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Hearing Date:	4/10/14

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

Application No.:	A-1-MEN-14-0009
Applicant:	Richard and Shannon McGee
Appellants:	Commissioners Dayna Bochco and Mary Shallenberger
Local Government:	County of Mendocino
Local Decision:	Approval with Conditions
Location:	A bluff-top parcel at 34570 South Highway One, approximately ¼ mile north of Anchor Bay, in Mendocino County (APN: 143-161-10)
Project Description:	Construction of a 2,688-square-foot, 2-story, 26-foot- high single family residence with: (1) 850 square feet of decking; (2) a 567-square-foot detached garage; (3) a 21-foot-long catwalk connecting the home and garage; (4) an on-site septic system and well; (5) a 4,000-gallon fire suppression water storage tank; (6) an approximately 650-foot-long, variable-width shared driveway; and (7) temporary use of a travel trailer during construction activities.
Staff Recommendation:	Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

On January 23, 2014, the County of Mendocino conditionally approved Coastal Development Permit (CDP) # CDP 37-2010 for the construction of a new two-story, 26-foot-tall, 2,688-square-foot single-family residence with a rooftop entrance, plus 850 square feet of decking; a 567-square-foot detached garage; and a 21-foot-long catwalk connecting the house to the garage at 34570 North Highway One near Anchor Bay (**Exhibits 1-2**). The approved development also authorizes construction of an onsite septic system sized to support four bedrooms, a well, a 4,000-gallon water tank for fire suppression, and an approximately 650-foot-long, variable-width driveway that will meander through both the vacant parcel to the north and through the subject parcel (page 3 of **Exhibit 3**).

The appellant (Commissioners Dayna Bochco and Mary Shallenberger) 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 wetlands and other environmentally sensitive habitat areas (ESHAs). The appellant contends that the approved residential development is not an allowable use in either wetlands or ESHA. The appellant also contends (**Exhibit 9**) that while the County indicated that approval is necessary to avoid a constitutional takings, the approved development has not been sited and designed to be the least environmentally damaging feasible alternative. Additionally, the appellant contends that the approved project does not include all feasible mitigation measures capable of reducing and eliminating project impacts. For example, the approved development does not identify a feasible site to mitigate for impacts to ESHA.

Staff believes the contention does raise a substantial issue because the local record lacks factual evidence supporting the consulting biologist's conclusion that siting the home within maritime chaparral is the least environmentally damaging feasible alternative. For example, the approved house is sited near the edge of the coastal bluff with reliance on a driveway that extends 650 feet through wetlands and Northern Bishop pine forest rather than near Highway One where it could be served by a much shorter driveway that would displace much less ESHA. Further, the approved development site will impact at least three kinds of ESHAs (wetlands, Northern Bishop Pine Forest, and maritime chaparral), but possibly as many as five, including coastal bluff morning-glory, and western dog violets that support the federally-endangered Behren's silverspot butterfly.

Regarding the permissibility of residential development in wetlands and other ESHAs, staff believes the appeal raises a substantial issue because the approved development does not fully identify and limit the extent of impermissible residential development in wetlands and other ESHAs. Regarding the appellants' contention that the approved project does not include all mitigation measures capable of reducing and eliminating project impacts, staff believes the appeal additionally raises a substantial issue of conformity of the approved project with LCP habitat provisions that require all feasible mitigation measures capable of reducing or eliminating project-related impacts to be implemented. Although the approved project includes requirements for mitigating direct impacts to wetlands (2:1) and to the removed bishop pine trees (4:1), it is not clear where and how the mitigation can be provided in a manner that compensates for the area of ESHA displaced by the project because the record indicates that the entire site consists of wetland and non-wetland ESHA. Additionally, staff believes the factual evidence supporting the adequacy of mitigation measures is lacking, because neither the County's findings nor the biologist's analysis identify mitigation measures necessary to compensate for direct impacts to

ESHA beyond the physical footprint of the approved development, such as those impacts to ESHA that will occur as a result of maintaining the required 100-foot defensible space cleared vegetation area around structures and property lines.

The protection of wetlands and ESHAs in the coastal zone are issues of statewide concern. In addition, the appeal will have a significant precedential effect on the review of future development of the vacant parcels in the immediate vicinity of the subject property that are similarly almost entirely covered by ESHA. Therefore, Commission staff recommends that the Commission find that the appeal raises a substantial issue of conformity of the approved project with LCP habitat requirements. The motion to find substantial issue as is recommended by staff can be found on Page 4.

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EXHIBITS

- Exhibit 1 – Regional location map
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- Exhibit 4 – Tree Removal Plan
- Exhibit 5 – Site Habitat Map dated October 29, 2013
- Exhibit 6 – Excerpts from Biological Reports
- Exhibit 7 – State Fire Safe Regulations Conditions of Approval
- Exhibit 8 – Notice of Final Local Action and Findings for Approval for CDP 37-2010
- Exhibit 9 – Appeal

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-MEN-14-0009 does not present a 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.

Staff recommends a **NO** vote on the foregoing motion. 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.

Resolution:

The Commission hereby finds that Appeal No. A-1-MEN-14-0009 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 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.

II. FINDINGS AND DECLARATIONS

A. APPEAL JURISDICTION AND PROCEDURES

Appeal Jurisdiction

Pursuant to Coastal Act Section 30603, the County's approval is appealable to the Commission because the approved development is located: (1) between the sea and the first public road paralleling the sea; (2) within 100 feet of a wetland or stream; and (3) within 300 feet of the top of the seaward face of a coastal bluff. The Commission's Appeal Jurisdiction is further discussed in [Appendix A](#) which is hereby incorporated by reference. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified local coastal program and as the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

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
 AT LEAST THREE (3) 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 issue¹ 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, appellants, and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing. 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.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The Mendocino County Planning Commission approved the proposed project with special conditions at its hearing held on January 23, 2014. The North Coast District Office received the Notice of Final Local Action on February 5, 2014 (**Exhibit 8**). An appeal of the County's decision to grant the permit with conditions was filed in a timely manner with the Commission within 10 working days of receipt by the Commission of the County's Notice of Final Action. The appeal was filed by Commissioners Dayna Bochco and Mary Shallenberger (**Exhibit No. 9**).

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: (a) the degree of factual and legal support for the local government's decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

C. SITE DESCRIPTION

The subject 2.63-acre bluff-top parcel is located approximately ¼ mile north of Anchor Bay (**Exhibits 1-2**), at 34570 North Highway One in Mendocino County (APN 143-161-10). The County staff report describes the property as consisting entirely of Environmentally Sensitive Habitat Areas (ESHAs) that include: a) Northern Bishop Pine Forest (*Pinus muricata*) over the majority of the parcel; b) coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) plants; c) a wetland that spans the width of the parcel adjacent to Highway One and extends over approximately one quarter of the parcel; d) Maritime Chaparral near the bluff edge; and e) Coastal Terrace Prairie on a lower bluff terrace near the southwestern parcel boundary (**Exhibit 5**). The County staff report also describes the presence of: f) riparian vegetation along the southern property line associated with an off-site creek that supports suitable habitat for the federally-threatened California red-legged frog (*Rana draytonii*); and g) the federally-endangered Behren's silverspot butterfly (*Speyeria zerene behrensii*) that has been observed on the property. The County staff report indicates that similar ESHA features exist on the property to the north.

A July 20, 2009 geologic report prepared by BACE Geotechnical ([Appendix B](#)) describes the site topography of the bluff-top parcel as follows:

The topography within the property generally slopes down toward the south and southwest, and is characterized by an upper, nearly flat area near the center of the property. Slope gradients in the eastern and central part of the site are near-level, approximately 30 horizontal to one vertical (30H:1V) or less. Steeper gradients on the order of 2 to 5H:1V are present on the south- and west-facing terrace slopes adjoining the peninsular bluff edges. The ocean bluff face is approximately 80 feet in vertical height and is very steep, about 0.5H:1V.

The parcel is designated and zoned on the certified Coastal Plan Map and Coastal Zoning Map as Rural Residential, Five Acre Minimum (RR-5-DL), with an alternate zoning designation of two acre minimum (RR-2-DL). Additionally, both the land use and zoning maps depict an overlay of Development Limitations (DL) over the portion of the property that spans from the westernmost parcel boundary and extends landward approximately 150 feet. Approximately 3/4 of the eastern portion of the property is not encompassed within the DL overlay. According to Mendocino County Coastal Zoning Code Section 20.416.00, the "DL" overlay pertains to parcels or portions of parcels that "according to available data have serious constraints that may prevent or seriously limit development. Such constraints include slopes over 30 percent, erosion or landslide potential or other geophysical hazards."

E. DESCRIPTION OF APPROVED PROJECT

On January 23, 2014, the County of Mendocino conditionally approved Coastal Development Permit (CDP) # CDP 37-2010 for the construction of a new two-story, 26-foot-tall, 2,688-square-foot single-family residence with a rooftop entrance, plus 850 square feet of decking, a 567-square-foot detached garage, and a 21-foot-long catwalk connecting the house to the garage (page 3 of **Exhibit 3**). The approved development also authorizes construction of an onsite septic system sized to support four bedrooms, a well, a 4,000-gallon water tank for fire suppression,

and an approximately 650-foot-long, variable-width driveway that meanders through both the vacant parcel to the north and through the subject parcel. The County staff report describes the intent of the “shared driveway” as potentially serving an additional, future building site on the currently undeveloped, separately-owned adjacent parcel.

The approved development has been sited on the westernmost portion of the property, on a 30% slope located 50 feet from the edge of the ocean bluff as depicted in the geologic reports prepared for the subject development. The County staff report indicates that the approved driveway, which begins on the parcel to the north and continues approximately 650 feet to the approved house and garage, will impact approximately 5,000 square feet of wetlands. In its findings for approval, the County indicates that “there is no feasible wetland free access to the site,” and further indicates that “In this case prohibiting development in wetland areas would deprive the owner of all economic use of the property.” The County’s findings for approval conclude that “The revised project as modified by the mitigated measures set forth by the recommended MND [Mitigated Negative Declaration], minimizes the extent of development, locates it in the least sensitive portions of the site, and incorporates all feasible mitigation measures.”

F. APPELLANT’S APPEAL CONTENTIONS

The appellant (Commissioners Dayna Bochco and Mary Shallenberger) 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 wetlands and other environmentally sensitive habitat areas (ESHAs). First, the appellant asserts the approved residential development is not an allowable use in either wetlands or ESHA. The appellant also contends (**Exhibit 9**) that while the County indicated that approval is necessary to avoid a constitutional takings, the approved development sited near the edge of the coastal bluff and with reliance on a 650-foot-long driveway that extends entirely through wetlands and Northern Bishop pine forest is not the least environmentally damaging feasible alternative and fails to include all feasible mitigation measures capable of reducing and eliminating project impacts.

G. ANALYSIS OF APPELLANT’S APPEAL CONTENTIONS

As set forth in Section 30603 of the Coastal Act, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act.

The contentions raised in the appeal present valid grounds for appeal in that the contentions allege the approved development’s inconsistency with LCP policies regarding the protection of wetlands and ESHA ([Appendix C](#)). Coastal Zoning Code (CZC) Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and specifically includes wetlands, riparian areas, and habitats of rare and endangered species. Wetlands, riparian areas, and endangered species habitat are subject to the wetland fill, ESHA and ESHA buffer protection requirements of Land Use Plan (LUP) Policies 3.1-4 and 3.1-7, and CZC Section 20.496.

As described above, the County staff report prepared for the January 23, 2014 Coastal Permit Administrator (CPA) hearing indicates that the currently vacant parcel consists entirely of

wetland and non-wetland ESHAs, and the approved development has been sited within the maritime chaparral ESHA on the westernmost portion of the property, on a 30% slope located approximately 50 feet from the edge of the ocean bluff. The footprint of the approved residence and garage was not indicated in the County's findings, but Commission staff estimates from exhibits in the local record that the residence, garage, and parking court would displace approximately 5,400 square feet of maritime chaparral and Northern Bishop Pine Forest. An additional amount of Northern Bishop Pine Forest would be displaced by the approved septic system. In addition, the County-approved development relies on construction of an approximately 650-foot-long driveway that begins on another owner's property to the north, and that the County acknowledges could eventually branch to serve a future development on the northern property (as depicted on the October 29, 2013 "Site Habitat Map"). The October 29, 2013 "Site Habitat Map" prepared by the consulting biologist shows the driveway meandering between the northern property and the subject property, and impacting wetlands and Northern Bishop Pine Forest on both properties. The County staff report indicates that the approved driveway will impact approximately 5,000 square feet of wetlands. The County staff report indicates that construction of the driveway and residence will also result in the removal of up to 26 trees, although the total amount of Northern Bishop Pine Forest to be displaced by the driveway is not indicated.

Substantial Issue With Respect to the Extent of Impermissible Residential Development in Wetlands and other Non-wetland ESHA

LUP Policy 3.1-4 and CZC Section 20.496.025 allow certain uses within wetlands. The nine categories of use allowed in wetlands range from port facilities to incidental public services. However, none of the nine categories of allowable uses in wetlands include driveways to serve residential development. Further, reading the Mendocino County LCP policies governing rare plant habitat areas consistent with the ESHA provisions of the Coastal Act, the LCP habitat policies restrict development to resource dependent uses that do not significantly disrupt habitat values. The approved residential development is also not a resource dependent use. Although residential development is not a permissible use in either wetlands or other ESHA, the approved development fails to fully identify and limit the extent of impermissible development in wetlands and other ESHA.

The approved development site will impact at least three ESHAs (wetlands, Northern Bishop Pine Forest, maritime chaparral), but possibly as many as five ESHAs (coastal bluff morning-glory, and western dog violets that support the federally-endangered Behren's silverspot butterfly). However, the degree to which the approved development will affect rare and special status plant species is uncertain. Commission staff possessing 16 years of botanical experience visited the subject site on March 16, 2011 to observe maritime chaparral habitat on the site as part of a field trip coordinated by the CA Native Plant Society (CNPS). Participants included County planning staff, CNPS representatives, maritime chaparral specialists from San Francisco State University, and a local biology professor and botanical consultant. During the site visit, Commission staff and other botanists observed within the maritime chaparral habitat the presence of both the rare coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) and western dog violet (*Viola adunca*), which is the host plant for the federally endangered Behren's silverspot butterfly. During the site visit, County planning staff acknowledged that the botanical report prepared for the property did not depict the rare plant locations observed by the group, and on March 24, 2011 Commission staff provided comments to the County via electronic mail

recommending that new floristically-appropriate surveys should be conducted by a qualified botanist to more accurately map all rare plant occurrences on the site.

Additionally, the consulting biologist for the project indicates in their March 19, 2012 addendum that a follow-up site visit conducted on September 13, 2011 “focused on mapping plant communities and their boundaries, identifying all plant species present, and determining the least impactful potential building location from a biological perspective.” However, the consulting biologist did not conduct the biological survey during the floristically-appropriate time of year for the target species. Furthermore, while the March 2012 Biological addendum contains as Appendix E the preliminary plant list that was prepared by participants of the March 2011 site visit, and while the list specifies the presence of both western dog violet and coastal bluff morning-glory within the maritime chaparral habitat, the consulting biologist’s revised site map dated October 29, 2013 does not depict the additional locations of either species that occur within the maritime chaparral.

The appellants assert the approved project is inconsistent with the ESHA protections policies, including, but not limited to, LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496 and 20.532, because the approved development is not an allowable use in wetlands or ESHA. While the County has indicated that development must occur within wetlands and other ESHA inconsistent with the habitat protection policies of the LCP to avoid a taking of private property, the County must still comply with the requirements of the LCP to the maximum extent possible. Therefore, the Commission finds that the appeal raises a substantial issue of conformity of the approved development with the habitat protection requirements of the LCP, including but not limited to LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496 and 20.532, because the approved development is not an allowable use in ESHA or ESHA buffers and fails to demonstrate that it fully identifies and limits the extent of impermissible encroachment into ESHA to the maximum extent feasible.

Substantial Issue With Respect to Whether Approved Project is Least Environmentally Damaging Feasible Alternative

The appellants also contend the approved project is inconsistent with LCP provisions requiring approval of the least environmentally damaging feasible alternative. While the County has indicated that development must occur within wetland and other ESHA inconsistent with the habitat protection policies of the LCP to avoid a taking of private property, the development must still comply with the requirements of the LCP to the maximum extent possible. The findings for approval fail to adequately demonstrate that the project as designed is the least environmentally damaging, most feasible alternative. The County’s findings for approval conclude that “The revised project as modified by the mitigated measures set forth by the recommended MND, minimizes the extent of development, locates it in the least sensitive portions of the site, and incorporates all feasible mitigation measures.” In making this determination, the County appears to rely upon the January 2009 biological report (**Exhibit 6**) and March 2012 biological addendum (page 9 of **Exhibit 6**). In a March 2012 biological addendum prepared for the subject site (page 21 of **Exhibit 6**), the consulting biologist concludes that:

All of the ESHAs were considered when identifying the appropriate location for the proposed development. Avoidance of the riparian habitat and the listed morning glory Calystegia purpurata ssp. saxicola, at the east side of the parcel, lead to the

recommendation that the development be sited far to the west at the margin of the Northern Bishop Pine Forest and the Maritime Chaparral habitats while allowing for enough of a setback to avoid encroaching on the sites Coastal Terrace Prairie and bluff face.

However, the biological evaluations the County used as the basis for its findings relative to minimizing impacts to ESHA lack key factual information (including but not limited to the mapped location of all ESHA features) that informs the siting of the development in the least environmentally damaging, most feasible alternative location. First, as discussed above, the biological evaluation and County findings do not establish the full extent of the impacts of the approved development on ESHA. For example, the findings specify that construction of the residence and driveway will result in the removal of up to 26 trees, but the total amount of Northern Bishop Pine Forest habitat area that will be displaced by the driveway and residence are not indicated. In addition, a “Reduced Tree Removal” site plan contained as Exhibit 7 of the County staff report depicts removal of trees associated with the driveway and residence, but does not depict the number of trees, if any, that will be impacted for construction of the septic system and water tank located upslope of the residence.

The local record also lacks factual evidence that demonstrates how the consulting biologist’s determination that “Avoidance of the riparian habitat and the listed morning glory *Calystegia purpurata* ssp. *saxicola*, at the east side of the parcel, lead[s] to the recommendation that the development be sited far to the west...” is the least environmentally damaging alternative. The findings do not explain why avoidance of the riparian habitat and coastal morning glory habitat at the eastern end of the parcel is less damaging than the impacts the approved development will have on wetlands, maritime chaparral, Northern Bishop Pine Forest, and other rare plant habitat that may exist in the approved development area. In particular it is unclear how the biologist concluded that siting the home within maritime chaparral that occurs on less than ¼ of the property is less environmentally damaging than siting the development within the Northern Bishop Pine Forest that occurs on more than ¾ of the property and that will be impacted by the driveway construction. Based on Commission staff observation, Northern Bishop Pine Forest habitat appears to be much more abundant along the southern Mendocino coast than maritime chaparral habitat.

The findings for the approved development also do not evaluate specific siting and design alternatives to determine what is the least environmentally damaging feasible alternative. For example, it appears that development could be sited closer to the highway and to the northern parcel boundary, while avoiding the rare plant occurrence and the riparian area near the southern parcel boundary as recommended by the applicant’s biologist, thereby reducing the length of driveway needed to serve the residence. Although the driveway and residence would still displace Northern Bishop Pine habitat, the total amount of ESHA that would be affected by the development would be reduced because all of the 650-foot-long driveway that extends ¾ of the way through the parcel from the highway to near the bluff edge would not be needed. The staff report indicates the driveway varies in width from 10-18 feet. Even at the narrower width, shortening the length of the driveway in half would save more than 3,000 square feet of ESHA from the impacts of the development. A second specific siting alternative that was not addressed is utilizing an alternative driveway alignment. An alternative driveway alignment could

potentially minimize impacts to wetlands and Northern Bishop Pine Forest, by siting the driveway entrance on the portion of the northern parcel that is outside of mapped wetland areas.

A third siting alternative that was not considered is locating the residence within the open grassy area. The Site Habitat Map and Residence Site Plans also depict an “open grassy area” adjacent to a mapped “thick understory area.” In its approved configuration, the driveway will eliminate a portion of the thick understory area. It is not clear why the driveway was not sited to pass through the open grassy area and avoid some of the Northern Bishop Pine Forest habitat. Several specific design alternatives that could reduce the development footprint within ESHA also were not evaluated. First, it appears construction of a smaller septic system and leachfield than what has been approved may be feasible and should be evaluated. The local record contains a December 2009 revised Site Evaluation Report ([Appendix B](#)) for an expanded septic system that will be located upslope of the approved residential development. The revised site report states in part that: “A Site Evaluation Report for this site was prepared and approved in 2003... This revised plan recognizes the expanded development of four total bedrooms. A three-bedroom residence and a one-bedroom guest house are proposed...” In approving the development, the County eliminated the originally proposed one-bedroom guest cottage. As a result, the septic system and its leachfield may be larger than required to accommodate the reduced size of the development. Reducing the size of the septic system and leachfield to the size of the system approved in 2003 would reduce the amount of Northern Bishop Pine Forest habitat that would be displaced by the septic system and its leachfield. Second, the overall development footprint could be further reduced by siting the residence and garage in a different location than on a 30% slope to enable the approved detached two-car garage to be attached to the residence. Eliminating the walkway between the garage and house by combining the house and garage in one structure would reduce the overall footprint of the development and reduce impacts on ESHA.

Therefore, as the County findings fail to establish that the approved development is the least environmentally damaging feasible alternative, the Commission finds that the appeal raises a substantial issue of conformity of the approved project with LCP habitat requirements, including LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496.020(A)(4), 20.496.025(B)(1), and 20.532.100.

Substantial Issue With Respect to Implementing All Feasible Mitigation Measures

The appellants also contend the approved project is inconsistent with LCP provisions requiring inclusion of all feasible mitigation measures capable of reducing project related impacts to have been adopted, including CZC Section 20.532.100(A)(1)(c). The County has included requirements for mitigating direct impacts to wetlands (2:1) and to the removed bishop pine trees (4:1). However, the locations where the additional planting and wetland creation would be performed were not identified in the County’s findings. Because the record indicates the entire site is comprised of various types of ESHA, it is not clear where and how the mitigation can be provided without adversely affecting existing ESHA and how the total amount of ESHA can be expanded to provide the required mitigation. The County did not identify a feasible mitigation site either on-site or off-site prior to permit approval. Additionally, as noted above, neither the County’s findings nor the biologist’s analysis identify additional impacts to ESHA that will occur as a result of maintaining the required 100-foot defensible space cleared vegetation area

around structures and property lines, and thus do not evaluate mitigation measures necessary to compensate for direct impacts to ESHA beyond the physical footprint of the approved development. Therefore, as feasible mitigation sites have not been identified and the total amount of habitat area that would be affected by the approved development has not been fully established, the Commission finds that the appeal raises a substantial issue of conformity of the approved project with the LCP mitigation requirements that all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

H. CONCLUSION

The protection of ESHA in the coastal zone is an issue of statewide concern. In addition, as noted above, the degree of factual and legal support for the County's action is lacking, given that the findings do not adequately evaluate or represent the full extent of habitat conditions and threats to rare habitats in relation to the approved development do not evaluate whether feasible less environmentally damaging alternatives exist. The appeal will have a significant precedential effect on the review of future development of the vacant parcels in the immediate vicinity of the subject property that are similarly almost entirely covered by ESHA. For example, in addition to a future building site the County identified on the currently undeveloped, separately-owned adjacent parcel to the north, the County indicates it is currently reviewing a proposed residential development two parcels northward of the subject site that is also entirely comprised of ESHA. Additionally, the County is currently processing another application for a residential development on an ESHA-dominated site approximately one mile south of the subject property.

Therefore, for all of the above reasons, the Commission finds that the appeal raises a substantial issue with respect to conformity of the County-approved development with LCP policies regarding the protection of wetlands and other ESHAs. The Commission finds a substantial issue exists, because residential development is not a permissible use in either wetlands or ESHA and the approved development: (1) does not fully identify and limit the extent of impermissible residential development in wetlands and other ESHA; (2) fails to demonstrate there is no less environmentally damaging feasible alternative to locating the development within the ESHAs; and (3) does not include all feasible mitigation measures capable of reducing or eliminating project-related impacts, raising a substantial issue of conformity of the approved project with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496.020, 20.532.095, and 20.532.100.

I. 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 additional information from the applicant needed to ultimately determine if

the project can be found to be consistent with the certified LCP. [Appendix D](#) contains a discussion of the information needed to evaluate the development.

Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the ESHA protection policies of the LCP, and the project's consistency with Coastal Act Section 30010. Therefore, before the Commission can act on the proposed project de novo, the applicant must submit all of the above-identified information.

APPENDIX A

COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On January 23, 2014, Mendocino County Coastal Permit Administrator conditionally approved Coastal Development Permit (CDP) # CDP 37-2010 for the construction of a new 2,688-square-foot, 2-story, 26-foot-tall single family residence with a rooftop entrance on a bluff-top parcel adjacent to and west of Highway One. The approved development also includes: (1) 850 square feet of decking; (2) a 567-square-foot detached garage; (3) a 21-foot-long catwalk connecting the house to the garage; (4) an on-site septic system and well; (5) a 4,000 gallon fire suppression water storage tank; (6) an approximately 650-foot-long, variable-width shared driveway; and (7) temporary use of a travel trailer during construction activities. A portion of the approved driveway improvements will occur on the adjacent parcel to the north, APN 143-161-09. The approved development also includes The entire project site is comprised of environmentally sensitive habitat areas (ESHAs), including but not limited to the presence of Northern Bishop Pine Forest, wetlands, maritime chaparral, and coastal bluff morning-glory.

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) between the sea and the first public road paralleling the sea; (2) within 100 feet of a wetland or stream; and (3) within 300 feet of the top of the seaward face of a coastal bluff.

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 100 Feet of a Wetland

The County staff report indicates that the approved development relies upon construction of a 650-foot-long driveway that extends through and will fill approximately 5,000 square feet of wetlands. As the approved development is located within 100 feet of a wetland feature, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

3. Within 300 Feet of the Top of the Seaward Face of a Coastal Bluff

The project site is a bluff-top parcel, and the approved development is located less than 300 feet from the bluff edge. Therefore, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received at the Commission's North Coast District Office on February 5, 2014 (**Exhibit No. 7**). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission by any two members of the Commission without first having to exhaust local appeals

The appeal of the County's decision to grant the permit with conditions was filed in a timely manner with the Commission within 10 working days of receipt by the Commission of the County's Notice of Final Action. The appeal was filed by Commissioners Dayna Bochco and Mary Shallenberger (**Exhibit No. 9**).

APPENDIX B

SUBSTANTIVE FILE DOCUMENTS

BACE Geotechnical. July 2009. *Engineering Geologic Reconnaissance: Proposed McGee & Miller Residence, 34570 South Highway One, Anchor Bay, Mendocino CA*. Prepared by Erik E. Olsborg and Sarah C. Lockwood, Santa Rosa, CA.

