area consists of sand dunes with no significant soil development, and no streams, wetlands, or other ESHAs are located near the proposed project. The project is therefore not expected to impact groundwater flow.</p>

<p>4 (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>The proposed project is not expected to have a significant adverse impact on surrounding dune habitats as long as the protective mitigation measures described in Section 8.0 are implemented. Mitigation measures include control of invasive species to prevent additional invasion in native areas and to improve the condition of adjacent dune areas currently disturbed by invasive species.</p>
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8.0 MITIGATION MEASURES

The following mitigation measures are recommended to compensate for development within a sand dune ESHA, including measures that will also serve to prevent impacts to protected resources located greater than 100 feet from the proposed development.

Potential Impact 1: The proposed development would result in a loss of 0.32 acres of open and vegetated dune habitats, predominantly vegetated with non-native and invasive species. Potential construction impacts include release of sediment, debris, or other harmful materials, accidental placement of fill or grading of the surrounding topography, and trampling and compaction due to construction equipment.

Mitigation Measure 1a: RESTRICTED ACTIVITIES IN ESHAs. No activities should be allowed that would disturb vegetation, topography, or hydrology beyond the designated development area shown in Figure 5, both during and following construction. Some examples of these activities are vehicle parking or storage of other heavy materials, regular foot traffic, and clearing of vegetation. However, certain vegetation removal activities may be permitted, including native plant restoration activities and pruning or removal of hazardous or diseased trees or thinning of trees if deemed beneficial to the ESHA by a certified arborist or qualified biologist. Vegetation management activities are described further in Mitigation Measures 1e, 4b, and 4c.

Solid materials, including wood, masonry/rock, glass, paper, or other materials should not be stored outside of the limit of permanent construction impacts shown in Figure 5. Solid waste materials should be properly disposed of offsite. Fluid materials, including concrete, wash water, fuels, lubricants, or other fluid materials used during construction should not be disposed of onsite and should be stored or confined as necessary to prevent spillage into natural habitats including the onsite ESHAs. If a spill of such materials occurs, the area should be cleaned immediately and contaminated materials disposed of properly. The affected area should be restored to its natural condition.

Mitigation Measure 1b: LIMIT OF CONSTRUCTION IMPACTS. Prior to any ground disturbance and vegetation clearing, combination silt fence and construction fence should be installed around the limit of the development area, including septic