California Department of Forestry and Fire Protection (“Cal Fire”). December 2009. State Fire Safe Regulations Application Form and Conditions of Approval, File # 336-09.

Carl Rittiman & Associates, Inc. December 2009. *Site Evaluation Report for Revised Sewage Disposal System Proposal*. Prepared by Carl Rittiman, Mendocino CA.

Mendocino County Coastal Development Permit #37-2010

Mendocino County Local Coastal Program

North Coast Resource Management. January 2009. *Botanical Survey and ESHA Buffer Analysis, Located at 34570 S. Highway 1, Anchor Bay, Mendocino County, CA (APN 143-161-10)*. Prepared by Estelle P. Clifton, Calpella, CA.

-----, March 2012. *Biological Addendum: Mendocino County Coastal Development Permit # 37-2010 (APN 143-161-10)*. Prepared by Estelle P. Clifton, Calpella, CA.

SHN Consulting Engineers. September 2009. *Geologic Hazard and Geotechnical Report: Proposed Miller-McGee Residence, Mendocino County, Anchor Bay, California*. Prepared by David R. Bradley and Thomas E. Lion, Willits, CA.

Appendix C
Mendocino County LCP Policies Regarding
Environmentally Sensitive Habitat Areas
(Emphasis added)

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.

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

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

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

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

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

other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.

LUP Policy 3.1-4 states:

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

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

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

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

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

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

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

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

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

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

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

(10) Nature study purposes and salmon restoration projects.

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

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

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

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

CZC Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states in part 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.

...

(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).

...

(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 3.1-18 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...

CZC Section 20.532.100 states, in applicable part, the following (emphasis added):

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.

...

Coastal Act Section 30010 addresses takings and states as follows:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

APPENDIX D

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 additional information from the applicant needed to ultimately 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. Analysis and Mitigation Plan for Major Vegetation Removal

The local record and biological documents prepared for the project indicate that major vegetation removal has occurred at the site, apparently without the benefit of a coastal development permit. The local record contains a February 10, 2011 letter submitted by County staff to the applicant describing “substantial removal and pilings of Manzanita and Bishop Pine on your property” constituting major vegetation removal that required a coastal development permit. According to the local record, the applicants acquired the subject property in July 2004, and submitted an application to the County for the subject development on December 28, 2010. It appears from review of aerial imagery that the major vegetation removal may have occurred subsequent to July of 2004.

A “Site Habitat Map” contained as Exhibit 6 in the County staff report depicts that more than half of the footprint of the approved residence is sited within the mapped “cleared” area, however the approved development does not include after-the-fact authorization for the major vegetation removal that occurred within ESHA. If evidence is not available that demonstrates authorization for previous vegetation removal activities, restoration of ESHA may be necessary to achieve compliance with coastal development permit requirements. Therefore, the applicants must provide evidence as to whether or not previous vegetation removal was authorized. If authorization was not obtained, the applicants shall submit either: a) a restoration plan that specifies measures to rehabilitate cleared ESHA; or b) if the applicants demonstrate pursuant to Item 3 (discussed below) that no feasible, less environmentally damaging alternative exists for the siting and footprint of the proposed house, then as part of an amended project description, a mitigation plan that includes measures for mitigating direct impacts to ESHA that occurred as a result of major vegetation removal activities. The analysis should specify the total area of cleared vegetation and the number of Bishop Pine trees that were removed without the benefit of permits.

2. Submittal of Current Botanical and Wetland Delineation Reports

The approved house is located within the maritime chaparral habitat. Commission staff and other botanists visited the subject site on March 16, 2011 and observed within the maritime chaparral habitat the presence of both the rare coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) and western dog violet (*Viola adunca*), which is the host plant for the federally endangered Behren's silverspot butterfly. While the consulting biologist includes in their March 2012 Biological addendum the preliminary plant list that was prepared by participants of the March 2011 site visit, and while the list specifies the presence of both western dog violet and coastal bluff morning-glory within the maritime chaparral habitat, the consulting biologist's site maps do not depict the locations of either species that occur within the maritime chaparral.

Additionally, while the consulting biologist's recommendation for a building site is based in part upon avoidance of riparian habitat and an off-site creek, none of the maps provided in the County staff report depict the location of the creek or of any riparian habitat. The extent of Coastal Act wetlands is also unclear, because the consulting biologist's January 21, 2009 analysis contains only three (3) wetland data points spaced between 30 and 210 feet apart, and separately labels a section of "wetlands," "hydrophytic vegetation," and "riparian vegetation." However, the revised "Site Habitat Map" dated October 29, 2013 and included as Exhibit 6 of the County staff report depicts a "vernal area" that extends beyond the previously mapped "wetland" and "hydrophytic vegetation" areas in some locations, but does not contain any new wetland data points and does not depict the previously-mapped riparian vegetation.

Therefore, to determine the full extent of all potential sensitive plant community and wetland and riparian habitat on the subject property, a current floristically-appropriate botanical survey and wetland delineation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be provided. The survey and delineation should be prepared by a qualified biologist and should include, but not be limited to: (1) a map of all survey routes; (2) an updated map documenting the location of all sensitive species occurrences and other environmentally sensitive habitat areas (ESHA) at a legible scale (typically 1 inch = 200 feet as per CZC Section 20.532.060) that includes all proposed developments superimposed on the map; (3) a mapped delineation of all Coastal Commission-jurisdictional wetland and riparian features at a legible scale (typically 1 inch = 200 feet as per CZC Section 20.532.060) that includes all proposed developments superimposed on the map; and (4) copies of all original wetland delineation data forms completed in the field. Each environmentally sensitive habitat area identified should be described in detail and depicted on an ESHA map prepared for the subject site at a minimum size of 11 inches by 17 inches.

Wetland and riparian features should be delineated using the wetland delineation methodology of the currently applicable U.S. Army Corps of Engineers (ACOE) 1987 Wetland Delineation Manual and May 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region. Documentation of wetland vegetation indicator status should follow the most recent version of the currently recognized ACOE National Wetland Plant List (https://wetland_plants.usace.army.mil). Jurisdictional wetland determinations within the coastal zone should apply the Coastal Act definition of wetlands, as further defined by Section 13577 of the Commission's regulations. Each significant wetland area should contain at least one set of paired sample points (spaced no more than 20 feet apart) across the wetland boundary to demonstrate the determination of the wetland-upland boundary. Commission staff recommend that biologists conducting wetland delineations in the coastal zone

should have a minimum of one year of wetland delineation experience prior to conducting independent delineations and have participated in a combination field and classroom wetland delineation course.

3. Building Site and Design Alternatives Analysis

If the Commission determines that to deny the project would result in an unconstitutional taking of private property inconsistent with Section 30010 of the Coastal Act, some wetland and non-wetland ESHA impacts may need to be approved even if such developments in wetland and other ESHAs are not allowable uses pursuant to the ESHA and wetland fill policies of the certified LCP. In that event, the Commission would still need to find that the development is consistent with all other policies of the certified LCP, including, but not limited to the provisions of LUP Policy 3.1-4 and CZC Section 20.496.025 that require that no development shall be allowed in any type of ESHA unless: no feasible, environmentally less damaging alternative exists, and all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted.

The local record contains little factual evidence supporting the consulting biologist's conclusion that siting the home within maritime chaparral that occurs on less than $\frac{1}{4}$ of the property is less environmentally damaging than siting the development within the Northern Bishop Pine Forest that occurs on more than $\frac{3}{4}$ of the property and that will be impacted by the driveway construction. Feasible, less environmentally-damaging alternatives appear to exist. For example, it appears that development could be sited closer to the highway and to the northern parcel boundary, while avoiding the rare plant occurrence and riparian areas near the southern parcel boundary which would require a shorter driveway, thereby reducing the overall encroachment into the ESHA by the area of the eliminated section of driveway. Similarly, an alternative, shorter shared driveway alignment could potentially minimize impacts to wetlands and Northern Bishop Pine Forest, by siting the driveway entrance on the portion of the northern parcel that is outside of mapped wetland areas. Additionally, while the County approval eliminated the originally-proposed guest cottage, the overall development footprint could be further reduced by (a) attaching the currently detached two-car garage to the residence, and (b) reducing the size of the septic system and its leachfield. The local record contains a December 2009 revised site evaluation report for an expanded septic system. The revised site report states in part that: "A Site Evaluation Report for this site was prepared and approved in 2003... This revised plan recognizes the expanded development of four total bedrooms. A three-bedroom residence and a one-bedroom guest house is proposed..."

Because there is no site available on the property where the site improvements could be constructed outside of ESHAs, analysis of the presence of feasible less environmentally damaging alternative designs or locations is needed as prescribed by wetland and ESHA zoning code provisions. Therefore, an alternatives analysis must be provided that evaluates all development alternatives to determine the least environmentally damaging feasible alternative that is least impactful to wetland and non-wetland ESHA resources. This analysis should consider all alternatives discussed above within the staff report analysis and encompass, at a minimum, a review of: (1) the current proposed building site and design, primary and replacement leachfields, and driveway under appeal; (2) alternative development locations on the subject property; and (3) a redesign of the residential structure, access driveway, and sewage disposal system to reduce the footprint of the development, such as a two-story structure with an adjacent smaller septic disposal system, and using smaller and/or attached building envelopes

(e.g., attached versus detached garage), with a site plan created for the analysis that includes the primary and replacement leachfields and driveway.

The alternatives analysis should address at minimum the feasibility of each alternative in relation to: (a) minimizing pervious surfaces; and (b) minimizing impacts to ESHAs. The alternatives analysis shall evaluate total impacts to all environmentally sensitive habitat areas, and should:

- (i) Include a detailed site plan and description for each alternative;
- (ii) Quantify the square footage of coverage and ground disturbance associated with each alternative;
- (iii) Specify what access improvements would be needed for each alternative (e.g., amount of grading, cut, and fill, type of materials to be used);
- (iv) Analyze the extent of each type of wetland and non-wetland ESHA impacts associated with each alternative (e.g., amount of trees and vegetation requiring removal, amount of cut, fill, grading, ability to avoid each type of habitat, total area of direct impacts, total of cleared area required to maintain defensible space as discussed further below, etc.); and
- (v) Analyze mitigation measures proposed for each alternative (including a specified location for implementation of mitigation measures, as discussed further below) to minimize impacts to natural resources and sensitive habitats.

4. Evidence of Lot Legality

LUP Section 3.9-1 states in part the following (emphasis added):

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. Lot legality information is also required as a predicate to a takings analysis. 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. A copy of any County-issued Certificates of Compliance and an explanation of the basis upon which the certificate was issued by the County; and
- 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. 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.

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

While the County has indicated that development must occur within wetland, ESHA and ESHA buffer, inconsistent with the habitat protection policies of the LCP to avoid a taking of private property, the Commission will need to evaluate whether factual evidence supports the determination that denial of the project would result in an unconstitutional taking of private property for public use. In order to make that determination, the Commission will need additional information from the applicants concerning whether any economic use can be made of the project that would be consistent with the ESHA protection policies and 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, in addition to the lot legality information identified above, please provide the following specific information for the property that is subject to A-1-MEN-14-0009 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;

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.

6. 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 natural resource policies of the Mendocino County certified LCP. As part of the analysis of impacts to natural resources, the Commission will evaluate whether the size and location of the home are the least environmentally damaging alternative and assess whether the applicant had a reasonable expectation to build a house and related development at the building footprint size that is currently proposed. While the local record contains some information about existing developments on some of the surrounding parcels, it does not contain all of the information to Commission needs to evaluate the proposed development.

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 RR 5 [RR-2] that are located west of Highway One between Haven's Neck and Fish Rock Gulch, 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.

7. Demonstration of Compliance with Fire Safe Regulations

The County staff report describes Fire Safe Regulations that Cal Fire requires as minimum standards for approval and states “Cal-Fire has submitted recommended conditions of approval (CDF# 336-09) for address standards, driveway standards, and defensible space standards,” which are contained in the local record. The local record contains a copy of the Exemption Request authorized by Cal Fire that allows construction of the house within a reduced setback from the property line. However, the local record does not contain information demonstrating the approved development’s compliance with other Fire Safe Regulations discussed below.

Evidence of Compliance with Driveway Standards

The County’s approval describes varying widths for the driveway design (including 10-foot-wide as described on CPA-3, and 12-foot-wide as described on CPA-8 and –9). Additionally, the County’s findings describe as part of Mitigation Measure 1a (which is contained as part of Special Condition No. 7) that “The driveway width shall be reduced to 12-feet, subject to approved waiver by Cal-Fire based on the environmental benefits of the reduced road width.” The County’s findings for approval state in part that:

The proposed access is intended to be shared with the parcel to the north (APN 143-161-009) which is currently vacant. At this time, only a single residence will be served by the access. Constructing the access to comply with typical driveway standards (10 feet wide with a turnout near the midpoint) is recommended. The driveway will need to be improved to road standards (18’ wide) or receive an exception from the Fire Safe Regulations before it is considered suitable to serve an additional residence. (Emphasis added)

It appears from the foregoing information that Cal Fire has not yet authorized the reduced driveway widths recommended in the County’s approval. Furthermore, the County’s findings indicate the driveway might be required to be enlarged to 18 feet to serve an additional future residence. It appears from the depiction of an identified house site on the adjacent parcel (as shown in Exhibits 5 and 6 of the County staff report) that an additional residence that would rely on the driveway construction could be developed in the reasonably foreseeable future. Therefore, the applicant must evaluate the impacts to ESHA associated with the driveway construction at the width that would be required to serve both residences. Additionally, the applicant must submit evidence that Cal Fire authorizes an exception request for the reduced driveway width to serve both the current residence and to serve a second residence.

Evidence of Compliance with Defensible Space Standards

According to the local record, the minimum standards that Cal-Fire requires as conditions of approval (CDF# 336-09) include a requirement to maintain defensible space. The requirement states the following:

Any person who owns, leases, or controls any property within the State Responsibility Area, shall at all times maintain around and adjacent to such building or structure a firebreak made by removing and clearing away, for a distance of not less than 100 feet on each side thereof or to the property line, whichever is nearer, all flammable vegetation or other combustible growth. This subdivision does not apply to single specimens of trees, ornamental shrubbery, or similar plants which are used as ground cover, if they do not form a means of rapidly transmitting fire from the native growth to any building or structures. (Public Resources Code, Section 4291). (Emphasis added)

It does not appear that maintenance of defensible space standards were addressed in the County's approval. Therefore, the applicant must submit: a) a site plan depicting the minimum defensible space clearance area required by Cal Fire for each alternative (as described in Item 3 above) and which identifies the trees and shrubs that must be removed; and b) evidence of any exception request authorized by Cal Fire to reduce the minimum defensible space area.

8. Mitigation and Monitoring Plan

If the Commission determines that to deny the project would result in an unconstitutional taking of private property inconsistent with Section 30010 of the Coastal Act, some ESHA impacts may need to be approved even if such developments in wetland and other ESHAs are not allowable uses pursuant to the ESHA and wetland fill policies of the certified LCP. In that event, the Commission would still need to find that the development is consistent with all other policies of the certified LCP, including, but not limited to the provisions of LUP Policy 3.1-4 and CZC Section 20.496.025 that require that any developments approved in in wetland or non-wetland ESHAs shall include all mitigation measures capable of reducing or eliminating adverse environmental effects

One of the adverse environmental effects of filling wetlands for a driveway would be the loss of wetland area. A wetland mitigation plan needs to be provided that compensates for any direct loss of wetlands and wetland values and functions associated with filling any wetlands for the driveway and its connection to Highway One. The mitigation plan needs to provide for the creation of new or expanded wetlands at a ratio of wetlands created or expanded to wetlands filled at a ratio large enough to compensate for temporal loss of wetland values and functions between the time the wetlands are filled and the full establishment of wetland values and functions in the wetland area to be created or expanded.

Clarification of the amount of wetland fill associated with the shared driveway connection to Highway One is also needed. Clarification is needed as to exactly how much wetland fill (both in cubic yards of volume and square feet of coverage) is proposed for the shared driveway and its connection to Highway One and whether it would be feasible to reduce the amount of such fill by reducing the width and length of the proposed shared driveway and connection.

Additionally, the mitigation plan must compensate for all significant adverse environmental resulting from direct and indirect impacts to Northern Bishop Pine Forest, coastal bluff morning-glory, maritime chaparral, and any other ESHAs on site to the greatest extent feasible. The mitigation plan must include detailed descriptions and diagrams of the site(s) proposed for mitigating wetland and other ESHA impacts, the proposed mitigation measures, success criteria, and monitoring proposals.

9. Clarification of Driveway Easement and Neighbor Authorization

The approved development relies on construction of a shared driveway to serve the approved single family residence. The approved driveway begins on the adjacent property to the north, meanders onto the subject property, and then encroaches on the neighboring property again before terminating on the subject parcel. The local record contains an Easement Deed that grants a non-exclusive easement "for ingress, egress, and public utilities" provided by the two northern property owners. However, the easement specifies in part that "All construction and maintenance of the driveway and easement area shall be agreed upon by the two owners as well." The local record does not appear to contain any authorization or co-application by the adjacent landowners

for those parts of the driveway that will serve the subject development but that will be constructed on the adjacent parcel. Furthermore, the legal description and graphic depiction of the easement area shown on pages 2 and 3 of the Easement Deed show a smaller easement area than the encroachments depicted as part of Exhibit 5 (on Site Plan A1.01) in the County's approval.

Therefore, the applicant must provide evidence that the adjacent property owners have given permission for the use of, and construction within, all portions of the proposed or any revised driveway that encroaches onto their lands.. Additionally, information must be provided that demonstrate the adjacent property owners of any land that contains the easement for ingress and egress have been invited to join as an applicant for the development pursuant to Section 30601.5 of the Coastal Act.

10. Submittal of Geotechnical Analyses

Clarification on Delineation of Sea Cliff/Bluff Edge

CZC Section 20.500.015(A) requires all applications for coastal development permits in areas of known or potential geologic hazards such as shoreline and bluff top lots be reviewed to ensure that new development will be safe from bluff erosion and cliff retreat. To this end, LUP Policy 3.4-7 and Coastal Zoning Code (CZC) Sections 20.500.010(A)(3) and 20.500.020(E) direct the approving authority to assure that new development is sited and designed to provide adequate setbacks from geologically hazardous areas and that restrictions of land uses be applied as necessary to ensure that the construction of seawalls or other shoreline protective structures will not be needed "in any way" over a full 75-year economic lifespan of the development.

Site imagery contained in the BACE geologic reconnaissance report (July 2009), and topography depicted on the site plan for the area immediately surrounding the development show the coastal bluff at the site consists of a very steep sea cliff that extends to the beach below. The July 20, 2009 geologic reconnaissance report prepared by BACE Geotechnical ([Appendix B](#)) describes the site topography of the bluff-top parcel as follows:

The topography within the property generally slopes down toward the south and southwest, and is characterized by an upper, nearly flat area near the center of the property. Slope gradients in the eastern and central part of the site are near-level, approximately 30 horizontal to one vertical (30H:1V) or less. Steeper gradients on the order of 2 to 5H:1V are present on the south- and west-facing terrace slopes adjoining the peninsular bluff edges. The ocean bluff face is approximately 80 feet in vertical height and is very steep, about 0.5H:1V.

The BACE geologic reconnaissance report (July 2009) indicates that aerial imagery and site reconnaissance were used to evaluate the sea cliffs and bluff edge. However, site photographs and topography do not clearly depict the bluff edge. Furthermore, the geologic reports prepared for the approved development (BACE 2009, SHN 2009) do not clearly demonstrate how the edge of the sea cliff and bluff edge were determined as the basis for measuring recommended bluff retreat/setback distances for the development. The bluff edge must be delineated pursuant to CCR Title 14 §13577(h), which states, in relevant part, that:

In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line

or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff....

Therefore, to accurately assess the sea cliff edge, a topographic survey that depicts bluff topography along the subject parcel and adjacent (upcoast and downcoast) parcels must be provided in addition to clarification of the determination of the delineated bluff edge.

Quantitative Slope Stability Analysis

The Commission must make findings regarding potential geologic hazards associated with new development. LCP policies require that new development (1) minimize risks to life and property in areas of high geologic hazard, and (2) assure stability and structural integrity, and neither create or contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs. Authorization of the placement of the new development on a blufftop lot is contingent on making findings that (a) the approved project site will be stable over the life of the project, and (b) that threats to the development from geologic hazards will be minimized and mitigated.

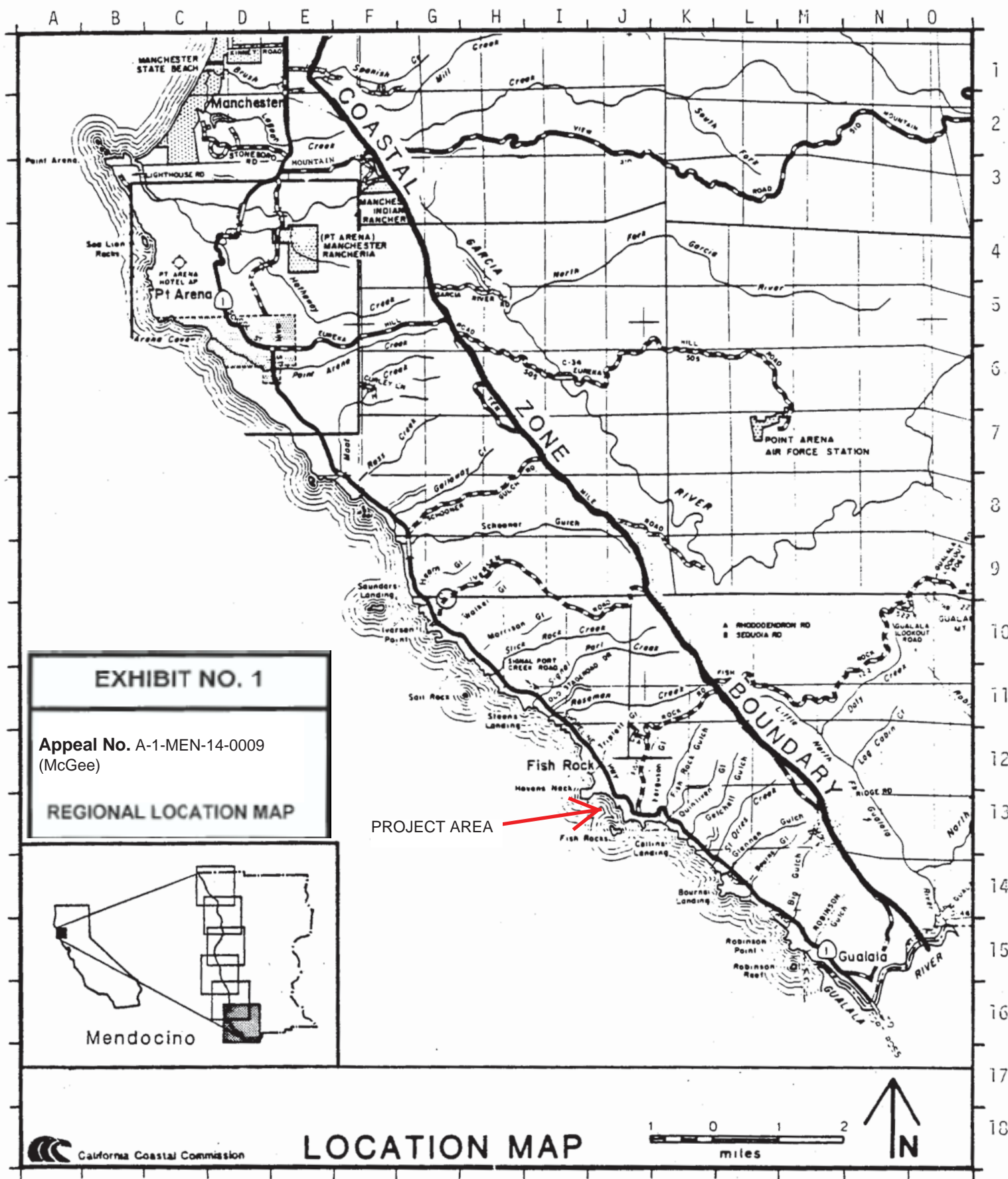
The existing geologic reconnaissance and geotechnical reports (BACE, July 2009; SHN September 2009) do not contain sufficient information with which to make these findings since the reports do not include a quantitative slope stability analysis. Such an analysis is needed to determine the following: (1) the static minimum factor of safety against landsliding of the bluff in its current configuration; (2) assuming that factor of safety obtained in (1) is less than 1.5, the location on the bluff top where a factor of safety of 1.5 is obtained; (3) the pseudostatic minimum factor of safety of the bluff, using a horizontal seismic coefficient of 0.15g; and (4) assuming that the factor of safety in (3) is less than 1.1, the location on the bluff top where a factor of safety of 1.1 is obtained. Therefore, the Commission must receive a quantitative slope stability analysis prepared according to the following guidelines:

1. The analyses should determine the factor of safety against sliding for both static and pseudostatic conditions.
2. Slope stability analyses should be undertaken through cross-sections modeling worst case geologic and slope gradient conditions. Analyses should include postulated failure surfaces such that both the overall stability of the slope and the stability of the surficial units are examined.
3. The effects of earthquakes on slope stability (seismic stability) may be addressed through pseudostatic slope analyses assuming a horizontal seismic coefficient of 0.15g. Alternative (displacement) methods may be useful, but should be in conformance with the guidelines published by the American Society of Civil Engineers, Los Angeles Section (ASCE/SCEC), "Recommended Practices for Implementation of DMS Special Publication 117, Conditions for Analyzing and Mitigating Landslide Hazards in California."
4. All slope analyses should ideally be performed using shear strength parameters (friction angle and cohesion), and unit weights determined from relatively undisturbed samples

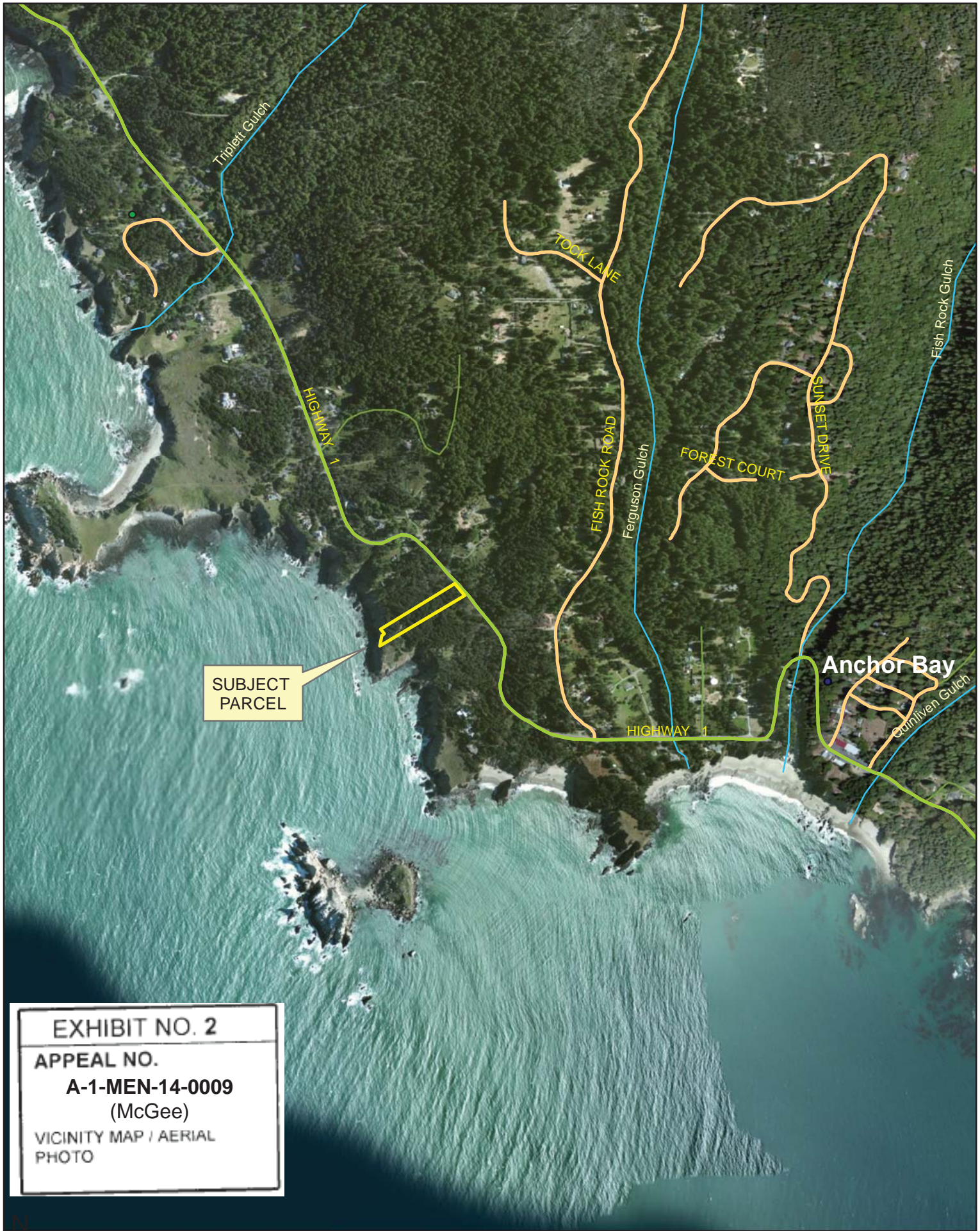
collected at the site. The choice of shear strength parameters should be supported by direct shear tests, triaxial shear test, or literature references.

5. All slope stability analyses should be undertaken with water table or potentiometric surfaces for the highest potential ground water conditions.
6. If anisotropic conditions are assumed for any geologic unit, strike and dip of weakness planes should be provided, and shear strength parameters for each orientation should be supported by reference to pertinent direct shear tests, triaxial shear test, or literature references.
7. When planes of weakness are oriented normal to the slope or dip into the slope, or when the strength of materials is considered to be homogenous, circular failure surfaces should be sought through a search routine to analyze the factor of safety along postulated critical failure surfaces. In general, methods that satisfy both force and moment equilibrium (e.g., Spencer, Morgenstern-Price, and General Limit Equilibrium) are preferred. Methods based on moment equilibrium alone (e.g., Bishop's Method) also are acceptable for circular failure models.
8. If anisotropic conditions are assumed for units containing critical failure surfaces and when planes of weakness are inclined at angles ranging from nearly parallel to the slope to dipping out of slope, factors of safety for translational failure along specified failure surfaces should also be calculated, using Spencer's, Janbu's generalized, or Morgenstern-Price methods. Janbu's simplified method may be used for planar failures. The use of a block failure model should be supported by geologic evidence for anisotropy in rock or soil strength. Shear strength parameters for such weak surfaces should be supported through direct shear tests, triaxial shear test, or literature references.

Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the ESHA protection policies of the LCP, and the project's consistency with Coastal Act Section 30010. Therefore, before the Commission can act on the proposed project de novo, the applicant must submit all of the above-identified information.



County of Mendocino



SUBJECT
PARCEL

Anchor Bay

EXHIBIT NO. 2
APPEAL NO.
A-1-MEN-14-0009
(McGee)
VICINITY MAP / AERIAL
PHOTO



1:12,500



Date: 3/19/2014

PROJECT DIRECTORY

[illegible]

PROJECT DATA

PROJECT SITE:	Anchor Bay, Mendocino CA
PROPERTY OWNERS:	Rich Molis & Sheron Miller
PROJECT DESCRIPTION:	New Single Family Residence
ASSESSORS NUMBER:	Parcel Number 145-160-10
PARCEL SIZE:	2.293 acres (61,131 x 897)
ZONING:	RR2
TYPE OF CONSTRUCTION:	BN
NUMBER OF STORES:	2 + roof deck
HEIGHT LIMIT:	38' above existing natural grade
SETBACKS:	30' (20' allowable side setback

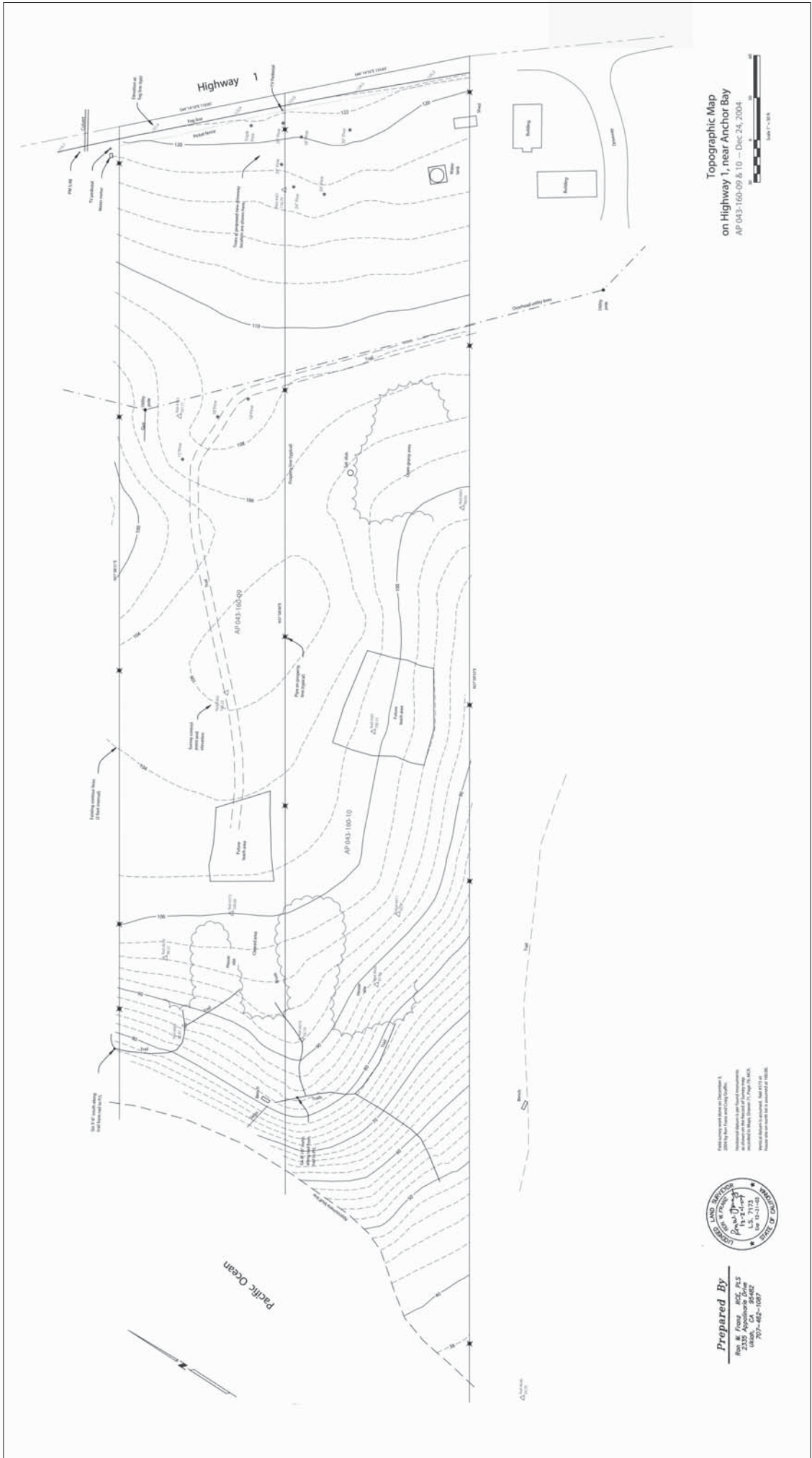
Anchor Bay Residence

Revision Schedule		
Revision	Set	Issue Date
1	Permit Set	2-1-10
2		2-25-10
		7-9-10

Drawn By: RDH
Checked By: TOL
Scale:

Sheet Number	Drawing List Sheet Name	Sheet Issue Date
A0.00	Cover Sheet	11/16/09
A0.01	Survey	11/16/09
A1.01	Site Plan	7-9-10
A2.01	Entry Level Plan	7-9-10
A2.02	Main Floor Plan	7-9-10
A2.02	Lower Level Plan	7-9-10
A2.03	Roof Plan	7-9-10
A3.01	East/West Elevations	7-9-10
A3.02	North/South Elevations	7-9-10
A4.01	Sections	7-9-10

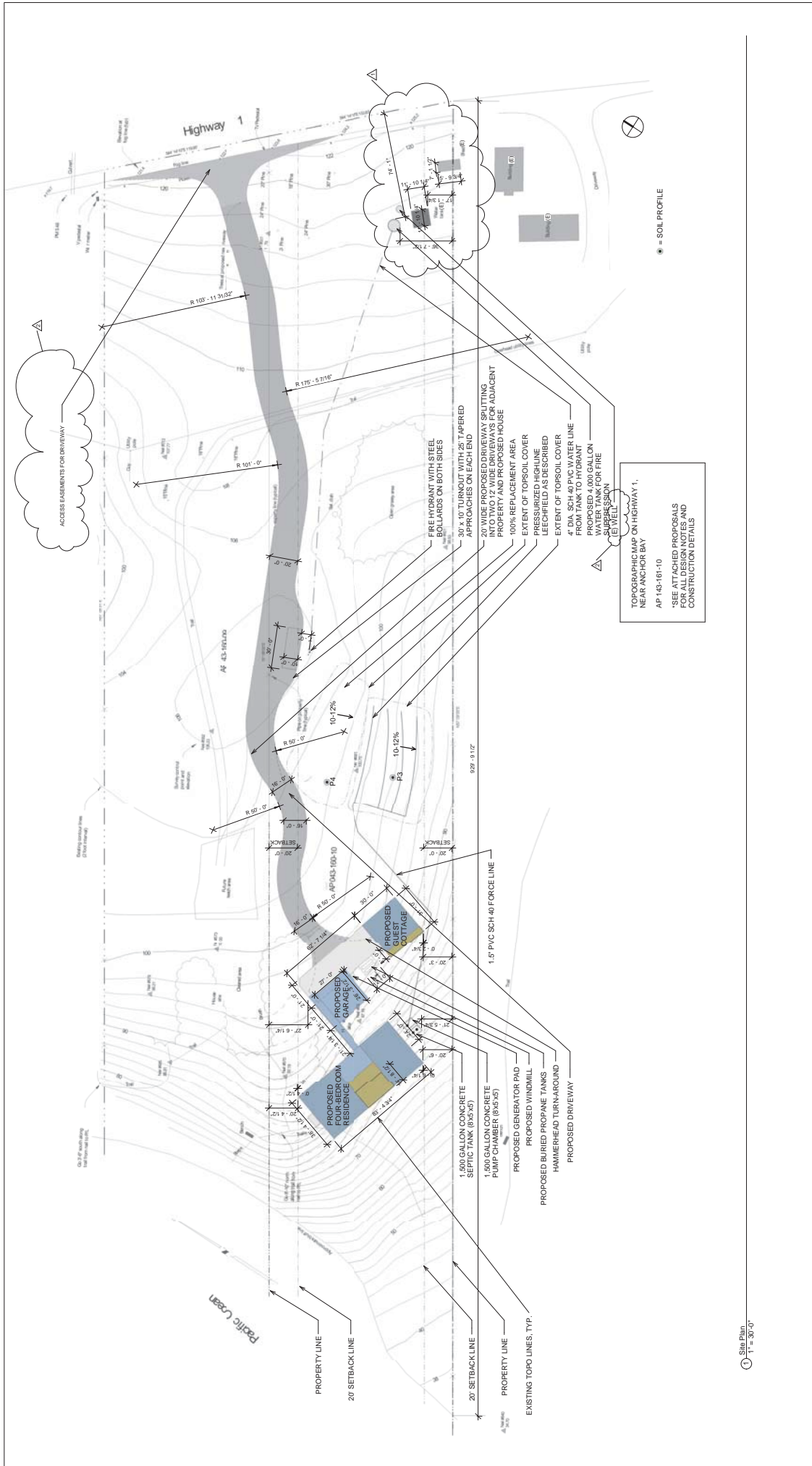




Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445

LUNDBERG DESIGN
2620 THIRD STREET
SAN FRANCISCO CA 94107-3115
T 415.695.0110 F 415.695.0379



① Site Plan
1" = 30'-0"

Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445



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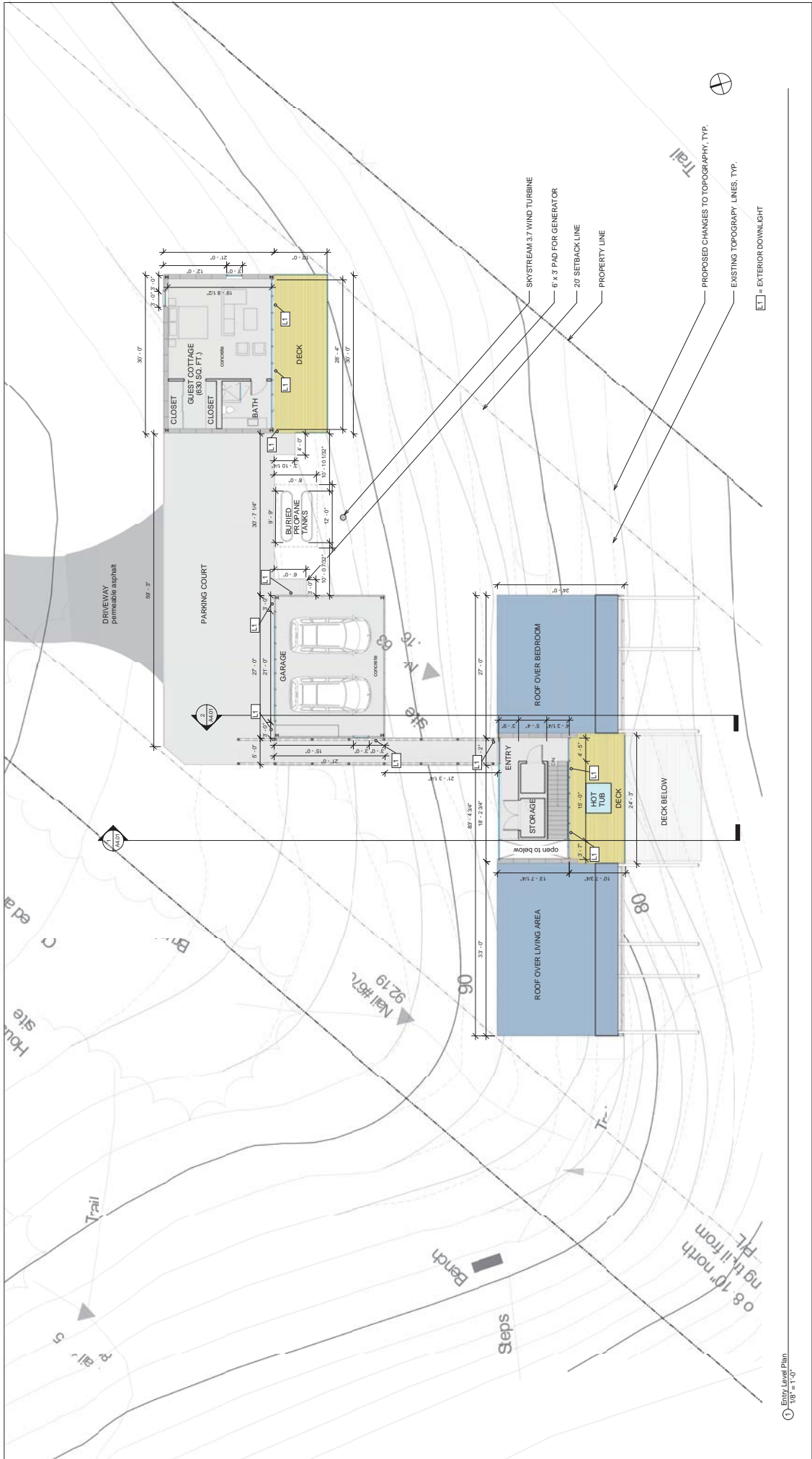
Site Plan

Revision	Schedule	Issue Date
1	Permit Set	2-1-10
2		2-25-10
		7-9-10

Drawn By:	ROH
Checked By:	OL
Scale:	1" = 30'-0"

All work shall conform to the applicable California Building Code and the applicable local ordinances. The engineer shall be responsible for the accuracy of the information provided and for the compliance of the work with the applicable codes and ordinances.

A1.01



1 Entry Level Plan
1/8" = 1'-0"

(4 of 10)

Anchor Bay Residence

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Revision Schedule
Revision Set Issue Date

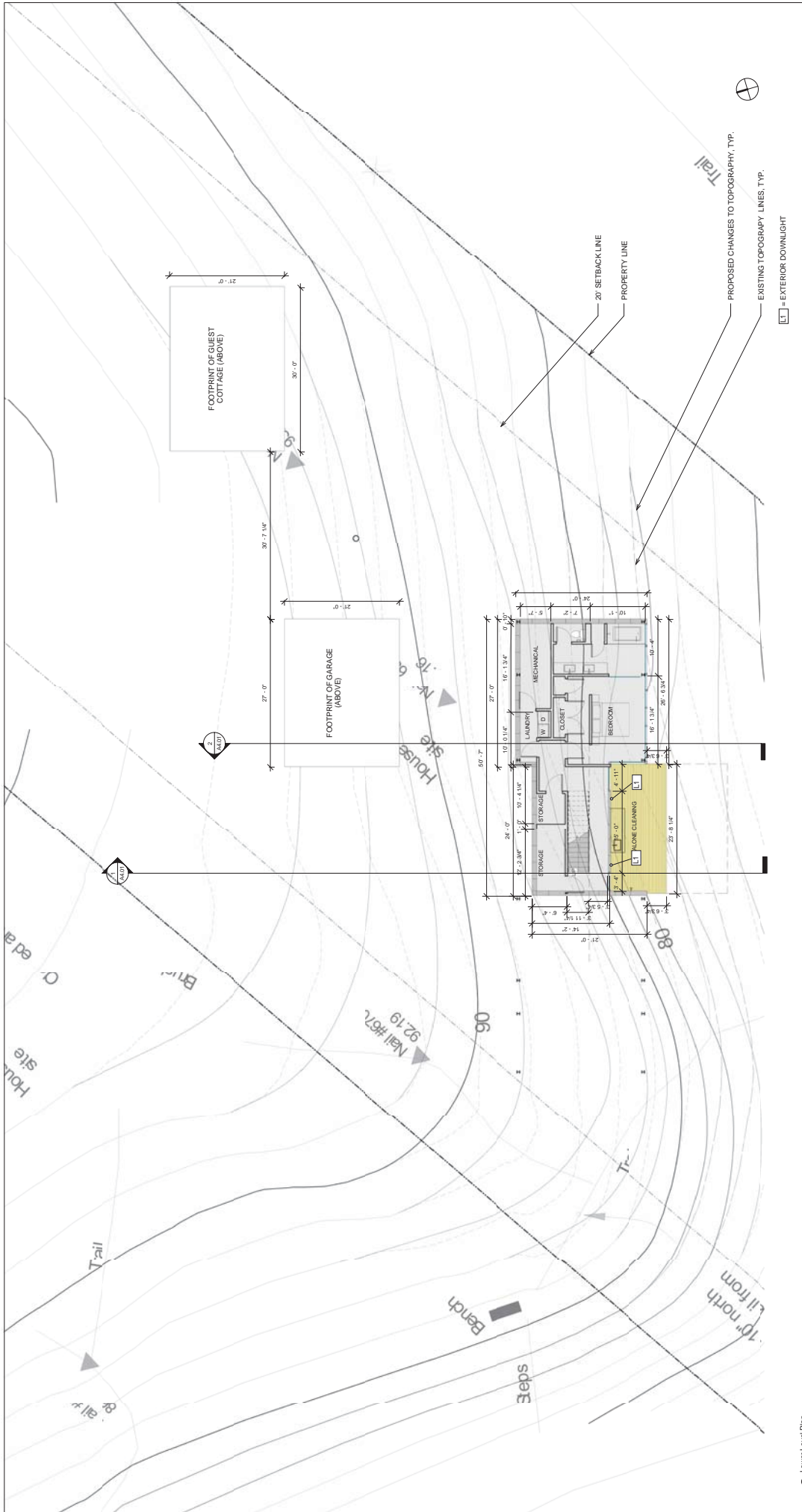
1 Permit Set 2-1-10
2 2-25-10
7-9-10

Drawn By: ROH
Checked By: CH
Scale: 1/8" = 1'-0"

This plan was prepared by the undersigned architect or engineer and is a true and correct copy of the original plan as filed with the appropriate authority. It is not to be used for any other purpose without the written consent of the undersigned.

Entry Level
Plan

A2.00



1 Lower Level Plan
1/8" = 1'-0"

Anchor Bay Residence

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Revision Schedule		Issue Date
Revision	SKT	
1	Permit Set	2-1-10
2		2-25-10
		7-9-10

Drawn By:	ROH
Checked By:	CO
Scale:	1/8" = 1'-0"

All work shall conform to the applicable building codes and standards. The architect shall be responsible for obtaining all necessary permits and for ensuring that the construction complies with all applicable laws and regulations.

Lower Level
Plan

A2.02



1 Roof Plan
1/8" = 1'-0"



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Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445

Roof Plan

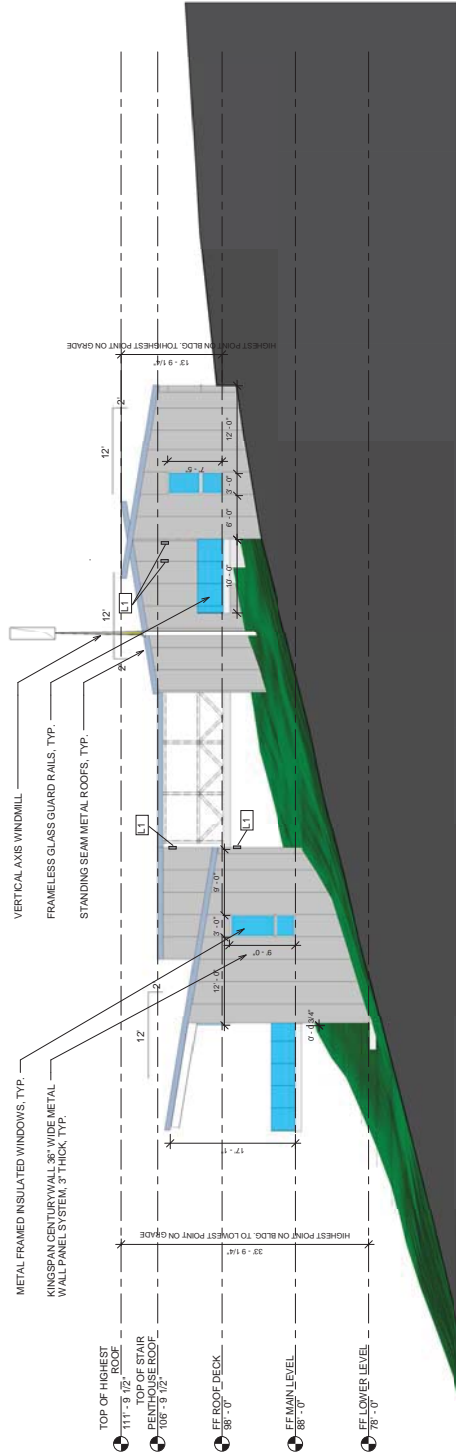
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2		2-25-10
		7-9-10

Drawn By: ROH

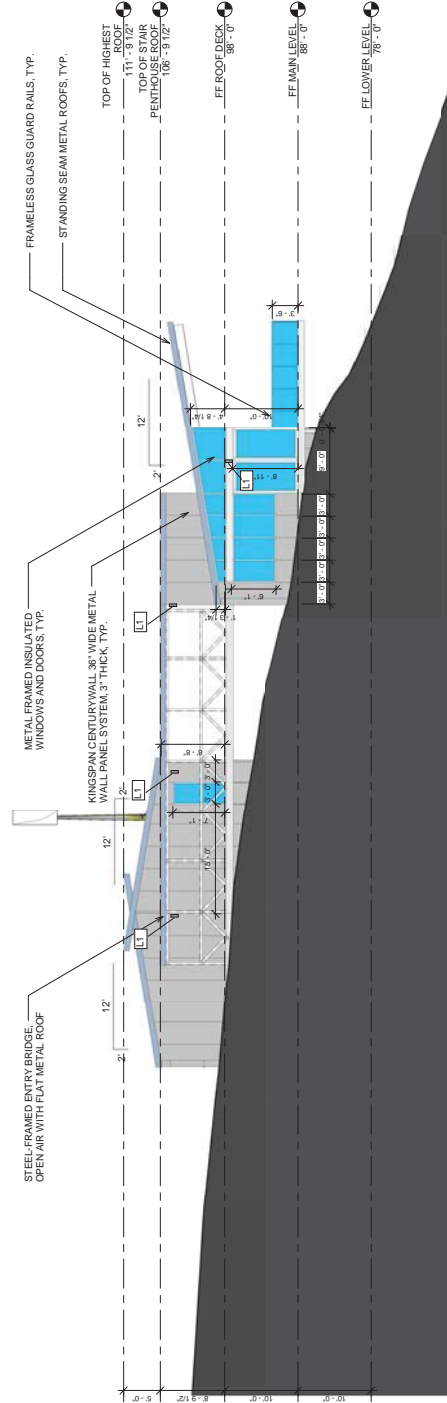
Checked By: CH

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

Notes: All dimensions are in feet and inches. All dimensions are to the center of the wall unless otherwise noted. All dimensions are to the center of the wall unless otherwise noted. All dimensions are to the center of the wall unless otherwise noted.



① East
1/8" = 1'-0"



② West
1/8" = 1'-0"

HEIGHT LIMIT CALCULATIONS

HIGHEST POINT ON BLDG. TO LOWEST POINT ON GRADE: 33' - 9 1/4"
HIGHEST POINT ON BLDG. TO HIGHEST POINT ON GRADE: 13' - 9 1/4"

33' - 9 1/4"

-13' - 9 1/4"

47' - 6 1/2"

47' - 6 1/2" DIVIDED BY 2 = 23' - 9 1/4" CALCULATED HEIGHT

MAX ALLOWABLE HEIGHT: 28' - 0"

□ = EXTERIOR DOWNLIGHT

Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445



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Revision Schedule

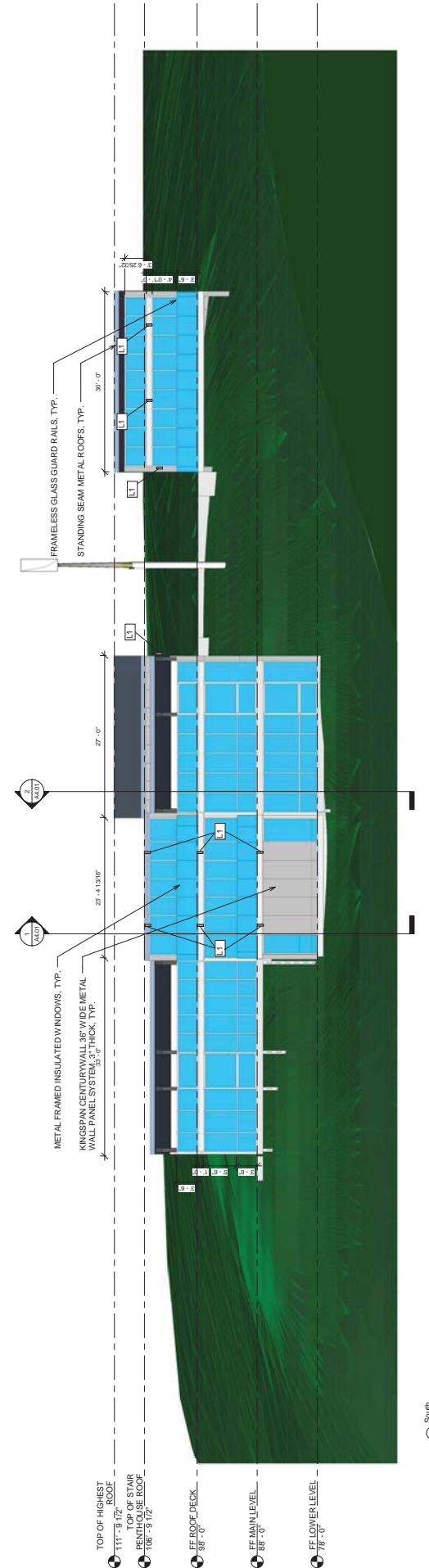
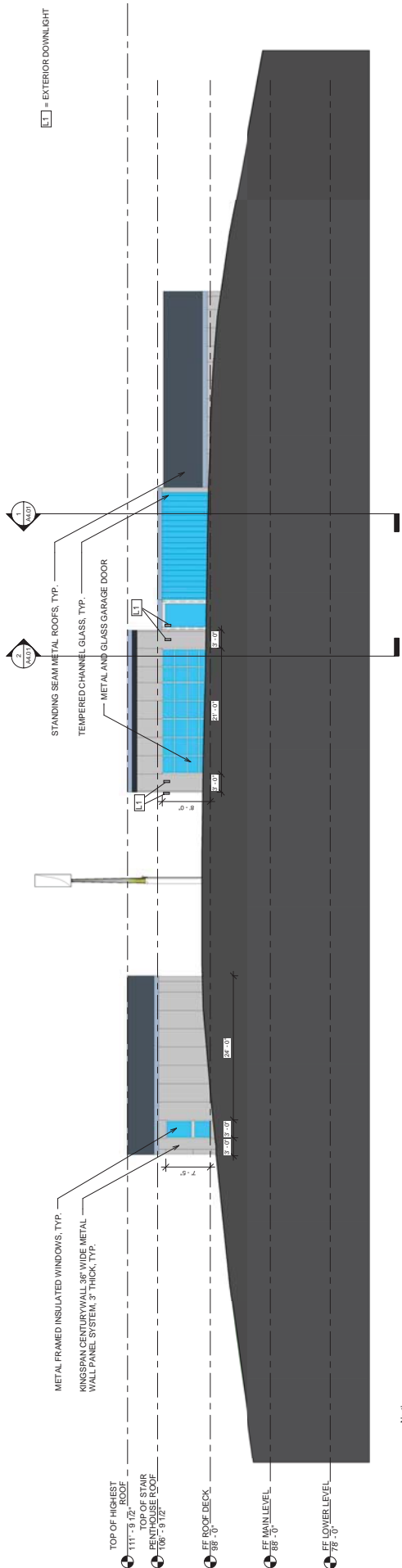
Revision	SKT	Issue Date
1	Permit Set	2-1-10
2		2-25-10
		7-9-10

Drawn By: ROH
Checked By: CH

Scale: 1/8" = 1'-0"
This drawing is a preliminary design and is not to be used for construction without the approval of the architect.

East/West
Elevations

A3.01



Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445

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Revision Schedule		Issue Date
Revision	SKT	
1	Permit Set	2-1-10
2		2-25-10
		7-9-10

Drawn By: ROH

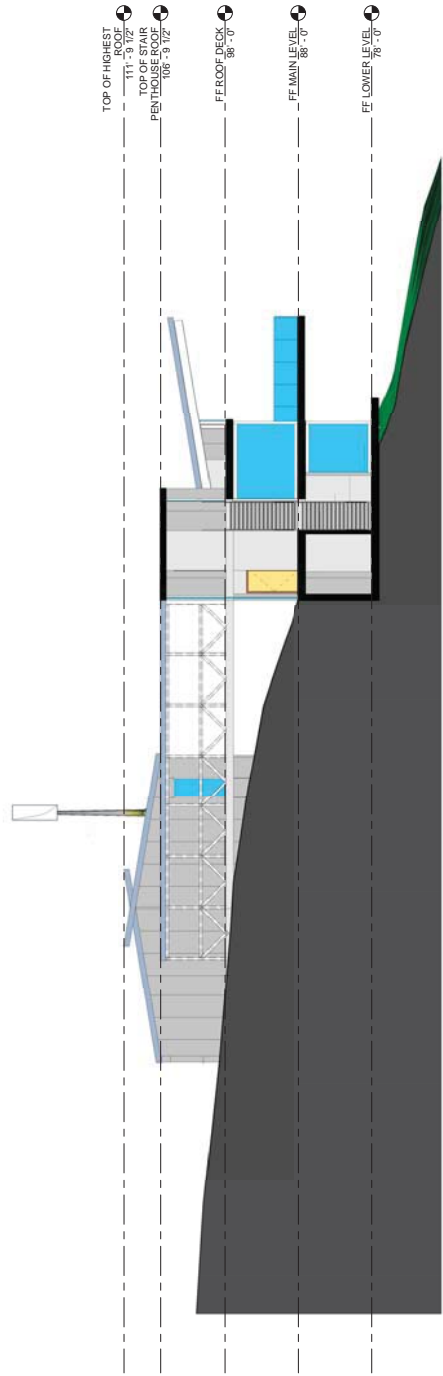
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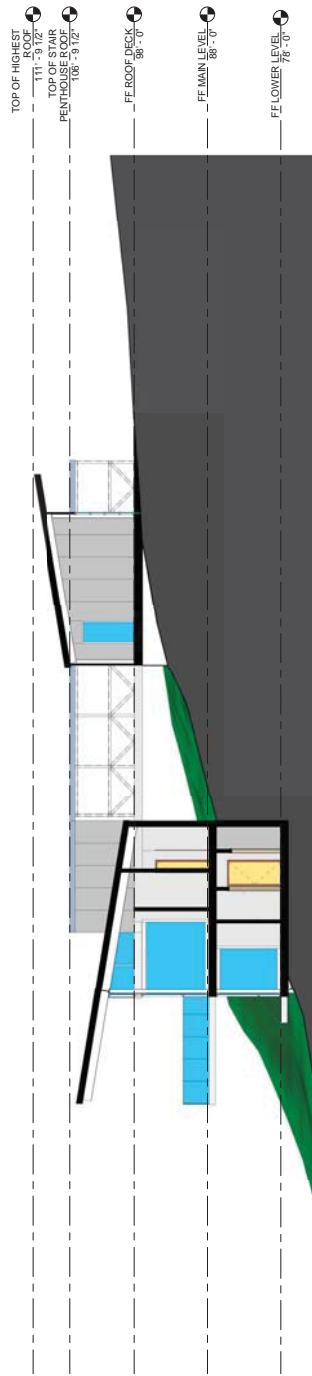
All dimensions and notes must be read in conjunction with the project specifications and the project manual. The project manual is the governing document for the project.

North/South
Elevations

A3.02



① Section Through Entry Stair Facing East
1/8" = 1'-0"



② Section Through Garage Looking West
1/8" = 1'-0"

Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445

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Revision	Sht	Issue Date
1	Permit Set	2-1-10
2		2-25-10
		7-9-10

Drawn By:	ROH
Checked By:	CL
Scale:	1/8" = 1'-0"

All work shall conform to the applicable building codes and standards. The architect shall be responsible for obtaining all necessary permits and approvals. The architect shall be responsible for the accuracy of the information provided in this document.

Sections

A4.01

A1.01

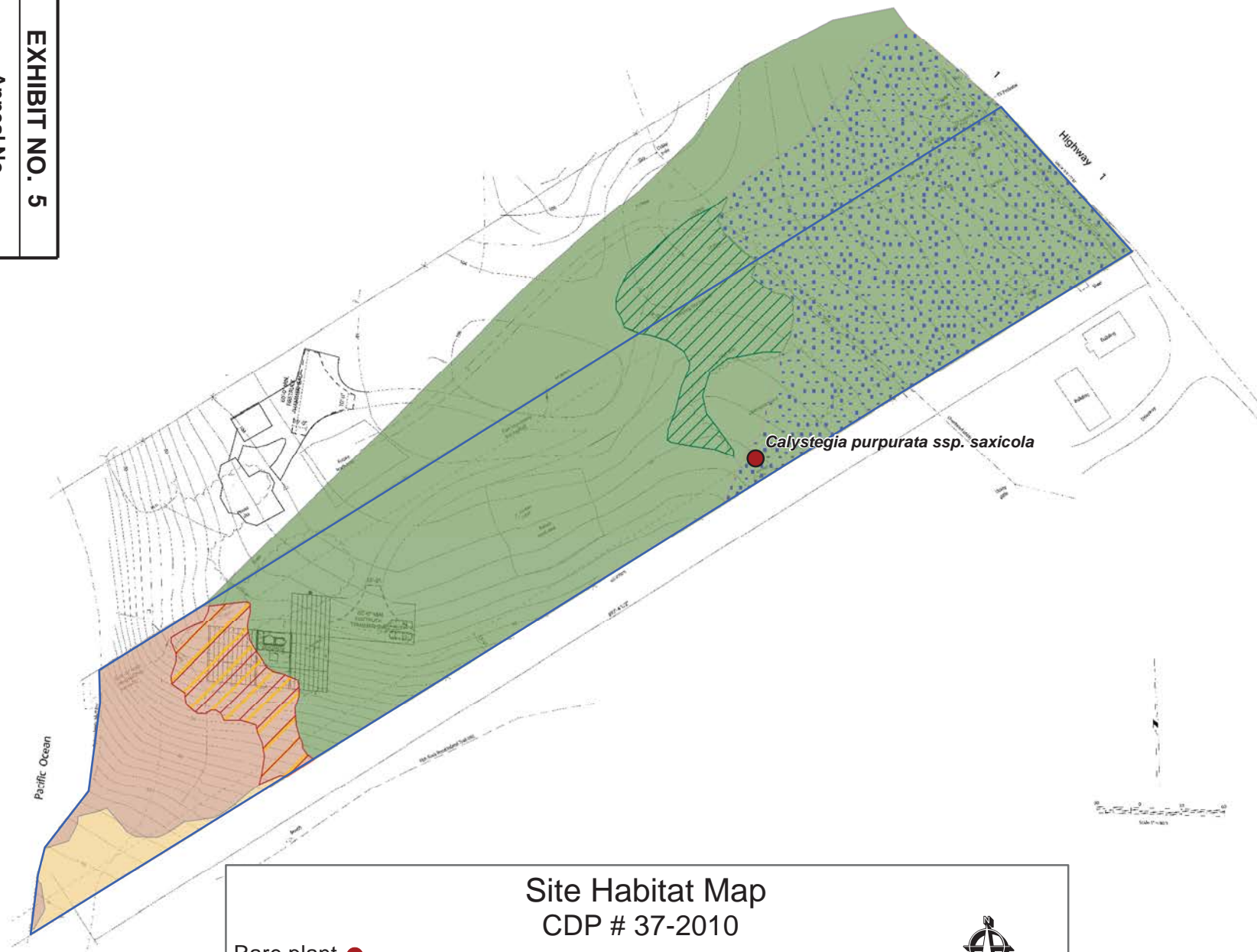
EXHIBIT NO. 5

Appeal No.

A-1-MEN-14-0009

(McGee)

SITE HABITAT MAP



Site Habitat Map CDP # 37-2010

Rare plant ●

Central Maritime Chaparral

Coastal Terrace Prairie

Northern Bishop Pine Forest



Cleared

Vernal

Thick Understory



1:1,200

NCRM
October 29, 2013



Botanical Survey and ESHA Buffer Analysis

Located at 34570 S. Highway 1 Anchor Bay, Mendocino County, CA.
(APN: 143-161-10)

Prepared for:

Shannon Miller and Rick McGee
823 Alvarado Road
Berkeley, CA 94705

Prepared by:

Estelle P. Clifton

Signature on File

North Coast Resource Management
P.O. Box 435
Calpella, CA 95418

January 21, 2009

EXHIBIT NO. 6

Appeal No.
A-1-MEN-14-0009
(McGee)

**EXCERPTS FROM
BIOLOGICAL REPORTS**

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Summary

A botanical assessment was conducted at the McGee/Miller Property, located at 34570 S. Highway 1, Anchor Bay, Mendocino County, California. The purpose of the assessment was to locate potential listed resources prior to submitting an application for a Coastal Development Permit for a single family residence on the property. Floristic surveys were conducted by NCRM botanist Estelle P. Clifton on 5/29/08 and 6/25/08 for a total of 5 survey hours. During the initial site survey potential wetlands and a listed plant community were identified within and adjacent to the project area.

A listed Northern Bishop Pine forest community occupies a majority of the parcel, placing the entire parcel within an ESHA and its buffer zone. No listed plant species were found. In addition it was determined that there is insufficient hydrophytic vegetation to qualify a wetland.

A buffer analysis has been prepared in order to minimize project-related impacts to the ESHA. Given the advantage of maintaining a contiguous Northern Bishop Pine stand and the placement of the hydrologic features, placing the proposed home site, at the western edge of the pine stand, set back from the bluff edge, has been determined the best location for minimizing impacts to the habitat.

Mitigation measures identified in Section 5 of this report should be implemented to ensure that potential development related activities have a less than significant impact on the identified ESHA.

1. Introduction and Project Description:

A botanical assessment was conducted at 34570 S. Highway 1, Anchor Bay to assess for the presence of listed resources prior to an application for a Coastal Development Permit for a single family residence. The approximately 2.6 acre parcel is located west of State Highway 1, 0.4 miles north of Fish Rock Road. The parcel is long and narrow stretching from the Highway to the bluff.

A preliminary site plan was provided by the landowners that show areas that are planned for development². The proposed plans call for an 18' road off of Hwy 1 that would jog back and forth between the project parcel and the adjacent parcel to the north, before splitting into two 10' driveways (Appendix C). The planned house site is located at the western edge of the Northern Bishop Pine forest.

2. Methodology

Floristic surveys were conducted by NCRM botanist Estelle P. Clifton on 5/29/08 and 6/25/08 for a total of 5 survey hours. Surveying methods were based on the *Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Plant Communities* developed by James Nelson (CDFG 2000). Survey

² Lunberg Design's "Anchor Bay Residence Map" dated December 24, 2004; based off of field work conducted by Ron Franz and Craig Graffin, December 3, 2004.

efforts were focused on identifying special status species and habitat areas within or adjacent to the project area. During these surveys, field notes on the species represented, and the habitat types were recorded.

California Natural Diversity Database (CNDDDB) Rare Find version 3 was consulted to establish past-reported rare or endangered plant populations on or near the study area. In addition, to compile a scoping list of species that have the highest likelihood of occurring within the project area, the *California Native Plant Society (CNPS)* electric inventory of Rare or Endangered Vascular Plants and the *California Natural Diversity Database (CNDDDB)* were queried for species that could or are known to occur within the Saunders Reef 7.5' USGS quadrangle and the three surrounding quadrangles (Point Arena, Eureka Hill, and Gualala).

At the time the surveys were conducted, all of the special status plant species considered in this study, were thought to be within their blooming window and identifiable.

All plant species located during the surveys were identified to the lowest taxonomic level necessary to determine the presence of potential special status plant species. *The Jepson Manual: Higher Plants of California* (Hickman 1996) was used to determine the taxonomic nomenclature.

A Manual of California Vegetation (Sawyer & Keeler-Wolf 1995), *Preliminary Descriptions of the Terrestrial Natural Communities of California* (Holland 1986), and *List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database* (CDFG 2003) were used to classify representative plant communities present.

Preliminary wetland delineations were conducted in accordance with the *Corps of Engineers Wetland Delineation Manual* (ACOE 1987) and the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region* (ACOE 2008). Soil profiles were described to include depths, color, redoximorphic features, and texture. Soil color was determined using *Munsell Soil Color Chart* (GretagMacBeth 1998).

Environmentally Sensitive Habitat Areas (ESHAs) within the plan were identified in accordance with the Mendocino County Local Coastal Plan (LCP) Zoning Ordinance. Treatment of development impacts within the ESHA buffer zones were analyzed utilizing the LCP Zoning Ordinance 20.496.020(A) through (4)(k).

3. Results and Discussion

According to the queries of the electric inventories, there are thirty-five rare and endangered plant species (Appendix A, Table 1) that have been reported or are likely to occur within the Saunders Reef 7.5' USGS quadrangle and the three surrounding quadrangles (Point Arena, Eureka Hill, and Gualala). In addition Seaside Lotus (*Lotus formosissimus*) and Blue Violet (*Viola adunca*) were included in the botanical scoping.

Of the thirty-seven plants, I have narrowed the list down to the twenty-four species that have a low to high likelihood of occurring within the project area. Aside from *Sidalcea malachroides* and *Lotus formosissimus*, CNPS watch list, or list 4 plant species, for Mendocino County, were not listed in the scoping list but were considered and surveyed for during field inspections.

During the initial site survey potential wetlands and listed plant communities were identified within and adjacent to the project area. No listed plant species were located during the florist surveys of the project area. A complete vegetation list of the plant species observed during the site visits is included in Appendix A, Table 2.

The Northern Bishop Pine Forest (G2, S2.2) as described by Holland, covers the majority of the parcel. Along the western edge of the parcel a manzanita shrubs separate the Bishop Pine forest from the species on the bluff edge. Potential wetland areas were found within the Bishop Pine Forest. Wetland Data Forms are attached in Appendix B.

The protection status afforded to the located Northern Bishop Pine Forest habitat places the entire parcel within the buffer zones of an ESHA.

The canopy of the pine forest is dominated by Bishop Pine (*Pinus muricata*) with a few young Redwood (*Sequoia sempervirens*) and Douglas-fir (*Psuedotsuga menziesii*) trees. In addition, several very large Eucalyptus trees (*Eucalyptus* sp.) line the highway corridor. The midstory vegetation within the Bishop Pine forest is dominated by California Wax Myrtle (*Myrica californica*), Cascara (*Rhamnus purshiana*), and Evergreen Huckleberry (*Vaccinium ovatum*). Dominant herb species are Kentucky Bluegrass (*Poa pratensis* ssp. *pratensis*) and Tall Manna Grass (*Glyceria elata*).

West of the Bishop Pine forest is a manzanita grove. The stand is completely dominated by Hairy Manzanita (*Arctostaphylos manzanita*) with some Coyote brush (*Baccharis pilularis*). I was not able to correlate this plant community to a published source.

The dominant species on the bluff edge are Golden Aster (*Heterotheca sessilifolia* ssp. *purpurata*), Morning glory (*Calystegia purpurata* ssp. *purpurata*), and Paintbrush (*Castilleja wightii*).

Due to the presence of facultative and obligate wetland plant species, a wetland study was determined to be necessary along the eastern portion of the parcel. The wetland species at all of the Data Points (DP) did not qualify as hydrophytic vegetation although the soils did at DP1 and DP2. Hydrology was not present but, it should be noted that the data was collected during a dry period.

A small area (approximately .01 acres) did meet hydrophytic vegetation criteria due to the dominance of Tall Manna Grass (*Glyceria elata* - OBL). The vegetation sampled at DP1 is approximated on the map (shown as the green hydrophytic vegetation polygon) in Appendix C). Vegetation sampled at DP2 is confined to the northern one third of the

open grassy area. Vegetation sampled at DP3 included the species to the north and east of the DP3 no farther than the mapped trail on both parcels.

A buffer analysis has been prepared in order to minimize project-related impacts upon the ESHAs. Given the advantage of maintaining a contiguous Northern Bishop Pine stand and the location of the potential wetland features, it happens that the preliminary home site, at the western edge of the pine stand, set back from the bluff edge, has been determined the best location for minimizing impacts to the habitat.

Conditional approval is being sought for the placement of the Miller and McGee single family residence entirely within the parcels Northern Bishop Pine Forest ESHA buffer zone. Permit approval is recommended as per Coastal Zoning Ordinance Sec 20.532.100

(A) (1) since the proposed single family residence development:

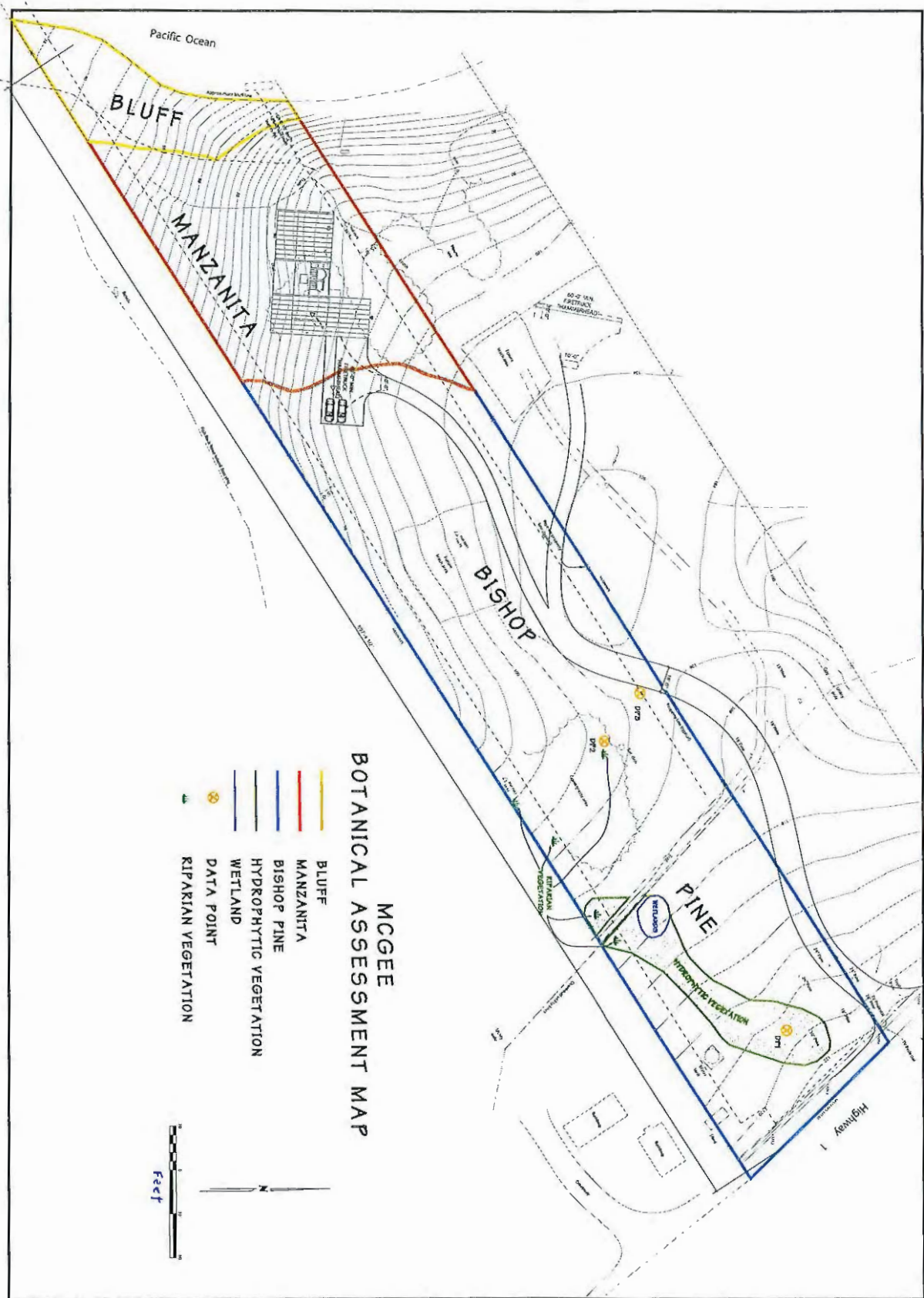
- (a) will not significantly degrade identified ESHAs;
- (b) is the least damaging alternative; and
- (c) will adopt all feasible mitigation measures capable of minimizing adverse project-related impacts upon the habitat.

4. Buffer Analysis

The usual requirement for the continuance of environmentally sensitive habitat areas is a ≥ 100 foot buffer that can be reduced, if appropriate, to no less than a 50 foot buffer. In this case, the proposed development cannot be located ≥ 50 feet away from the ESHAs due to the restrictive size of the parcel. As a result, the buffer zone analysis included in this report addresses the impacts that are proposed within the ESHA and its buffer zone.

To ensure that development activities do not significantly degrade the identified sensitive Northern Bishop Pine communities, appropriate mitigation measures have been prepared.

(Section 20.496.020 Coastal Zoning Ordinance)	
<i>(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for 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>	The proposed project location is compatible with the continuance of the identified environmentally sensitive habitats.
<i>(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</i>	There is not enough room on the parcel to create a 50- foot buffer from the ESHAs. The proposed development is located where there will be the least environmental impact and therefore potential degradation to the sensitive resource will be minimized. Referring to Sections 20.496.050 (B) and 20.532.100 (A) (1) NCRM determined this development of a single family residence may be permissible.





Hydrophytic area in the Bishop Pine Forest at the eastern portion of the parcel



The Bishop Pine Forest, at the middle of the parcel.



Biological Addendum

Mendocino County Coastal Development Permit # 37-2010
(APN: 143-161-10)

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INTRODUCTION

In 2009, North Coast Resource Management (NCRM) prepared A *Botanical Survey and ESHA Buffer Analysis* for the McGee project, CDP # 37-2010 (Appendix F). As part of that study a grove of manzanita was identified along the western side of the parcel which did not correspond to a published plant community. On March 16th, 2010 Mendocino County Planner II Teresa Spade brought manzanita specialists Dr. Tom Parker and PhD candidate Mike Vasey to the site to evaluate whether the manzanita community on the parcel could qualify as maritime chaparral. Following their site visit Mr. Vasey, in a letter to the County (Appendix D), indicates that the manzanita stand at CDP # 37-2010 was found to qualify as "maritime chaparral." Additionally during their March 16th, 2010 site visit, a lower terrace of coastal prairie was surveyed as well.

Another significant species (*Viola adunca*), a host for Behren's silverspot butterfly (*Speyeria zerene behrensis*) (BSSB), was observed by Botanist Teresa Scholars within the identified coastal prairie community during the County-led March 16th, 2010 site visit. Ms. Scholar's species list appears in Appendix E.

The County has requested an addendum to NCRM's botanical assessment and specifically an updated buffer analysis, due to the presence of these new plant communities at the site. On September 13th, 2011 NCRM Botanist Estelle Clifton conducted a follow-up assessment which focused on mapping plant communities and their boundaries, identifying all plant species present, and determining the least impactful potential building location from a biological perspective. This assessment additionally looked for evidence of Sonoma Tree Voles and potential impacts to BSSB and California Red-legged Frog within the project site.

PROJECT DESCRIPTION

The project is located at 34570 South Highway 1, Anchor Bay, Mendocino County, California. The McGee parcel (APN 143-161-10) is long and narrow. The McGee's and their neighbor to the north have planned a combined driveway that meanders between the two parcels. The proposed combined driveway would require a minimum 18 foot road width per CalFire. If separate driveways were proposed, CalFire would require a minimum 10 foot wide driveway for each home. Currently, a small existing road on the neighbors parcel to the north provides vehicular accesses to the western portion of the project site.

METHODOLOGY

Plant Species and Communities


A *Manual of California Vegetation* (Sawyer Keeler-Wolf 2009), *Preliminary Description of the Terrestrial Natural Communities of California* (Holland 1986), and the *California Natural Diversity Data Base* (CDFG April 2010) were used to classify and assign ranking or listing status to the representative plants and plant communities that are present at the project site.

A special status plant species scoping list (Appendix C) was constructed based on the *California Native Plant Society* (CNPS 2011) electric inventory of Rare or Endangered Vascular Plants and the *California Natural Diversity Database* (CNDDB 2011). CNPS "List 4"

plant species were not listed in the scoping list but were considered and surveyed for. For definitions regarding the listing of special status plant species included in the scoping list or listing of special status plant communities refer to Appendix C-Definitions for Special Status Plant Species.

All plant species located during the 2011 survey were identified to the lowest taxonomic level necessary to determine the presence of special status plant species. *The Jepson Manual: Higher Plants of California* (Hickman 1996) was used to determine the taxonomic nomenclature of species observed. A complete vegetation list of the plant species observed during the site visits is included in Appendix B.

Potential Wetland

Wetlands Vegetation was sampled in accordance with the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region* (ACOE 2008). Percent vegetative cover was estimated by walking the portion of the parcel that was first stratified as potentially vernal, visually estimating the coverage of each prevalent species by cover type over this broad area (approximately 1 acre). 

Wildlife Species

A Sonoma Tree Vole (STV) survey was performed by walking the parcel and looking for evidence of consumed Douglas-fir needles. The *Draft Guidelines for Habitat Assessments and Surveys for Behren's Silverspot Butterfly (Speyeria zerene behrensii)* (BSSB) (USFWS 2006) was reviewed to assess the project's potential for impacting BSSB. The *Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog* (CRF) (USFWS 2005) was reviewed to assess the project's potential for impacting CRF.

Habitat Map

In 2009, a field survey map was created utilizing the County of Mendocino's Geographic Information System (GIS) county parcel layer in conjunction with the National Agriculture Image Program (NAIP) 2005 aerial photos. This was followed by a *Botanical Assessment Map* (2009) in which the applicant's surveyed map was geo-referenced in our GIS to best fit the base map of the county's parcel layer.

During the 2011 survey, GPS data points were recorded at the McGee parcel with a sub meter accuracy Trimble Pro X GPS unit. Plant community boundaries were recorded with the GPS as well as the surveyed property boundary stakes located on the parcel. These GPS data points did not match the approximate location of the county parcel layer utilized to make the 2009 project map (the county parcel layer is about 75' off of the surveyed property boundary, shifted to the northwest). The 2011 property maps (Appendix A) were revised utilizing the recorded GPS data points as the base layer. The applicant's surveyed map was then geo-referenced to the GPS data point base layer.

RESULTS & DISCUSSION

The entire McGee parcel was found to be an Environmentally Sensitive Habitat Area (ESHA) due to the presence of listed plant communities, potential wetland areas, and one listed plant species (*Calystegia purpurata* ssp. *saxicola*).

Vegetation

The site is primarily forested in Northern Bishop Pine Forest (G2, S2.2) with some potential wetland area. The forest turns into a dense stand of Central Maritime Chaparral (G2, S2.2) at the bluff edge above the Pacific Ocean, sloping south to a lower terrace of Coastal Terrace Prairie (G2, S2.1) habitat. Within the Northern Bishop Pine Forest, one identified special status plant species occurrence- *Calystegia purpurata* ssp. *saxicola* (CNPS 1B.2, G4T2, S2.2) was identified and mapped. The 2008 assessment (NCRM 2009) identified the Northern Bishop Pine Forest and the riparian habitat at the eastern portion of the parcel. In addition to these previous survey findings, this addendum addresses the newly identified vegetative ESHAs -Central Maritime Chaparral and Coastal Terrace Prairie.

Wetland

Rudimentary wetland vegetation data was collected within a portion of the Northern Bishop Pine Forest (NBPF) to aid in the determination of significant resources areas on the parcel. The eastern third of the parcel contains thick understory brush and saplings as well as a diverse herbaceous layer. The following visual estimates of percent vegetative cover were recorded within the most vernal stratum of the NBPF. Although the species recorded for a dominance test below did not qualify as wetland vegetation (ACOE 2008) smaller sample areas dominated by FACW species that had indicators of wetland hydrology were evident in multiple locations. These areas are spread throughout the mapped vernal areas in the NBPF.

Stratum	Species Name	Wetland Indicator Status	Absolute Percent Cover	Dominant?
Tree	<i>Pinus muricata</i>	NI	70	Yes
	<i>Myrica californica</i>	FAC+	40	Yes
	<i>Rhamnus californica</i>	NI	5	No
	<i>Sequoia sempervirens</i>	NI	1	No
		Total Cover	116	
	50/20 Thresholds: 50% of total cover = 58% 20% of total cover = 26%			
Sapling/Shrub	<i>Rhamnus californica</i>	NI	50	Yes
	<i>Vaccinium ovatum</i>	NI	20	Yes
		Total Cover	70	
	50/20 Thresholds: 50% of total cover = 35%			

	20% of total cover = 14%			
Herb	<i>Calamagrostis nutkaensis</i>	FACW	40	Yes
	<i>Brachypodium phoenicoides</i>	NI	20	Yes
	<i>Anthroxanthum odoratum</i>	FACU	20	Yes
	<i>Juncus occidentalis</i>	FACW	5	No
	<i>Holcus lanatus</i>	FAC	1	No
		Total Cover	86	
	50/20 Thresholds: 50% of total cover = 43% 20% of total cover = 17.2%			
Woody Vines	<i>Rubus ursinus</i>	FAC+	2	Yes
Hydrophytic Vegetation Determination	Total number of dominant species across all strata = 8 Percent of dominant species that are OBL, FACW, or FAC = 38% Therefore, this community is not hydrophytic by Indicator 2 (Dominance Test) It should be noted that only one dominate is FACU or UPL, four dominantes do not have an indicator status assigned, and three are OBL, FACW, or FAC.			

During the June, 2008 field survey a pool of water was observed at the parcels southeastern corner near State Highway 1. The hole in which the pooled water was observed appeared to be an old well because the banks were not graded or slope they were vertical as though the hole had been dug at some time in the past. Decayed wood hung into the approximately 6' diameter water hole. Standing water was observed located approximately 26" below the upper banks.

Wildlife

Behren's Silverspot Butterfly (*Speyeria zerene behrensii*) (BSSB)

Potential habitat for BSSB on the McGee parcel is located at the western bluff's lower terrace within the Coastal Terrace Prairie where several nectar source plants have been identified. Avoidance is proposed and described in the impact and mitigation section of this addendum report.

Sonoma Tree Vole (STV)

No evidence of STVs was observed during the 2011 site assessment. Four Douglas-fir trees are located on the parcel within the Northern Bishop Pine Forest. These few trees are not believed to constitute suitable habitat for this species. Adjacent parcels are also dominated by Bishop Pine (*Pinus muricata*).

California red-legged frog (*Rana aurora draytonii*) (CRLP)

Potential habitat for CRLF may exist within the study areas eastern most riparian areas. Presence is assumed and protection measures are included in the impact and mitigation section of this addendum report.

Plant

One rare plant species was located during the 2011 assessment – coastal bluff morning glory (*Calystegis purpurata* ssp. *saxicola*). Coastal bluff morning glory (*Calystegis purpurata* ssp. *saxicola*) (located on the Habitat Map, Appendix A) is a CNPS list 1B.2 species, which means it is considered fairly threatened in California. The California Environmental Quality Act (CEQA) includes, under the definition of “endangered, rare, or threatened,” not only plants that are state and federal Endangered Species Act listed species but also any species that qualifies for such listing (14 CCR § 15380). All of the plants constituting CNPS List 1A, 1B, and 2 meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. As a CNPS List 1B species, coastal bluff morning glory is eligible for consideration as a state listed species, thus it is mandatory that it be fully considered during preparation of environmental documents relating to CEQA (CNPS 2009 Ranking).

BUFFER ANALYSIS

An updated buffer zone analysis has been prepared to address additional ESHAs discovered at the McGee parcel since the 2009 analysis.

(Section 20.496.020 Coastal Zoning Ordinance)	
<i>(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for 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>	The proposed project location is compatible with the continuance of the identified environmentally sensitive habitats.
<i>(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.</i>	There is not enough space on the parcel to create a reduced buffer from the ESHAs. The proposed development is located where potential degradation to the sites sensitive resources will be minimized. There is no less environmentally damaging alternative. Referring to Sections 20.496.050 (B) and 20.532.100 (A) (1) NCRM determined this development of a single family residence may be permissible.
<i>(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</i>	Habitats on adjacent parcels are similar. Within the Northern Bishop Pine Forest (NBPF) riparian habitat exists within the eastern portion and nesting habitat throughout the NBFP stand. NBFP extends on adjacent lands south and north of the study area. At

<i>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).</i>	the parcels western bluff, potential BSSB habitat exists within the Coastal Terrace Prairie which is primarily located on the parcel to the south. A dense stand of maritime chaparral provides suitable nesting habitat on the McGee parcel and extends onto the northern parcel.
<i>(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.</i>	
<i>b(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;</i>	The highest quality habitat was determined to exist at the eastern portion of the parcel within the NBPF's riparian habitat areas.
<i>b(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;</i>	Various species are expected to continue use of the site unhindered by the proposed development.
<i>b(iii) An assessment of the impact and activity levels of the proposed development on the resource.</i>	Although this proposed project is a new development, there is an existing dirt drive that will be partially utilized, reducing development induced disturbance within the pine forest. Locating the residence at the margin of the pine forests, as opposed to a home site closer to the riparian habitat, is seen as the less environmentally damaging alternative. See 4(i)
<i>(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.</i>	<p>If mitigation measures are followed, degradation to adjacent habitat areas will not occur; due to the seasonable timing of the earth work that will be performed, the placement of the proposed residence set back from the bluff edge, and the erosion control measures that will be employed.</p> <p>The residence is proposed on an approximately 35% slope. The gradient of the proposed access road is nearly level.</p> <p>To ensure project specific short and long term erosion control measures are employed an erosion plan shall be developed once the county has approved the residence location. This will mitigate the proposed impervious building foundations and potential construction related impacts to the sites hydrology. In addition, a living roof proposed for the residence shall assist in mitigating run-off concentration.</p> <p>A permeable driveway should be constructed to reduce impacts to the hydrologic conveyance within the ESHAs. The access road is designed to service both this project and a potential future residence on the parcel to the north. As a result an eighteen foot</p>

<p>(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.</p>	<p>driveway is planned to connect with Hwy 1.</p> <p>The proposed site is farthest from the riparian habitat without encroaching too close to the bluff face. See (1)(b).</p>
<p>(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.</p>	<p>The proposed access road is partially cleared and portions of it have a history of being culturally impacted by vehicle traffic. An estimated eleven or more pine trees are proposed to be cut to facilitate the proposed development and construction of the access road.</p>
<p>(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.</p>	<p>This proposed residential development location has been determined to be the best location on the site to protect the sites numerous environmentally sensitive habitat areas.</p> <p>The proposed residence location provides for the greatest set back from the riparian portion of the parcel and the listed species location without encroaching on the bluff face.</p>
<p>(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.</p>	<p>Given the numerous ESHAs a buffer or setback is not feasible. See (1)(a)&(f). The proposed single family residence development is primarily a short term site disturbance. The culturally impacted access road and the proposed residence will remain permanent impacts within the site's ESHAs.</p> <p>To minimize disturbance within the sites numerous ESHAs removal of vegetation or planting of landscape species not native within any of the identified natural plant communities shall be prohibited on the parcel.</p>
<p>(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).</p>	<p>The ESHA boundary begins at Hwy 1 to the east and continues to the western bluff face. The NBPF ends near the bluff edge in a dense stand of Maritime Chaparral that has been partially cleared. The proposed access road cuts through the NBPF and the proposed leach lines and parking area will also be within the NBPF. The proposed residence is located within both the NBPF and the Maritime Chaparral habitats. The Coastal Terrace Prairie ESHA is approximately 70 horizontal feet down slope of the proposed residence. The bluff face is approximately 70 horizontal feet west of the residence. The riparian vegetation is approximately 200 horizontal feet and the listed plant species is approximately 250 horizontal feet east of the proposed residence.</p>
<p>(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.</p>	<p>The property owner is not proposing a subdivision</p>

<i>4(a) Permitted 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.</i>	This proposed single family residence will not alter the functional capacity of the environmentally sensitive habitat, its species or their ability to be self-sustaining.
<i>(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.</i>	There is no other feasible site on this restricted parcel that is not entirely within an ESHA.
<i>(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.</i>	The proposed development location will have the least impact on the maintenance of the biological and physical integrity of the ESHAs and on the maintenance of the hydrologic capacity of the areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.
<i>(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.</i>	In the long term the environmentally sensitive habitats will not be impacted by this proposed development. Their functional capacity will be maintained, as well as their ability to be self-sustaining.
<i>(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as 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.</i>	There is no other identified solution that will reduce the impact that is feasible for this development. To develop the drive way, vegetation removal will be necessary within the ESHA. Impacted vegetation will be replaced at a 1:1 ratio with native trees and shrubs.
<i>(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.</i>	Mitigation measures recommended in NCRM's 2009 report <i>Botanical Survey and ESHA Buffer Analysis</i> address bare soil and vegetation removal. Additionally an erosion control plan is proposed as mitigation below. Preparation of an erosion plan will ensure impact minimization to natural landforms. A permeable driveway and living roof on the residence shall be constructed to reduce impacts to the hydrologic conveyance within the ESHAs.
<i>(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.</i>	Minimal riparian vegetation will be lost due to the proposed development. The proposed access road meanders between the northern parcel and the McGee parcel. The proposed alignment already minimizes disturbance within the riparian vegetation by utilizing the northern parcel and the existing road at the roads eastern side.
<i>(h) Above ground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.</i>	The access road should be engineered and constructed to continually shed run-off, preventing flow concentration. The topographic placement of the proposed residence will not significantly impede flows. Creation of an

	erosion plan will ensure hydrologic patterns are maintained and storm runoff is mitigated.
<i>(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.</i>	Both the placement of the access road and the residence will protect the hydrologic patterns of the parcel. See 4(h) above.
<i>(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.</i>	<p>The parcel's drainage conveyance will not be significantly inhibited by the orientation of the proposed access road or single family residence development.</p> <p>There are no natural stream environments at the western side of the parcel. Unlike the eastern half of the parcel where there are natural drainage zones that are evident given the topographic shape of the land and the species identified.</p>
<i>(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)</i>	The proposed development will have minimal long term significant environmental impacts to the identified ESHA. These impacts shall be mitigated by erosion planning and restrictions on future vegetation removal. In recognition of the potential short term construction related impacts, mitigation measures were developed and included in the Botanical Survey and ESHA Buffer Analysis prepared for the site in 2009 (NCRM 2009).

IMPACTS AND MITIGATIONS

The results of the above buffer analysis indicate that additional mitigation measures will be necessary to insure the Environmentally Sensitive Habitat Areas (ESHAs) will not be significantly degraded by short and long term construction activities related to this proposed development. The following mitigation measures are in addition to those identified in the Botanical Survey and ESHA Buffer Analysis prepared for this proposed development in 2009 (NCRM 2009).

Although erosion control measures are recommended for this project, a plan will not be developed until the County has approved a development envelope for the site.

Potential impact 1: The proposed development within the ESHAs and their buffer zones may adversely affect the hydrologic conveyance system or cause erosion at the site.

Mitigation Measure 1a: An erosion plan shall be prepared by a qualified professional prior to construction activities to ensure design and construction of development facilities will cause the least impact to the site.

Mitigation Measure 1b: A permeable road surface and living roof shall further

minimize long term development related hydrologic impacts.

Habitat may exist for California Red Legged Frogs (CRLF) at the site's eastern most riparian areas. In-lieu of conducting focused surveys for CRLF, mitigation measures to avoid take are proposed:

Potential impact 2: Short term construction activities may adversely affect CRLF however, breeding activities of CRLF are likely to have concluded by April 15th and CRLF are unlikely to disperse overland between April 15th and October 15th within the project area.

Mitigation Measure 2a: Construction activities including grading shall be limited to the period of April 15th through October 15th of a given year.

Mitigation Measure 2b: Prior to construction, project contractors will be trained by a qualified biologist in the identification of the California red-legged frog. Construction crews will begin each day with a visual search around all stacked or stored materials, as well as along any silt fences to detect California red-legged frogs. If a California red-legged frog is detected, construction crews will contact the U.S. Fish and Wildlife Service (Service) or a qualified biologist prior to re-initiating work.

Mitigation Measure 2c: If a rain event occurs during the construction period, all construction-related activities will cease for a period of 48 hours after the rain stops. Prior to resuming construction activities, trained construction crew member(s) will examine the site for the presence of California red-legged frogs. If no California red-legged frogs are found, construction activities may resume.

Mitigation Measure 2d: If a California red-legged frog or other federally-listed species is found any time during construction activities, or circumstances arise indicating that the proposed project or construction activities may result in incidental take, all activities that could result in take should cease and the Service should be contacted immediately.

The proposed residence is approximately 70 horizontal feet from the identified Coastal Terrace Prairie Habitat where potential nectar source plants of Bahren's Silverspot Butterfly (*Speyeria zerene behrensii*) (BSSB) are located. Although this distance is considered sufficient avoidance, no further encroachment shall be permitted without habitat assessments in accordance with the *Draft Guidelines for Habitat Assessments and Surveys for Bahren's Silverspot Butterfly (Speyeria zerene behrensii) (BSSB)* (USFWS 2006).

Potential impact 3: Encroachment on habitat suitable for Bahren's Silverspot Butterfly (*Speyeria zerene behrensii*) (BSSB) could have an impact on this species.

Mitigation Measure 3a: Development shall be limited to the proposed building envelope. No further encroachments towards the Coastal Terrace Prairie, such as vegetation removal or grading, shall extend beyond the proposed development

footprint.

CONCLUSION

The McGee parcel is entirely vegetated by ESHAs. Identified ESHAs on the site include Northern Bishop Pine Forest (G2, S2.2), Central Maritime Chaparral (G2, S2.2), Coastal Terrace Prairie (G2, S2.1), *Calystegia purpurata* ssp. *saxicola* (CNPS 1B.2, G4T2, S2.2), riparian vegetation, and potentially suitable habitat for CRLF and BSSB as well as the bluff face above the Pacific Ocean.

All of the ESHAs were considered when identifying the appropriate location for the proposed development. Avoidance of the riparian habitat and the listed morning glory *Calystegia purpurata* ssp. *saxicola*, at the east side of the parcel, lead to the recommendation that the development be sited far to the west at the margin of the Northern Bishop Pine Forest and the Maritime Chaparral habitats while allowing for enough of a setback to avoid encroaching on the sites Coastal Terrace Prairie and bluff face.

Implementation of the above mitigations and those contained in the Botanical Survey and ESHA Buffer Analysis prepared for the site in 2009 (NCRM 2009) will protect against residential development related impacts at the site.

REPORT AUTHOR

 **Signature on File**

Estelle P. Clifton

B.S. Forestry and Watershed Management, Humboldt State University, Arcata, Ca. 2005 and B.A. Culture Ecology and Sustainable Community, New College of California, San Francisco, Ca. 2001. She completed a plant taxonomy course from HSU in 2004 and has over ten years of professional experience in the study of flora and habitat types of the Pacific Northwest and over seven years of experience conducting Botanical Assessments, for large and small projects, requiring CEQA compliance for timber harvesting, land conversion, and development plans/permits; conducts Special Status Plant Species Surveys; classifies watercourses, riparian vegetation, maps vegetative communities, and utilizes GIS and GPS applications. She has also prepared wetland delineations, as per the Army Corps of Engineers Technical Report (#Y-87-1) and the California Coastal Act guidelines.

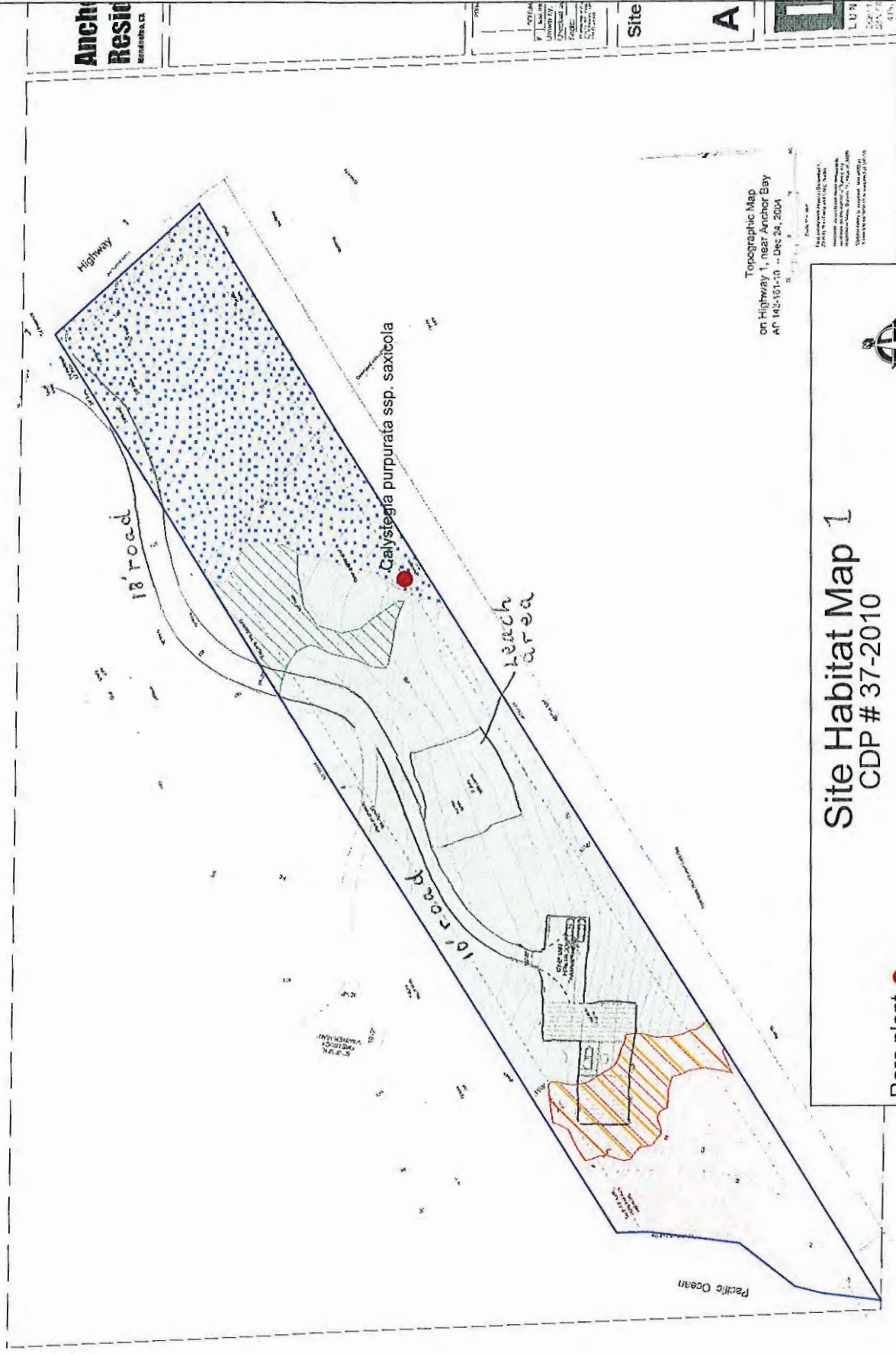
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- Vasey, Michael. 2011. Letter from Mr. Vasey to Mendocino County Planning and Building Department regarding plant community (Maritime Chaparral) at the McGee parcel.

APPENDIX A

Maps



Site Habitat Map 1 CDP # 37-2010

- Rare plant ●
- Central Maritime Chaparral ●
- Coastal Terrace Prairie ●
- Northern Bishop Pine Forest ●
- cleared ●
- vernal ●
- thick understory ●
- 2010 NAIP Image
- 1:1,200
- NCRM
- March 22, 2012

Topographic Map
on Highway 1, near Anchor Bay
AT 145-101-10 -- Dec 24, 2004

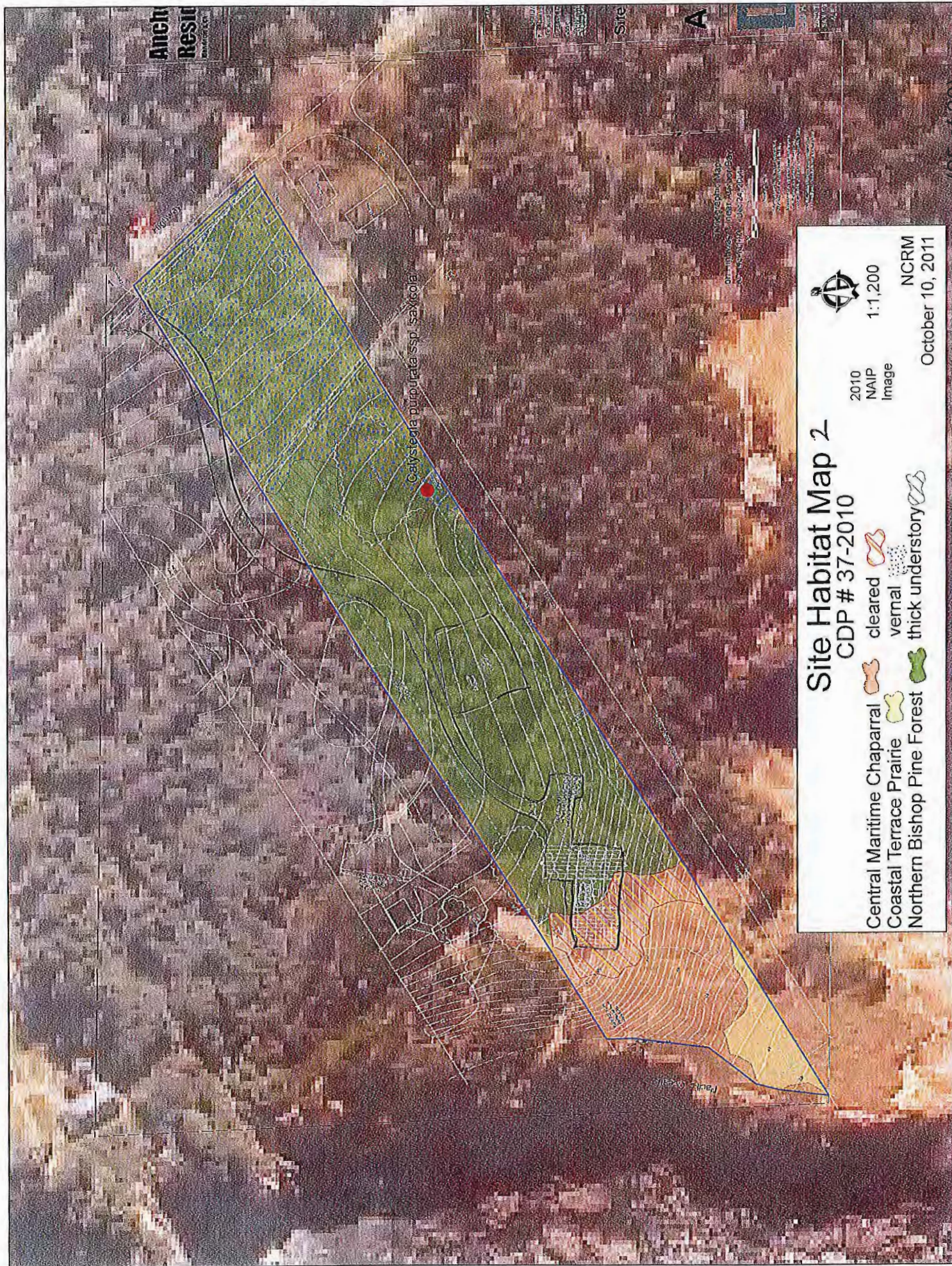
Map prepared by: [illegible]
Map scale: 1 inch = 1 mile
Map date: 2004
Map title: [illegible]

Anchor
Resid

Site

A

LU 10
2004
61%



Site Habitat Map 2
CDP # 37-2010

2010
 NAIP
 Image

1:1,200

NCRM
 October 10, 2011

Central Maritime Chaparral
 Coastal Terrace Prairie
 Northern Bishop Pine Forest

cleared
 vernal
 thick understory

APPENDIX D

Michael Vasey's letter



Department of Biology
1600 Holloway Avenue
San Francisco State University
San Francisco, CA 94132-1722
Tel: 415/338-1549
Fax: 415/338-2295
<http://www.sfsu.edu/~biology>

March 17, 2011

Ms. Teresa Spade
Planner II, Planning and Building Services
790 South Franklin St., Fort Bragg, CA
Subject: **CDP # 37-2010**

Dear Ms. Spade,

You will recall that I responded to your inquiry about whether or not maritime chaparral occurs along the northern Sonoma-southern Mendocino coast and I indicated that, in my opinion, it does. Since I was coming up for a talk to the local CNPS chapter on March 15, we agreed to meet at the subject site for a visit to assess whether or not maritime chaparral occurs there and whether or not it might be impacted by a development proposal. Accordingly, we met on March 16 and you took me to the site with Dr. Tom Parker (my colleague). Tom is a professor at San Francisco State, a renowned community ecologist, and an expert in the genus *Arctostaphylos*. I also have worked on this genus of woody shrubs with Tom for about twenty years and, along with Jon Keeley, we have prepared two treatments for this genus, a published treatment in the *Flora of North America* (2009), and one due out later this year in the 2nd edition of the *Jepson Manual*. I am a PhD candidate at UC Santa Cruz and long-time lecturer at San Francisco State University in Biology. I have spent about five years studying maritime chaparral along the central California coast. Maritime chaparral is a shrubland dominated by hard woody shrubs with hard evergreen leaves, typical of *Arctostaphylos* and *Ceanothus*. It occurs along the coast at low to moderate elevations that are often inundated by fog during the summer dry season.

Based upon my observation of the stand in question at **CDP # 37-2010**, I conclude that it qualifies as maritime chaparral. Dr. Parker concurs with my opinion. This stand is dominated by *A. columbiana* but also includes individuals of a relatively rare shrub, *Ceanothus gloriosus* var. *gloriosus*. Both of these species are typical of maritime chaparral along the northern California coast. The coastal prairie down below the shrubland on the upper bluff contains an excellent stand of *A. uva-ursi* and includes the hybrid between *A. columbiana* and *A. uva-ursi* (*A. x media*). This prairie includes good stands of *Deschampsia holciformis* and *Calamagrostis nutkaensis*. Other species fairly typical of maritime chaparral in the area included *Vaccinium ovatum*, *Gaultheria shallon*, and *Garrya elliptica*.

I hope this information is of assistance to you.

Sincerely,

Michael C. Vasey, M.A., PhD. Candidate

Cc: Dr. V. Thomas Parker

APPENDIX E

Teresa Sholars' draft species list

**Draft Plant list for 34570 South Highway One, Gualala, CA
property west of high way 1 at ca. 5.3 mile marker**

March 16, 2011

Teresa Sholars

Teresa-sholars@redwoods.edu

Maritime chaparral

Dominated by low growing manzanita and ceanothus in the maritime (fog) zone

Arctostaphylos columbiana
Arctostaphylos uva-ursi
Arctostaphylos x media
Calystegia purpurata ssp. *saxicola*
Ceanothus foliosus (?) or *thyrsiflorus*
Ceanothus gloriosus var. *gloriosus*
Garrya elliptica
Grindelia stricta
Gaultheria shallon
Iris douglasiana
Pinus muricata
Rhamnus californica
Vaccinium ovatum
Viola adunca
Viola sempervirens

Coastal prairie

Dominated by grasses

Arctostaphylos uva-ursi
Calamagrostis nutkaensis
Deschampsia cespitosa
Festuca rubra
Iris douglasiana
Viola adunca

Bishop Pine Forest

Dominated by *Pinus muricata* in the maritime (fog) zone

Pinus muricata
Calamagrostis nutkaensis
Gaultheria shallon
Iris douglasiana
Juncus patens
Lonicera hispidula
Morella californica
Notholithocarpus densiflorus

Pteridium aquilinum
Rhododendron macrophyllum
Rubus ursinus
Stachys ajugoides

I know I missed a lot since I was not taking notes

Field trip was attended by Mike Vassey and Tom parker from CSUSF and Nancy Morin and Lori Hubert (CNPS) plus others

CONDITIONS OF APPROVAL

CDF File Number 336-09 Date 12/2/2009
Owner's Last Name McGee Owner's First Name Richard
Owner's Phone Number (510) 697-2267
Owner's Mailing Address 873 Alvarado Rd. Berkley CA 95705 Agent/Phone # _____
Project Street # 34570 Project Street Name South Highway I Type of Project Residence
Project City/Community Anchor Bay Battalion 6 Fort Bragg

Finale ☐

With reference to the above case number, the California Department of Forestry and Fire Protection requires the following MINIMUM standards as set forth in Title 14, "Natural Resources; Div. 1.5, be adhered to in order to gain a "Final Clearance" and "Approval for occupancy" from this Department. Local agencies may have additional requirements that may be more restrictive.

☒ **Address Standard**

California Code of Regulations, Title 14, Section 1274.01

Address must be posted at the beginning of construction and maintained thereafter. It shall be posted on BOTH sides of a mailbox or post at driveway entrance so it is visible from BOTH directions of travel. Minimum 3 inch letter height, 3/8 inch stroke. Reflectorized, contrasting with background color. Sequential numbering issued by Mendocino County will be utilized. Multiple Addresses will be on a single post.

☒ **Driveway Standard**

California Code of Regulations, Title 14, Section 1273.10

Driveway will be minimum 10 feet wide, all weather surface. It shall be a maximum of 16 % grade, minimum 50 feet inside radius on turns, and have a minimum 15 feet vertical clearance. Driveways longer than 150 feet, but less than 800 feet require a turnout near the midpoint. Driveways longer than 800 feet require turnouts every 400 feet. Turnouts shall be a minimum 10 feet wide and 30 feet long with a 25 foot taper at each end. A 40 foot radius turnaround or 60 foot hammerhead "T" is required for driveways longer than 300 feet and must be within 50 feet of the building. Gates will be 2 feet wider than the traffic lane and located at least 30 feet in from the road.

☐ **Road Standard**

California Code of Regulations, Title 14, Section 1273

Roads will have two-9 foot traffic lanes (18 ft. wide road surface), Minimum 40,000 lb. load capacity, and have an all weather surface. Roads will have a maximum grade of 16%, a minimum curve radius of 50 foot, and a minimum of 15 foot vertical clearance. Dead end roads shall not exceed: 800 ft for parcels 1 acre or less - 1320 ft. for parcels 1 to 4.99 acres - 2640 ft. for parcels 5 to 19.99 acres - 5280 ft. for parcels 20 acres or larger. Dead end roads are also required to have turnarounds every 1320 ft. and at terminus. Turnarounds shall be a minimum 40 ft. radius or 60 ft. hammerhead "T". Roads shall be officially recognized by Mendocino County with approved signs at each intersection and visible for 100 feet from both directions. The sign shall be minimum 3 inch letter height, 3/8 inch stroke, reflectorized and contrasting with background color. One Way Road Standards (if approved) are available from this office.

EXHIBIT NO. 7

Appeal No.

A-1-MEN-14-0009

(McGee)

STATE FIRE SAFE
REGULATIONS CONDITIONS
OF APPROVAL

☐ **Bridge Standard**

California Code of Regulations, Title 14, Section 1273.07

Bridges shall have a minimum 40,000 lb. load capacity, minimum 15 foot vertical clearance. Appropriate signing including: Weight limits, Vertical Clearance, One Way Road, Single Lane conditions shall be posted. One lane bridges shall provide an unobstructed view from one end to the other with turnouts at both ends.

☒ **Emergency Water Supply Standard**

California Code of Regulations, Title 14, Section 1275.01

Subdivisions shall meet or exceed either PUC Revised General Order #103, NFPA Standard 1231, or ISO Rural Class 8 Standard (local jurisdiction may require more as these are minimum standards). Fire Hydrant shall be 18 inches above grade, minimum 4 feet and maximum 12 feet from road or driveway. Hydrant shall be minimum 50 feet and maximum 1/2 mile from building it serves, and minimum 8 feet from flammable vegetation. Hydrant shall have 2 1/2 inch male National Hose fitting, suitable crash protection and located where Fire Apparatus using it will not block entry. Hydrant shall be identified with a 3 inch reflectorized blue dot on driveway sign, or placed within 3 feet of hydrant, or identified by blue highway marker as specified by State Fire Marshal.

☒ **Setback for Structure (Defensive Space)**

California Code of Regulations, Title 14, Section 1276.01

All parcels 1 acre or larger shall provide a minimum 30 foot setback for all buildings from all property lines and/or center of a road. All parcels less than 1 acre shall provide for same practical effect by standards set forth by local jurisdiction.

☒ **Maintaining Defensible Space**

Public Resources Code, Section 4291

Any person who owns, leases, or controls any property within the State Responsibility Area, shall at all times maintain around and adjacent to such building or structure a firebreak made by removing and clearing away, for a distance of not less than 100 feet on each side thereof or to the property line, whichever is nearer, all flammable vegetation or other combustible growth. This subdivision does not apply to single specimens of trees, ornamental shrubbery, or similar plants which are used as ground cover, if they do not form a means of rapidly transmitting fire from the native growth to any building or structure.

CDF: ADDITIONAL COMMENTS.

A 4000 gallon emergency water tank is required for this project. The tank can be replaced if water is available as stated above in emergency supply. Please meet all the requirements above.

Larry
Grafft
Battalion Chief

By:

Signature on File

Reviewing Official

Tracy Boudreaux

Fire Prevention Bureau

Cal-Fire Fire Safe Exemption Request

Section of state Law exemption request is directed to:

1276.01. Setbacks for Structure Defensible Space

(a) All parcels 1 acre and larger shall provide a minimum 30 foot setback for buildings and accessory buildings from all property lines and/or the center of a road.

(b) For parcels less than 1 acre, local jurisdictions shall provide for the same practical effect.

Note: Authority cited: Section 4290, Public Resources Code. Reference: Section 4290 and 4291, Public Resources Code.

Approved
12-7-09
J.B.

Exemption request is to:

* Reduce property line setback from 30 feet to 20 feet.

Supporting documentation is attached technical data for exterior wall material. Wall and roof material will be .04 aluminum skinned panel. Roof will be a standing seam construction and wall will be a hidden fastener with folded corner construction. The only exterior wood on any structure will be ipe decking. Railings will be steel and glass. Deck support structure will be cantilever steel beam.



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUST STREET • UKIAH • CALIFORNIA • 95482

120 WEST FIR STREET • FORT BRAGG • CALIFORNIA • 95437

STEVE DUNNICLIFF
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FB FAX 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

RECEIVED

January 30, 2014

FEB 05 2014

NOTICE OF FINAL ACTION

**CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT**

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

CASE#: CDP 37-2010

OWNER/ APPLICANT: RICHARD & SHANNON MCGEE

REQUEST: Coastal Development Permit to construct a new 2,688 square foot, 2-story, 16-foot high, single-family dwelling with 850 square feet of deck, a 567 square foot detached 2-car garage and a detached 590 square foot, 1-story guest cottage with 300 square feet of decks, all served by an on-site septic system and well, a 4,000 gallon fire suppression water storage tank, and a shared driveway. Temporary use of a travel trailer during construction is requested.

APPEALABLE AREA: Yes

LOCATION: In the Coastal Zone, approximately ¼ mile north of Anchor Bay, on the coastal bluff west of Highway One at 34570 South Highway One (APN 143-161-10).

PROJECT COORDINATOR: ANDY GUSTAVSON

ACTION TAKEN:

The Coastal Permit Administrator, on January 23, 2014, approved the above described project with modifications. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This 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.

Attachments

cc: Coastal Commission
Assessor

EXHIBIT NO. 8

APPEAL NO. A-1-MEN-14-0009

McGEE

**NOTICE OF FINAL LOCAL ACTION &
FINDINGS FOR APPROVAL FOR
CDP 37-2010 (1 of 33)**



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

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FINAL FINDINGS AND CONDITIONS OF APPROVAL

CDP 37-2013 – MCGEE

JANUARY 23, 2014

RECOMMENDED PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of the California Environmental Quality Act and the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, staff recommends the Coastal Permit Administrator certify the mitigated negative declaration and approve the proposed project, as modified to remove the guest cottage, by adopting the following findings and conditions.

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program. In this particular case the project will result in development within a ESHA, which covers the entire property, that is allowed because:
 - a. The resources as identified by the biological survey will not be significantly degraded by the proposed development;
 - b. There is no feasible less environmentally damaging alternative development site;
 - c. All feasible mitigation measures capable of reducing or eliminating impacts related to the project have been adopted; and
2. The applicants purchased the subject project with an investment backed expectation that they would be able to construct the proposed single family dwelling similar to the other single family dwellings developed on blufftop lots located in the area; and
3. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
4. 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
5. 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
6. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
7. 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; and
8. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.
9. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,231.25 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to Monday January 31, 2014 (within 5 days of the end of any appeal period). Any waiver of the fee shall be on a form issued by the Department of Fish and Game upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the

outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

SPECIAL CONDITIONS:

1. The applicant shall comply with those recommendations in the California Department of Forestry Conditions of Approval (CDF# 336-09) or other alternatives acceptable to the Department of Forestry. Prior to the final inspection of the building permit, written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.
2. The recommendations in the Geologic Hazard and Geotechnical Report prepared by SHN dated September 2, 2009, shall be incorporated into the design and construction of the proposed project. Prior to issuance of the building permit, the applicant shall submit evidence that a qualified geotechnical or civil engineer has reviewed the final grading and building plans. No development shall be permitted within 50 feet of the bluff top edge.
3. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
 - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazards and the landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
 - c) The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
 - d) The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosion hazards in the future;
 - e) The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.

4. Prior to the issuance of a permit for any development on the property, the owner shall record a conservation easement or equivalent restriction over the property, in a form approved by Mendocino County and the California Department of Fish and Wildlife, that prohibits in perpetuity any development or other modification within the delineated vernal wetland area (VWA) delineated on the subject property that could adversely impact the VWA. Resource restoration and vegetation management activities approved by the California Department of Fish and Wildlife, and maintenance and repair activities associated with the approved driveway, water well,

water storage tank, and utility lines, as shown on the approved site plan may be allowed provided they do not result in adverse impacts to the VWA.

5. Prior to the issuance of a permit for any development on the property, the owner shall submit to the County a wetland and bishop pine forest mitigation and monitoring plan, prepared by a qualified biologist and/or wetland hydrologist and approved by the California Department of Fish and Wildlife, that shall run for a period of 5 years, subject to annual reporting and inspection to verify the continued maintenance of wetland and bishop pine forest mitigation measures including but not limited to: (1) symbolic fencing demarking the delineated vernal wetland area; (2) in-kind replacement of removed bishop pine trees at a 1:4 replacement ratio on the subject property; and (3) in-kind replacement of lost wetland at a minimum 2:1 ratio on the subject property, or at a replacement level accepted by the California Department of Fish and Wildlife
6. Prior to issuance of the Coastal Development Permit the applicant shall submit, to the satisfaction of the Coastal Permit Administrator, a site drainage plan to detail how the proposed project will capture and infiltrate all runoff from 85% of the 24 hour storm event for Mendocino County. The drainage plan shall include a review of the permeable driveway.
7. The Environmentally Sensitive Habitat Area recognized by the Biological Assessment Report and shown on the Site Habitat Map shall be protected from development and disturbances other than those expressly authorized by this permit in perpetuity. The following mitigation measures, based on the Botanical Survey and ESHA Buffer Analysis (January 2009) and Biological Addendum (March 2012) prepared by North Coast Resources Management, are a condition of approval of this development:

Mitigation Measure 1.a: Aside from those trees that will need to be removed to construct the access road and the residence, no additional Bishop Pine trees shall be removed or manicured within the Northern Bishop Pine Forest. The proposed project shall be modified to further reduce the NBPF impact as follows:

- The guest cottage shall be eliminated from the project.
- The driveway width shall be reduced to 12-feet, subject to an approved waiver by Cal-Fire based on the environmental benefits of the reduced road width.
- The water storage tank shall be located outside the NBPF wetland area.
- All utilities shall be located within or adjoining the approved driveway to the maximum extent possible.

Mitigation Measure 1.b: Those trees or shrubs, that will be removed as a result of the development, will be replaced with native trees or shrubs, listed in Appendix A, Table 3, of the NCRM 2009 Study, such as Bishop Pine (*Pinus muricata*), Tan oak (*Lithocarpus densiflorus*), California wax myrtle (*Myrica Californica*), Blue Blossom (*Ceanothus thyrsiflorus*) and Silk tassel (*Garrya elliptica*), as close as possible to where they were removed. The timing of plantings should be outside of the growing season in accordance with a mitigation and monitoring plan approved by the California Department of Fish and Wildlife.

Mitigation Measure 1.c: The portions of the parcel that have a higher presence of hydrophilic vegetation, as shown on the site habitat map, dated October 29, 2013, shall be avoided during construction of the permeable access road.

Mitigation Measure 1.d: In order to maintain Bishop Pine Forest habitat quality, invasive sapling Eucalyptus trees and Cotoneaster shrubs are recommended for removal from the parcel, in accordance with a mitigation and monitoring plan approved by the California Department of Fish and Wildlife.

Potential ESHA Impact by Construction Activities: Construction activities will result in soil disturbance and the use of solid and fluid construction materials. Short term construction activities may adversely affect the ESHA, especially the more vernal portion of the onsite

ESHA by causing sediment, debris, or other harmful materials to enter the ESHA. The following mitigation measures will reduce project related impacts to a less than significant level:

Mitigation Measure 2.a: Outside of the proposed access road, no equipment or construction materials shall be staged within the eastern portion of the identified environmentally sensitive habitat.

Mitigation Measure 2.b: Fluid materials, including fuels, lubricants, or other construction-related fluids shall be stored as far from the eastern riparian area and the bluff as possible and disposed of off site. If spillage of toxic materials occurs, on the parcel, the area shall be cleaned and the affected area should be restored to its natural condition.

Mitigation Measure 2.c: To insure erosion does not occur as a result of the proposed single family residence development, soil disturbance will be conducted during fair weather when the soils are not saturated. Saturated soil conditions may be evidenced by the creation of ruts or the displacement of soil in amounts that cause a visible increase in turbidity. Soil that must be removed should not be side cast. Loose fill shall be end hauled to a stable location. Erosion mix seeding and hay mulch shall be applied to all exposed soil associated with the development prior to November 1st. If excess fill remains after installation it will be removed from the site be removed from the site.

Potential CRLF Impact: Short-term construction activities may adversely affect CRLF. However, breeding activities of CRLF are likely to have concluded by April 15th and CRLF are unlikely to disperse overland between April 15th and October 15th within the project area. Habitat may exist for CRLF at the site's eastern most riparian areas. In-lieu of conducting focused surveys for CRLF, mitigation measures to avoid take are proposed:

Mitigation Measure 3.a: Construction activities including grading and any other earth disturbing activities shall be limited to the period of April 15th through October 15th of a given year.

Mitigation Measure 3.b: Prior to construction, project contractors will be trained by a qualified biologist in the identification of the California red-legged frog. Construction crews will begin each day with a visual search around all stacked or stored materials, as well as along any silt fences to detect California red-legged frogs. If a California red-legged frog is detected, construction crews will contact the U.S. Fish and Wildlife Service (Service) or a qualified biologist prior to re-initiating work.

Mitigation Measure 3.c: If a rain event occurs during the construction period, all construction-related activities will cease for a period of 48 hours after the rain stops. Prior to resuming construction activities, trained construction crew member(s) will examine the site for the presence of California red-legged frogs. If no California red-legged frogs are found, construction activities may resume.

Mitigation Measure 3.d: If a California red-legged frog or other federally-listed species is found any time during construction activities, or circumstances arise indicating that the proposed project or construction activities may result in incidental take, all activities that could result in take should cease and the Service shall be contacted immediately.

Potential Wetland Impacts: The proposed development within the wetland and the ESHA buffer zones may adversely affect the hydrologic conveyance system or cause erosion at the site.

Mitigation Measure 4.a: An erosion plan shall be prepared by a qualified professional prior to construction activities to ensure design and construction of development facilities will cause the least impact to the site.

Mitigation Measure 4.b: A permeable road surface and living roof shall further minimize long term development related hydrologic impacts.

8. Prior to issuance of the building permit, the applicant shall submit an exterior lighting plan and design details or manufacturer's specifications for all the exterior lighting fixtures. 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.
9. Prior to commencement of construction activities for the residence, applicant shall obtain an encroachment permit from the California Department of Transportation.

**STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT**

**CDP# 37-2010
JANUARY 23, 2014
CPA-1**

OWNER/APPLICANT: RICHARD AND SHANNON MCGEE
823 ALVARADO ROAD
BERKELEY, CA 94705

PROPOSAL: Request for a Coastal Development Permit to construct a new 2,688 square foot, 2-story, 26-foot high, single-family dwelling with 850 square feet of deck, a 567 square foot detached 2-car garage and a detached 590 square foot, 1-story guest cottage with 300 square feet of decks, all served by an on-site septic system and well, a 4,000 gallon fire suppression water storage tank, and a shared driveway. Temporary use of a travel trailer during construction is requested.

LOCATION: In the Coastal Zone, approximately ¼ mile north of Anchor Bay, on the coastal bluff west of Highway One at 34570 South Highway One (APN: 143-161-10)

APPEALABLE AREA: Yes – (Blufftop lot, ESHAs, West of First Public Road.)

PERMIT TYPE: Standard

TOTAL ACREAGE: 2.63 acres

GENERAL PLAN: RR:L-5 [RR:L-2]/DL

ZONING: RR-2/RR-2 DL

SUPERVISORIAL DISTRICT: 5

CA COASTAL RECORDS PROJECT: Image 20904506

ENVIRONMENTAL REVIEW: The proposed Mitigated Negative Declaration (MND) was circulated on January 3, 2014 for 20-day public review.

PROJECT DESCRIPTION: Based on the submitted plan (dated July 9, 2010) the project includes the construction of a new 2,688 square foot 2 story single family residence with roof entrance and 850 square foot of decking and a 567 square foot detached garage on the west side of the property. Each structure will have Class A rated exterior metal insulated panes with R20 walls and R32 standing seam roof. There will be a living (planted) roof over the residence. The maximum building height above average grade is 26 feet. Two buried propane tanks and a standby generator are also proposed next to the detached garage building. Construction of a permeable drive way is proposed. The driveway will serve subject parcel and the currently vacant parcel (APN: 143-161-09) to the north. The east side of the property, near Highway One, is currently developed with an existing well, which will be rehabilitated to supply water for a new 4,000 gallon fire suppression water tank. Domestic water will be provided by the North Gualala Water Company. An on-site sewage disposal system will be developed with a primary leach field area and 100 percent reserve area. The project includes the development of electric, telephone, cable and water connections. Finally, the applicants request the use of a temporary travel trailer during construction. Note the vertical axis windmill shown on the submitted plan has been withdrawn and is not part of the proposed development.

PROJECT SETTING: The topography within the property generally slopes down toward the south and southwest and is characterized by an upper, nearly flat area near the center of the property. Slope gradients in the eastern and central part of the site are near level. Steeper slopes are present on the south- and west- facing terrace slopes adjoining the bluff. The ocean bluff is approximately 80 feet in

vertical height and very steep¹. The parcel is made up entirely of environmentally sensitive habitat areas (ESHA). Northern Bishop Pine Forest covers the majority of the parcel. Within the Northern Bishop Pine Forest, the eastern most portion of the parcel was found to qualify as wetland. The Northern Bishop Pine Forest transitions into a dense stand of Central Maritime Chaparral dominated by Manzanita shrubs. The southwestern corner of the parcel is a lower terrace of Coastal Terrace Prairie habitat.²

EXISTING USES: There is an existing well to be repaired and a shed to be demolished. Otherwise the parcel is undeveloped.

ADJACENT ZONING:

North: RR-5 (2)
East: RR-5(2)
South: RR-5(2)
West: N/A Pacific Ocean

SURROUNDING LAND USES:

North: Vacant
East: Residential
South: Vacant
West: Pacific Ocean

OTHER RELATED APPLICATIONS: Approved septic permit ST#23621. Certificate of Compliance, APN 143-161-10 was recognized as a legal lot through CC-30-02.

SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning (Ukiah) - Approval
Department of Transportation - No comment
Environmental Health (Fort Bragg) - Approval
Building Inspection (Fort Bragg) - No comment
Department of Fish & Wildlife - No response
Caltrans - No response

Native Plant Society - No response
Coastal Commission - No response
Point Arena City Hall - No response
Fort Bragg City Planning - No response
GMAC - Approval
North Gualala Water Company - Approval

The Gualala Municipal Advisory Council (GMAC) voted unanimously (6.0) to conditionally approve the project on December 6, 2012. The concerns brought up by GMAC included the adequacy of the botanical report, plans for temporary travel trailer use, site grading, shared easement with adjoining property owner, location of electrical meter, details for undergrounding utilities, details of back-up generator, and clarification of the water source. Many of the concerns expressed by GMAC were addressed by the applicant who was able to clarify site plan details and locations of utilities.

KEY ISSUES

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

Land Use and Zoning

The parcel is classified on the Coastal Plan Map as Rural Residential Five Acres Minimum with an alternate density of Two Acre Minimum (RR-5 [RR-2]). The parcel is similarly zoned; Rural Residential, (RR:L-2 [RR]), indicating a two acre minimum parcel size. The parcel has an overlay of Development Limitations (DL).

The proposed single family residence and associated development are principally permitted uses within the Rural Residential Zoning District, and are consistent with the Rural Residential land use classification. The proposed buildings conform to the RR development standards. The required yard setbacks for a parcel in an RR:L-2 zone are 20 feet from front and rear property lines, and 6 feet from side property lines. As shown on the Site Plan, the structures comply with setbacks required by the County Zoning Code. The site is not within a designated highly scenic area; therefore the height limit is 28 feet above

¹ BACE Geotechnical July 2009. Proposed; McGee & Miller Residence 34570 South Highway One, Anchor Bay, Mendocino, CA.

² North Coast Resource Management, March 2012. Biological Addendum Mendocino County Coastal Development Permit #37-2010 (APN: 143-161-10).

average natural grade. The proposed 26 foot height of the residence complies with the height limit. Maximum lot coverage for a lot between 2 acres and 5 acres in size in an RR zone is 15%. Lot coverage is the percentage of the gross lot area covered by structures, including roads. The lot is approximately 2.63 acres, or 114,563 square feet. The Site Plan shows approximately 9,039 square feet of coverage, or 12.6%. This is a conservative estimate that includes the driveway access which will be developed with a permeable surface. The project complies with lot coverage limits.

Public Access

The project site is located west of Highway One, but is not designated as a potential public access trail location on the LUP maps. The LUP map shows a proposed public access trail, the Fish Rock Observation Point and Trail, on the lots to the south. There is no evidence of prescriptive access on the developed site. The project would have no effect on public access to the coast.

Hazards

Fire hazard: The property is in an area that has a "high" fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention (Cal-Fire). Cal-Fire has submitted recommended conditions of approval (CDF# 336-09) for address standards, driveway standards, and defensible space standards. Standard Condition #4 is recommended to achieve compliance with Cal-Fire fire safe standards.

The proposed access is intended to be shared with the parcel to the north (APN 143-161009) which is currently vacant. At this time, only a single residence will be served by the access. Constructing the access to comply with typical driveway standards (10 feet wide with a turnout near the midpoint) is recommended. The driveway will need to be improved to road standards (18' wide) or receive an exception from the Fire Safe Regulations before it is considered suitable to serve an additional residence.

Cal-Fire approved an exception request on December 7, 2009 to allow for a reduced property line setback from 30 feet to 20 feet. The Residence will be 20 feet from the northern property line and the garage will be approximately 28 feet from the northern property line. Cal-Fire supported the exception request based on the type of construction materials being used. The applicant proposes aluminum skinned panel for wall and roof materials. Roof will be a standing seam construction and wall will be a hidden fastener with folded corner construction. The only exterior wood on any structure will be decking. Railings will be steel and glass. Deck support structure will be cantilever steel beam. Standard Condition #4 and Special Condition #1 is recommended to achieve compliance with CDF fire safe standards.

Slope Stability and Bluff Top Setback: The proposed structure would be located on gently to moderately sloping lands on a coastal bluff that is approximately 80 feet high. BACE Geotechnical (BACE) prepared an Engineering Geologic Reconnaissance at the project site (July 2009) as required of all development located in known geologic hazards (Coastal Zoning Code Section 20.500.015(A)(2)). Additionally SHN Consulting Engineers and Geologists (SHN) prepared a Geologic Hazard and Geotechnical Report for the proposed residence (September 2013). Both reports are located in the project file.

Sections 20.500.020(B)(1, 3) of the Mendocino County Coastal Zoning Code require as follows:

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

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

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

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

The appropriate bluff edge setback was determined by BACE Geotechnical to be 50 feet for the residence and associated structures. As shown on the site plan, the proposed structures observe the determined bluff edge setbacks. The SHN report concurs with the 50 foot bluff setback and outlines recommendations relative to site grading, foundation support, site drainage, and seismic design criteria (see discussion below on grading and site drainage).

It is the policy of the Coastal Commission and the County to require recordation of a deed restriction as a condition of development on bluff top parcels, prohibiting the construction of seawalls and requiring that permitted improvements be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development that might fall onto a beach. Special Condition #3 is recommended to address this issue.

Tsunami Hazard: The development is located in a tsunami zone. However BACE Geotechnical concluded that the geologic setback of 50 feet and the height of the bluff at 80 feet reduce the likelihood of tsunami damage to negligible.

The proposed structure would be located in a gently to moderately sloping area more than 50 feet from a west and south facing ocean bluff. The nearest known earthquake fault is the San Andreas fault, which is mapped approximately 3 miles to the northeast. The risk of surface fault rupture at the site is remote as reported by SHN. The site will be subject to strong ground shaking during future nearby, large magnitude earthquakes, as is typical in Mendocino County coastal areas; these seismic hazards are addressed by current building code standards implemented by the building permit process.

Grading, Erosion and Runoff

Regarding erosion control, Section 20.492.015 of the MCCZC states in pertinent part:

- (A) *The erosion rate shall not exceed the natural or existing level before development.*
- (B) *Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.*
- (C) *Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily.*

Regarding storm water runoff, Section 20.492.025 of the MCCZC states in pertinent part:

- (A) *Water flows in excess of natural flows resulting from project development shall be mitigated.*
- (B) *Development shall be planned to fit the topography, soils, geology, hydrology and other conditions existing on the site so that grading is kept to an absolute minimum.*
- (C) *The acceptability of alternative methods of storm water retention shall be based on appropriate engineering studies. Control methods to regulate the rate of storm water discharge that may be acceptable include retention of water on level surfaces, the use of grass areas, underground storage, and oversized storm drains with restricted outlets or energy dissipaters.*
- (D) *Retention facilities and drainage structures shall, where possible, use natural topography and natural vegetation. In other situations, planted trees and vegetation such as shrubs and permanent ground cover shall be maintained by the owner.*
- (E) *Provisions shall be made to infiltrate and/or safely conduct surface water to storm drains or suitable watercourses and to prevent surface runoff from damaging faces of cut and fill slopes.*

- (F) *Adjoining property shall be protected from excavation and filling operations and potential soil erosion*
- (G) *The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.*
- (K) *All development that is within, or drains into, environmentally sensitive habitat, is a commercial or residential subdivision, is a service station or automotive repair facility or that includes commercial development or a parking lot, shall capture and infiltrate or treat, using relevant best management practices; including structural best management practices, all runoff from storms of a magnitude such that the runoff from eight-five (85) percent of storms is encaptured or treated.*

Site drainage recommendations include interception and diversion of surface flows and subsurface seepage away from the building foundation and the bluff edge using sheet flow and two percent gradient away from building foundations, adequately addressing erosion concerns of Section 20.500.020(B)(3) of the Mendocino County Coastal Zoning Code outlined above.

The SHN report recommends the following measures to limit the effects of erosion from the proposed development and keep rates commiserate with pre-development conditions:

1. Whenever possible, design finished grade to allow sheet runoff rather than concentrated runoff.
2. Slope to drain away from perimeter foundation areas.
3. Where concentrated runoff will occur, minimize its velocity by controlling slopes and protect the channel and discharge area by dissipating flow energy, using rock or other erosion resistant surfacing as appropriate.
4. Compact exposed fill slopes, and protect both cut and fill slopes from concentrated runoff or heavy sheet runoff by using brow ditches or other drainage control facilities.
5. Erodible cut or fill slopes, or other soil surfaces, should be protected by issuing vegetative cover, jute mesh and straw, rock slope protection, or other measures to provide erosion resistance.
6. Perform site work and vegetation establishment during seasons not subject to repeated or prolonged rainfall.
7. Provide periodic maintenance of erosion control measures.

MND mitigation measure 1.a will (1) eliminate the guest cottage, (2) reduce the width of the driveway, (3) relocate the Fire Suppression Water Tank, and (4) locate utility lines within the driveway alignment which will reduce the removal of 26 Bishop Pine trees, as proposed, to 12. No other vegetation outside the proposed building area will be removed. Consequently, the development has been sited to be least impactful to the Bishop Pine Forest, Central Maritime Chaparral, and Coastal Terrace Prairie; all considered environmentally sensitive habitat areas (ESHA). At the same time geologic features were considered when selecting the home site. While the home site will be located on a 30% slope, the submitted geologic hazard reports (BACE Geotechnical 2009 and SHN 2009) indicate that the building site is suitable for development. The selected location will allow grading impacts to be kept to a minimum.

SHN has made recommendations regarding site grading, foundation preparation and support. Staff recommends Special Condition #2 to require that the recommendations in the geotechnical report prepared by SHN dated September 2, 2009, be incorporated into the design and construction of the proposed project. Building plans shall show how concentrated runoff from downspouts will be dispersed to achieve natural sheet flow, as recommended in the geotechnical report. The proposed project includes a permeable driveway surface to be used to infiltrate site runoff. An engineer shall also review the permeable driveway plans. This design feature does not appear to be analyzed in either of the geotechnical reports. Special Condition #4 is recommended to help ensure that prior to issuance of the

building permit, the applicant will submit evidence that a qualified geotechnical or civil engineer has reviewed the final grading and building plans.

The entire site is covered by environmentally sensitive habitats and therefore the proposed development will drain to an environmentally sensitive habitat. Special Condition 4 is recommended to require a site drainage plan detailing how the residence's runoff will be infiltrated to satisfy Section 20.492.025 (K) of MCCZC. To meet the 85% of runoff, the two year – 24 hour storm event from Mendocino County is the design storm or approximately .94 inches of precipitation must be captured, infiltrated, or treated. The applicant has proposed the use of green or living roofs to recapture rain water. Other recommended options include connecting the roof runoff to infiltration planters or an emergency water supply tank.

Concentrated runoff will be dissipated in such a way to allow for sheet flow and percolation rather than concentrated runoff. Any areas disturbed during construction will be promptly re-vegetated with native vegetation. Impacted vegetation will be replanted at a 1:1 ratio with native trees and shrubs.

Visual Resources

Although the subject parcel is west of Highway One, it is not located in a designated "Highly Scenic Area". The building site will not be visible from any public beach, access or view location. Nor will the building site be visible from Highway One as it will be buffered by approximately 560 feet of Bishop Pine forest.

Natural Resources

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

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

The applicant has submitted a Botanical Survey and ESHA Buffer Analysis prepared by North Coast Resources Management (NCRM, January 2009) and a Biological Addendum to this report (March 2012). The results of these reports indicate that the entire parcel qualifies as ESHA. There are three distinct plant communities located on the property; Northern Bishop Pine Forest (NBPF), Central Maritime Chaparral (CMC) and Coastal Terrace Prairie (CTP). Within the portion of the parcel dominated by NBPF there is an area that qualifies as a wetland according to the County's Local Coastal Plan definition (ESHA Map Exhibit). This wetland abuts Highway One and extends the entire width of the parcel, covering approximately one quarter of the parcel. Within the wetland an occurrence of coastal bluff morning glory (*Calystegis purpurata* ssp. *saxicola*) was recorded. This plant is a CNPS list 1B.2 species and considered fairly threatened in California.

There is isolated riparian vegetation located along the southern property line associated with an off-site creek. Within this area there is suitable habitat for the California red-legged frog (*Rana aurora draytonii*), a species listed as threatened by the U.S. Fish and Wildlife Services. Although no red-legged frogs were detected during biological site investigations, presence is assumed based on the habitat present. The Department of Fish and Wildlife (DFW) reviewed the botanical study and determined that the project will avoid a take of the CRLP if the mitigation measures recommended by the ESHA Analysis are incorporated into the project (Bill McIver, DFW, communication, April 2, 2012).

Habitat for the Behren's silverspot butterfly (*Speyeria zerene behrensii*), a species listed as endangered by the U.S. Fish and Wildlife Service, occurs in the CTPtp community. A Behren's silverspot butterfly was observed at the site during biological investigations. DFW also concluded that the potential impacts on the CTP are insignificant and will not take nor adversely affect the Behren's silverspot butterfly (John E Hunter, DFW, communication, April 17, 2012).

Appendix D: Site Habitat Map, details the different ESHAs. Because the parcel is 100 percent covered by multiple ESHAs there is no option but to locate development within an ESHA.

Chapter 20.496 and Section 20.532.060, et. seq. of the MCCZC contains 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 Wildlife, 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.

Development within an ESHA: Because the entire parcel is covered by ESHA, there is no opportunity to provide a buffer to these areas of any size. Therefore the buffer policies are not applicable to this project. NCRM used the buffer analyses as outlined in Section 20.496.020 of the MCCZC to evaluate impacts related to placing development directly in ESHA.

Mendocino County Coastal Element Section 3.12-24 states "Any development within designated resource areas, if not specifically addressed by other policies, shall be carefully reviewed and established in accord with conditions which could allow some development under mitigating conditions but would assure the continued protection of the resource."

Section 20.532.100, et. seq. of the MCCZC contains specific findings that are required when development is proposed within an ESHA:

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

In order to develop the property, development must be located in an ESHA and therefore the findings related to development within an ESHA must be made.

The resources have been evaluated in the submitted Botanical Survey and ESHA Buffer Analysis and Biological Addendum prepared by NCRM. Email correspondence from the U.S. Fish and Wildlife Arcata Field Office and site visits attended by botanical consultants, County Planners, California Coastal Commission staff, and maritime chaparral specialists from San Francisco State University and California Native Plant Society representatives helped inform the submitted botanical studies.

The Biological Addendum evaluates the project's potential impacts and concludes that the development of a driveway, single family residence and detached garage would not degrade the resource as long as the recommended conditions are followed. The biological addendum specifically concludes "the proposed single family residence will not alter the functional capacity of the environmentally sensitive habitat, its species or their ability to be self-sustaining." The conclusion was reached because habitats on adjacent parcels are similar. The NBPF extends on adjacent lands to the north and south. The highest quality habitat was determined to exist at the eastern portion of the parcel with the Northern Bishop Pine Forest riparian habitat. This area will not be impacted by development. Similarly the Coastal Terrace Prairie habitat extends to the parcel to the south and will not be altered by this development. The Maritime Chaparral that will be impacted by the building site includes a dense stand of Manzanita that will continue to provide suitable nesting habitat even with the home site development.

The recommended mitigation measures include replanting impacted vegetation at a 1:1 ratio, developing the driveway with a permeable surface and planting a living roof. Additionally an erosion control plan will be developed, among others. All potential biological impacts and recommended mitigation measures are listed at the end of this section.

A number of alternative development scenarios were considered for the property. As mentioned, the highest quality habitat was determined to exist at the eastern portion of the parcel within the wetland and riparian habitats in the Northern Bishop Pine Forest. This area includes the listed morning glory. Avoidance of this habitat led to the recommendation to locate development as far to the west as possible while allowing enough setback to avoid encroaching on the Coastal Terrace Prairie and bluff face. By locating the home site in the transitional zone between the Northern Bishop Pine Forest and the Maritime Chaparral impacts to other, more sensitive areas are limited.

The property owner's original plan called for a guest cottage and wind turbine in addition to the single family residence. Based on the findings in the biological reports, the Mitigated Negative Declaration established Mitigation Measure 1.a which have eliminated these features from the proposed project. The property owners have agreed to these mitigations and have thus reduced the overall scale of their development.

There are several aspects of the current proposal that reduce the development disturbance. An existing dirt drive will be partially used and developed with a permeable surface. Construction impacts will be minimized by the use of insulated panels. This method will reduce the amount of time construction crews are on site. Roofs will be living and the walkway from the garage to the house is elevated, further reducing impervious surfaces on the site.

The project avoids the most sensitive habitat area, uses design elements to minimize disturbance and incorporates all feasible mitigation measures (see list below). For these reasons the proposed development is considered the least environmentally damaging alternative.

Development within a Wetland: Section 20.496.025, et. seq. of the MCCZC lists development or activities allowed within wetlands. Residential development and appurtenant infrastructure, including driveways, are not listed as a permitted use. Typically these uses would be prohibited in wetland areas. However, wetlands cover the entire width of the parcels frontage on Highway 1. Wetlands continue across the property line to the north. There is no feasible wetland free access to the site.

Section 30010 of the California Coastal Act addresses takings and states as follows:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

In this case prohibiting development in wetland areas would deprive the owner of all economic use of the property. Approximately 5,000 square feet of permeable driveway will need to be constructed within the wetland to accommodate the 12-foot wide driveway as specified by mitigation measure 1.a.

Some factors the courts examine to determine if a taking has occurred involve the existence of reasonable investment backed expectations and the degree to which a regulation may interfere with those reasonable investment-backed expectations and whether or not a regulation deprives an owner of all economic use of the property.

The current owners purchased the property with the expectation that it could be developed similar to the other bluff top lots located in the same zoning district there was a reasonable economic backed expectation. The approximately 2.63 acre vacant parcel was purchased for \$465,000 in 2004. The parcel is planned and zoned for residential development and received a certificate of compliance demonstrating legal parcel status in 2002, prior to the current owner's purchase. Since the time of purchase the owners have spent an additional \$35,000 on special studies, design and engineering for the site.

Section 20.368.010 of the MCCZC sets forth the principally permitted use types in the RR district, which include: single family residential, vacation home rental, light agriculture, row and field crops, tree crops and passive recreation. Because the property is completely covered by ESHA, all principally permitted

uses would require encroachment into an ESHA. The allowed agricultural uses would require substantial site disturbance and clearing and are not a viable way to use the property. Passive recreation use would be the only option that would be less impactful than the construction of a single family residence and possibly not require any activities meeting the definition of development under the Coastal Act; however passive recreation does not afford the property owners an economically viable use.

Least Environmentally Damaging Development Site: The revised project as modified by the mitigated measures set forth by the recommended MND, minimizes the extent of development, locates it in the least sensitive portions of the site, and incorporates all feasible mitigation measures.

Below is a listing of potential natural resource impacts and mitigation measures that are included as Special Conditions for this project, consistent with the recommendation of the biological report.

Potential ESHA Impact by Development within the NBPF: The proposed development within the NBPF ESHA and its buffer zone may adversely affect the functional capacity of the environmentally sensitive habitat.

Mitigation Measure 1.a: Aside from those trees that will need to be removed to construct the access road and the residence, no additional Bishop Pine trees should be removed or manicured within the Northern Bishop Pine Forest. The proposed project shall be modified to further reduce the NBPF impact as follows:

- The guest cottage shall be eliminated from the project.
- The driveway width shall be reduced to 12-feet, subject to approved waiver by Cal-Fire based on the environmental benefits of the reduced road width.
- The water storage tank shall be relocated outside the NBPF wetland area.
- All utilities shall be located within or adjoining the approved driveway to the maximum extent possible.

Mitigation Measure 1.b: Those trees or shrubs, that will be removed as a result of the development, will be replaced on a 1: 1 ratio with native trees or shrubs, listed in Appendix A, Table 3, of the NCRM 2009 Study, such as Bishop Pine (*Pinus muricata*), Tan oak (*Lithocarpus densiflorus*), California wax myrtle (*Myrica Californica*), Blue Blossom (*Ceanothus thyrsiflorus*) and Silk tassel (*Garrya elliptica*), as close as possible to where they were removed. The timing of plantings should be outside of the growing season.

Mitigation Measure 1.c: The portions of the parcel that have a higher presence of hydrophilic vegetation, as shown on the site map in Appendix C of the 2009 NCRM Study, should be avoided during construction of the permeable access road.

Mitigation Measure 1.d: In order to maintain Bishop Pine Forest habitat quality, invasive sapling Eucalyptus trees and Cotoneaster shrubs are recommended for removal from the parcel.

Potential ESHA Impact by Construction Activities: Construction activities will result in soil disturbance and the use of solid and fluid construction materials. Short term construction activities may adversely affect the ESHA, especially the more vernal portion of the onsite ESHA by causing sediment, debris, or other harmful materials to enter the ESHA. The following mitigation measures will reduce project related impacts to a less than significant level:

Mitigation Measure 2.a: Outside of the proposed access road, no equipment or construction materials shall be staged within the eastern portion of the identified environmentally sensitive habitat.

Mitigation Measure 2.b: Fluid materials, including fuels, lubricants, or other construction-related fluids should be stored as far from the eastern riparian area and the bluff as possible and disposed of off site. If spillage of toxic materials occurs, on the parcel, the area should be cleaned and the affected area should be restored to its natural condition.

Mitigation Measure 2.c: To insure erosion does not occur as a result of the proposed single family residence development, soil disturbance will be conducted during fair weather when the soils are not saturated. Saturated soil conditions may be evidenced by the creation of ruts or the displacement of soil

in amounts that cause a visible increase in turbidity. Soil that must be removed should not be side cast. Loose fill shall be end hauled to a stable location. Erosion mix seeding and hay mulch shall be applied to all exposed soil associated with the development prior to November 1st. If excess fill remains after installation it will be removed from the site.

Potential CRLF Impact: Short-term construction activities may adversely affect CRLF. However, breeding activities of CRLF are likely to have concluded by April 15th and CRLF are unlikely to disperse overland between April 15th and October 15th within the project area. Habitat may exist for CRLF at the site's eastern most riparian areas. In-lieu of conducting focused surveys for CRLF, mitigation measures to avoid take are proposed:

Mitigation Measure 3.a: Construction activities including grading shall be limited to the period of April 15th through October 15th of a given year.

Mitigation Measure 3.b: Prior to construction, project contractors will be trained by a qualified biologist in the identification of the California red-legged frog. Construction crews will begin each day with a visual search around all stacked or stored materials, as well as along any silt fences to detect California red-legged frogs. If a California red-legged frog is detected, construction crews will contact the U.S. Fish and Wildlife Service (Service) or a qualified biologist prior to re-initiating work.

Mitigation Measure 3.c: If a rain event occurs during the construction period, all construction-related activities will cease for a period of 48 hours after the rain stops. Prior to resuming construction activities, trained construction crew member(s) will examine the site for the presence of California red-legged frogs. If no California red-legged frogs are found, construction activities may resume.

Mitigation Measure 3.d: If a California red-legged frog or other federally-listed species is found any time during construction activities, or circumstances arise indicating that the proposed project or construction activities may result in incidental take, all activities that could result in take should cease and the Service should be contacted immediately.

Potential Wetland Impacts: The proposed development within the wetland and the ESHA buffer zones may adversely affect the hydrologic conveyance system or cause erosion at the site.

Mitigation Measure 4.a: An erosion plan shall be prepared by a qualified professional prior to construction activities to ensure design and construction of development facilities will cause the least impact to the site.

Mitigation Measure 4.b: A permeable road surface and living roof shall further minimize long term development related hydrologic impacts.

Archaeological/Cultural Resources

The project was reviewed by the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University. The Information Center responded that the project area has the possibility of containing unrecorded archaeological sites and recommended a study. The application was reviewed by the Mendocino County Archaeological Commission on October 12, 2011, which determined that a survey was necessary. The survey was completed by John W. Parker, Ph.D., a registered professional archeologist. The survey concluded that no historic or prehistoric cultural materials exist on the parcel. The survey results were accepted at the June 13, 2013 Archeological Commission meeting. No further study is recommended. Nonetheless, standard Condition # 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance (Chapter 22.12 of the Mendocino County Code) in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Groundwater Resources

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

**STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT**

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received from Jana Wareham of North Gualala Water Company on December 6, 2012, stating that the proposed residence is within their service area and water service is available.

The project would have incremental but not significant impacts on groundwater resources. The application proposes a new sewage disposal system consisting of a 1,200 gallon septic tank, a 1,200 gallon pump tank, and 240 linear feet of leach field trench. Frank Kemper of the Division of Environmental Health commented that the project can be approved by Environmental Health.

No adverse impacts to groundwater resources are anticipated.

Transportation/Circulation

The project proposes a new encroachment onto Highway One. The application was referred to the Mendocino County Department of Transportation and California Department of Transportation (Caltrans) for comment. The project will require an encroachment permit from Caltrans. This is reflected in recommended Special Condition # 5.

The project will contribute incrementally to traffic volumes on local and regional roadways, however it is limited to traffic associated with a single family residence and such incremental increases were considered when the Local Coastal Plan land use designations were assigned to the site.

No adverse impacts to transportation/circulation are expected.

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

FINDINGS:

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

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and

**STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT**

**CDP# 37-2010
CPA-12**

- void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
 3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
 4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
 5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
 6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
 7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
 8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. The applicant shall comply with those recommendations in the California Department of Forestry Conditions of Approval (CDF# 336-09) or other alternatives acceptable to the Department of Forestry. Prior to the final inspection of the building permit, written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry. Prior to commencement of construction activities for the residence, applicant shall obtain an encroachment permit from the California Department of Transportation.
2. The recommendations in the Geologic Hazard and Geotechnical Report prepared by SHN dated September 2, 2009, shall be incorporated into the design and construction of the proposed project. Prior to issuance of the building permit, the applicant shall submit evidence that a qualified geotechnical or civil engineer has reviewed the final grading and building plans. No development shall be permitted within 50 feet of the bluff top edge.

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

The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.

4. Prior to issuance of the Coastal Development Permit the applicant shall submit, to the satisfaction of the Coastal Permit Administrator, a site drainage plan to detail how the proposed project will capture and infiltrate all runoff from 85% of the 24 hour storm event for Mendocino County. The drainage plan shall include a review of the permeable driveway.
5. The Environmentally Sensitive Habitat Area recognized by this report and shown on the Site Habitat Map shall be protected from development and disturbances other than those expressly authorized by this permit in perpetuity. The following mitigation measures recommended in the Botanical Survey and ESHA Buffer Analysis (January 2009) and Biological Addendum (March 2012) prepared by North Coast Resources Management are a condition of approval of this development:

Mitigation Measure 1.a: Aside from those trees that will need to be removed to construct the access road and the residence, no additional Bishop Pine trees should be removed or manicured within the Northern Bishop Pine Forest. The proposed project shall be modified to further reduce the NBPF impact as follows:

- The guest cottage shall be eliminated from the project.
- The driveway width shall be reduced to 12-feet, subject to approved waiver by Cal-Fire based on the environmental benefits of the reduced road width.
- The water storage tank shall be relocated outside the NBPF wetland area.
- All utilities shall be located within or adjoining the approved driveway to the maximum extent possible.

Mitigation Measure 1.b: Those trees or shrubs, that will be removed as a result of the development, will be replaced on a 1: 1 ratio with native trees or shrubs, listed in Appendix A, Table 3, of the NCRM 2009 Study, such as Bishop Pine (*Pinus muricata*), Tan oak (*Lithocarpus densiflorus*), California wax myrtle (*Myrica Californica*), Blue Blossom (*Ceanothus thyrsiflorus*) and Silk tassel (*Garrya elliptica*), as close as possible to where they were removed. The timing of plantings should be outside of the growing season.

Mitigation Measure 1.c: The portions of the parcel that have a higher presence of hydrophilic vegetation, as shown on the site map in Appendix C of the 2009 NCRM Study, should be avoided during construction of the permeable access road.

Mitigation Measure 1.d: In order to maintain Bishop Pine Forest habitat quality, invasive sapling Eucalyptus trees and Cotoneaster shrubs are recommended for removal from the parcel.

Potential ESHA Impact by Construction Activities: Construction activities will result in soil disturbance and the use of solid and fluid construction materials. Short term construction activities may adversely affect the ESHA, especially the more vernal portion of the onsite ESHA by causing sediment, debris, or other harmful materials to enter the ESHA. The following mitigation measures will reduce project related impacts to a less than significant level:

Mitigation Measure 2.a: Outside of the proposed access road, no equipment or construction materials shall be staged within the eastern portion of the identified environmentally sensitive habitat.

Mitigation Measure 2.b: Fluid materials, including fuels, lubricants, or other construction-related fluids should be stored as far from the eastern riparian area and the bluff as possible and disposed of off site. If spillage of toxic materials occurs, on the parcel, the area should be cleaned and the affected area should be restored to its natural condition.

Mitigation Measure 2.c: To insure erosion does not occur as a result of the proposed single family residence development, soil disturbance will be conducted during fair weather when the soils are not saturated. Saturated soil conditions may be evidenced by the creation of ruts or the displacement of soil in amounts that cause a visible increase in turbidity. Soil that must be removed should not be side cast. Loose fill shall be end hauled to a stable location. Erosion mix seeding and hay mulch shall be applied to all exposed soil associated with the development prior to November 1st. If excess fill remains after installation it will be removed from the site be removed from the site.

Potential CRLF Impact: Short-term construction activities may adversely affect CRLF. However, breeding activities of CRLF are likely to have concluded by April 15th and CRLF are unlikely to disperse overland between April 15th and October 15th within the project area. Habitat may exist for CRLF at the site's eastern most riparian areas. In-lieu of conducting focused surveys for CRLF, mitigation measures to avoid take are proposed:

Mitigation Measure 3.a: Construction activities including grading shall be limited to the period of April 15th through October 15th of a given year.

Mitigation Measure 3.b: Prior to construction, project contractors will be trained by a qualified biologist in the identification of the California red-legged frog. Construction crews will begin each day with a visual search around all stacked or stored materials, as well as along any silt fences to detect California red-legged frogs. If a California red-legged frog is detected, construction crews will contact the U.S. Fish and Wildlife Service (Service) or a qualified biologist prior to re-initiating work.

Mitigation Measure 3.c: If a rain event occurs during the construction period, all construction-related activities will cease for a period of 48 hours after the rain stops. Prior to resuming

construction activities, trained construction crew member(s) will examine the site for the presence of California red-legged frogs. If no California red-legged frogs are found, construction activities may resume.

Mitigation Measure 3.d: If a California red-legged frog or other federally-listed species is found any time during construction activities, or circumstances arise indicating that the proposed project or construction activities may result in incidental take, all activities that could result in take should cease and the Service should be contacted immediately.

Potential Wetland Impacts: The proposed development within the wetland and the ESHA buffer zones may adversely affect the hydrologic conveyance system or cause erosion at the site.

Mitigation Measure 4.a: An erosion plan shall be prepared by a qualified professional prior to construction activities to ensure design and construction of development facilities will cause the least impact to the site.

Mitigation Measure 4.b: A permeable road surface and living roof shall further minimize long term development related hydrologic impacts.

6. Prior to issuance of the building permit, the applicant shall submit an exterior lighting plan and design details or manufacturer's specifications for all the exterior lighting fixtures. 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.
7. Prior to commencement of construction activities for the residence, applicant shall obtain an encroachment permit from the California Department of Transportation.

Staff Report Prepared By:

1/10/14
Date

Signature on File

Andy Gustavson
Chief Planner

Attachments:

- | | |
|-----------|--------------|
| Exhibit 1 | Topographic |
| Exhibit 2 | Aerial |
| Exhibit 3 | General Plan |
| Exhibit 4 | Zoning |
| Exhibit 5 | Plans |
| Exhibit 6 | ESHA Map |
| Exhibit 7 | Tree Removal |

Appeal Period:

Is ten (10) calendar days for the Mendocino County Board of Supervisors, followed by ten (10) working days for the California Coastal Commission following the Commission's receipt of the Notice of Final Action from the County.

Appeal Fee:

\$945.00 (To the Mendocino County Board of Supervisors)

EXHIBIT 2

SUBJECT PARCEL(S)

CASE: CDP 37-2010

OWNER: MILLER, Shannon & McGEE, Richard

APN: 143-161-10

AGENT:

ADDRESS: 34570 S. Hwy. 1, Gualala

23 of 33

2010 NAIP AERIAL ORTHOPHOTO

0 50 100 Feet
0 0.0075 0.015 Miles



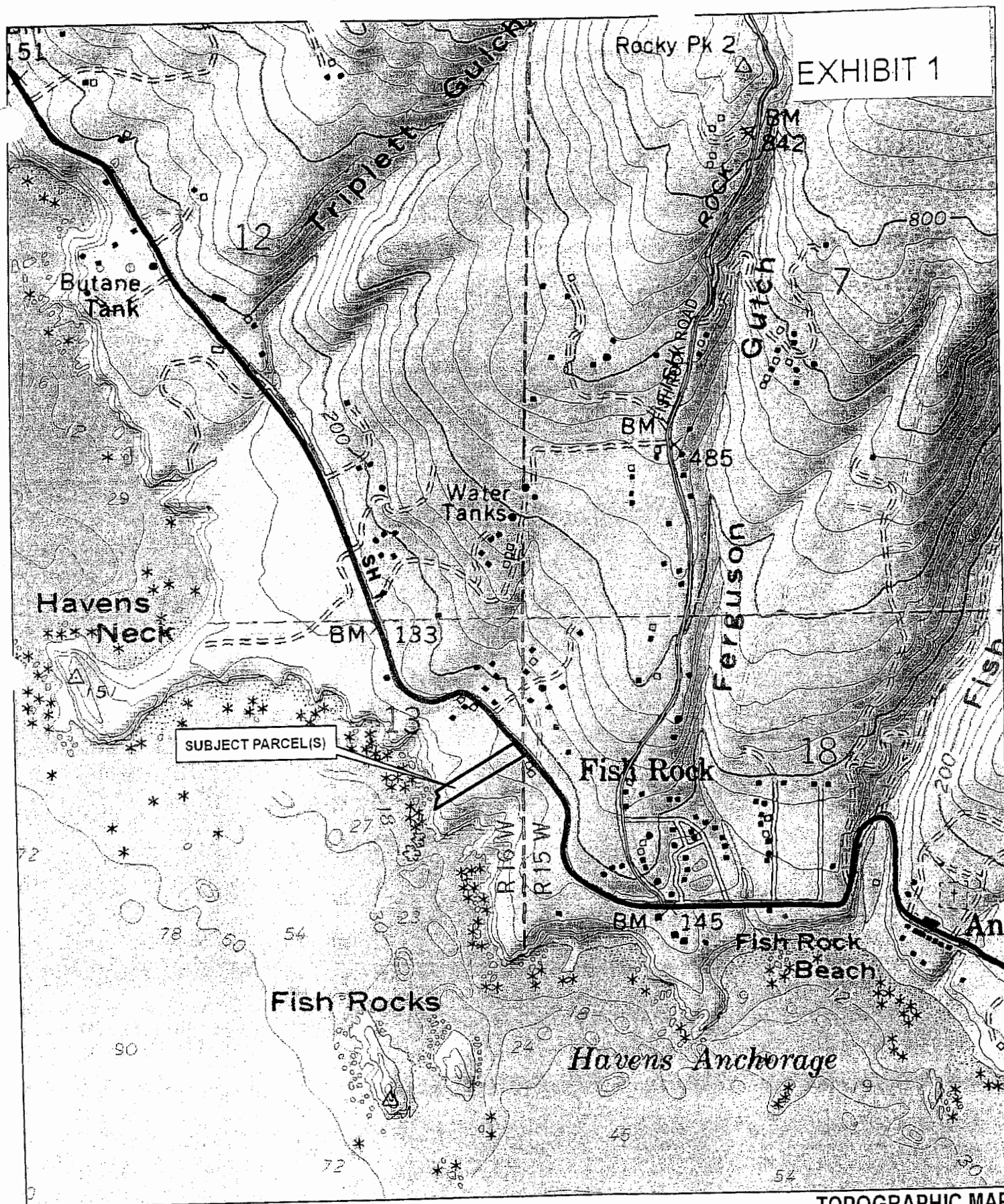


EXHIBIT 1

SUBJECT PARCEL(S)

CASE: CDP 37-2010

OWNER: MILLER, Shannon & McGEE, Richard

APN: 143-161-10

AGENT:

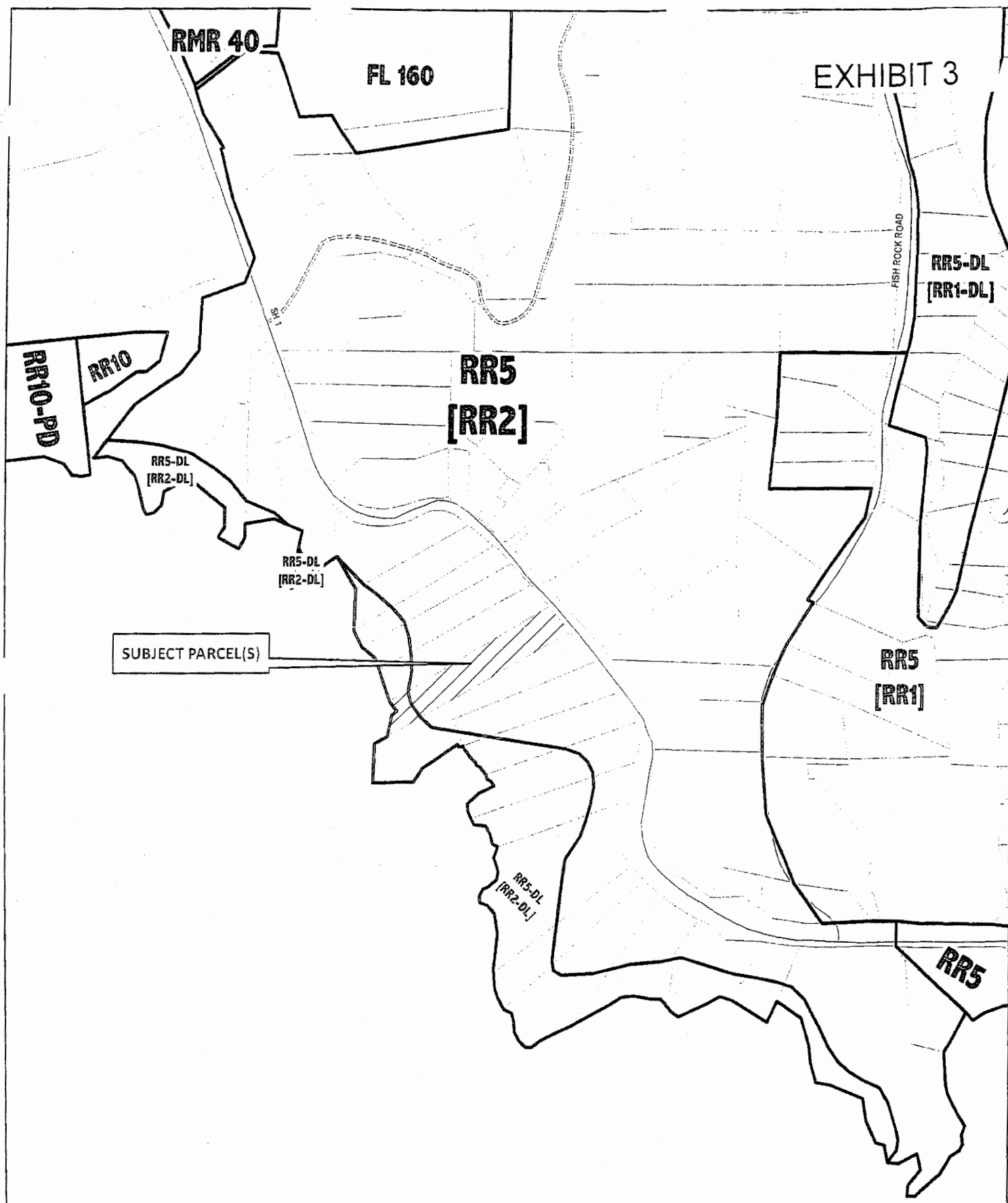
ADDRESS: 34570 S. Hwy. 1, Gualala

24 of 33

TOPOGRAPHIC MAP
CONTOUR INTERVAL IS 40 FEET

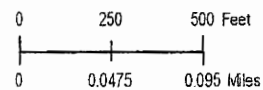
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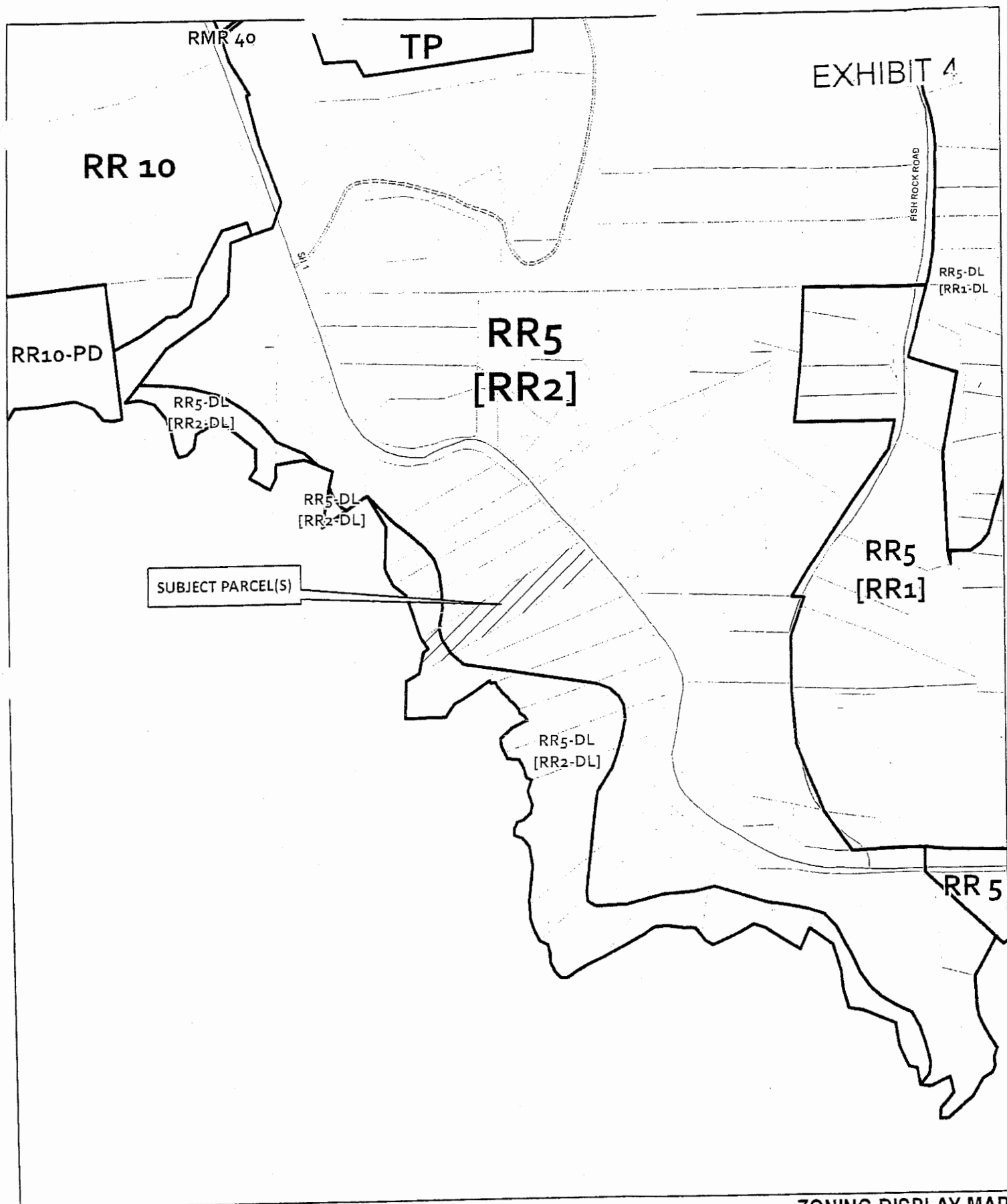




CASE: CDP 37-2010
 OWNER: MILLER, Shannon & McGEE, Richard
 APN: 143-161-10
 GP/ZONE: RR5(RR2) / RR
 ADDRESS: 34570 S. Hwy. 1, Gualala

GENERAL PLAN DESIGNATIONS

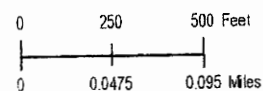


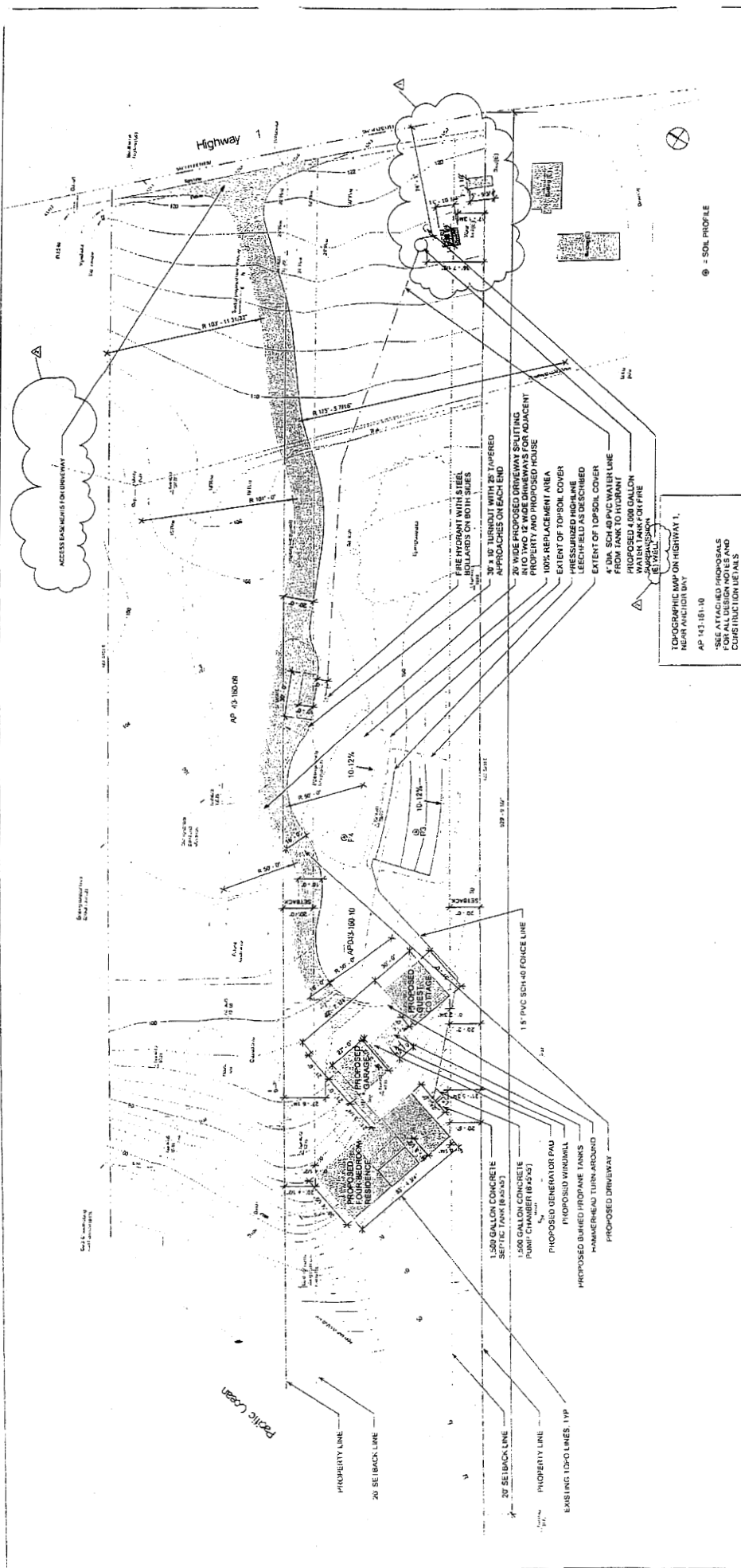


CASE: CDP 37-2010
OWNER: MILLER, Shannon & McGEE, Richard
APN: 143-161-10
GP/ZONE: RR5(RR2) / RR
ADDRESS: 34570 S. Hwy. 1, Gualala

26 of 33

ZONING DISPLAY MAP





① Site Plan
1" = 30'

Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445

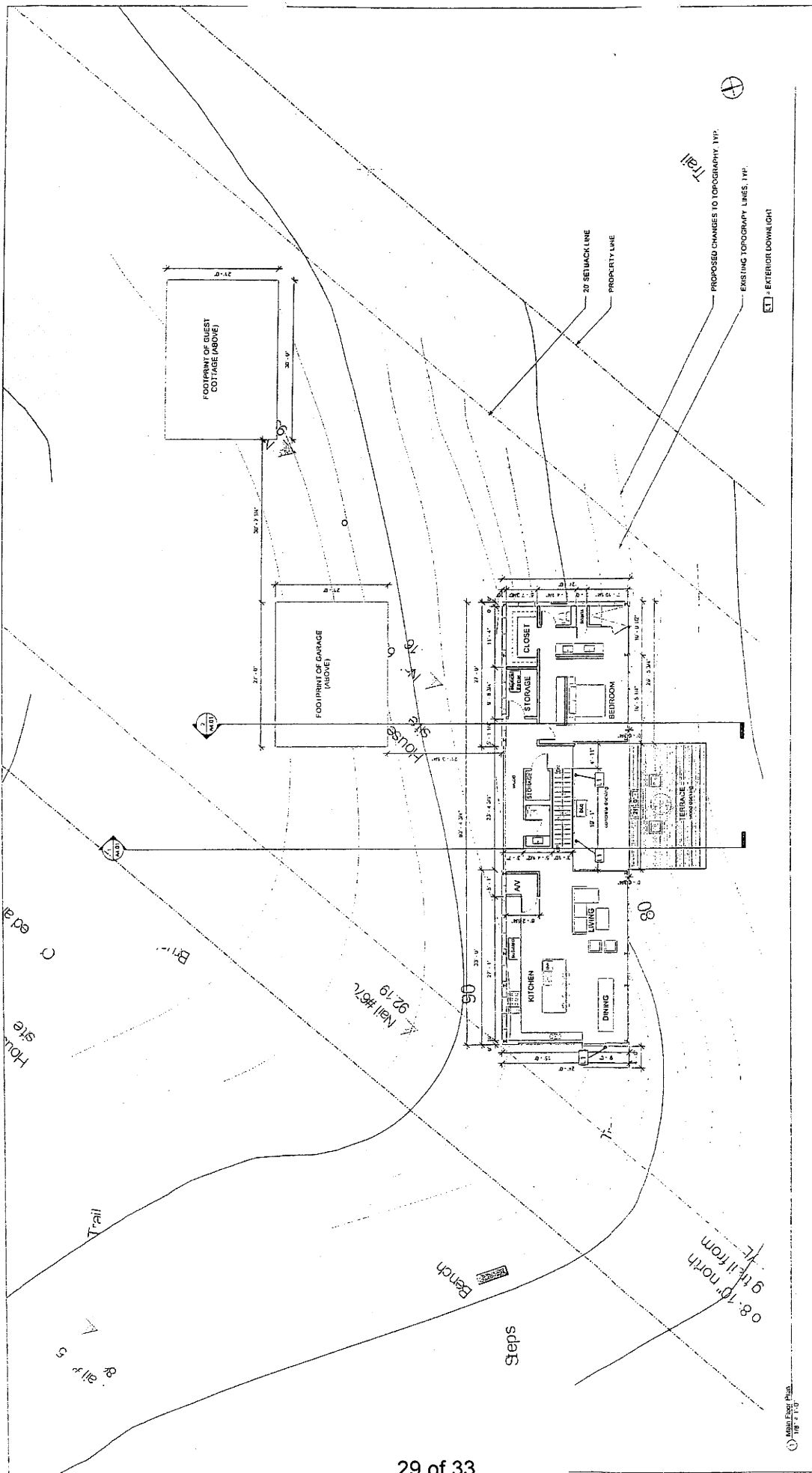
Revision	Revision Schedule	Issue Date
1	2-1-10	2-25-10
2	2-25-10	7-9-10

Drawn By: RCH
Checked By: TOL
Scale: 1" = 30'
Notes: See attached proposals for all design notes and construction details.

LUNDBERG & ASSOCIATES
2020 THIRD STREET
SAN FRANCISCO, CA 94107-3105
F 415.595.0100 F 415.695.8178

Site Plan

A1.01



Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445

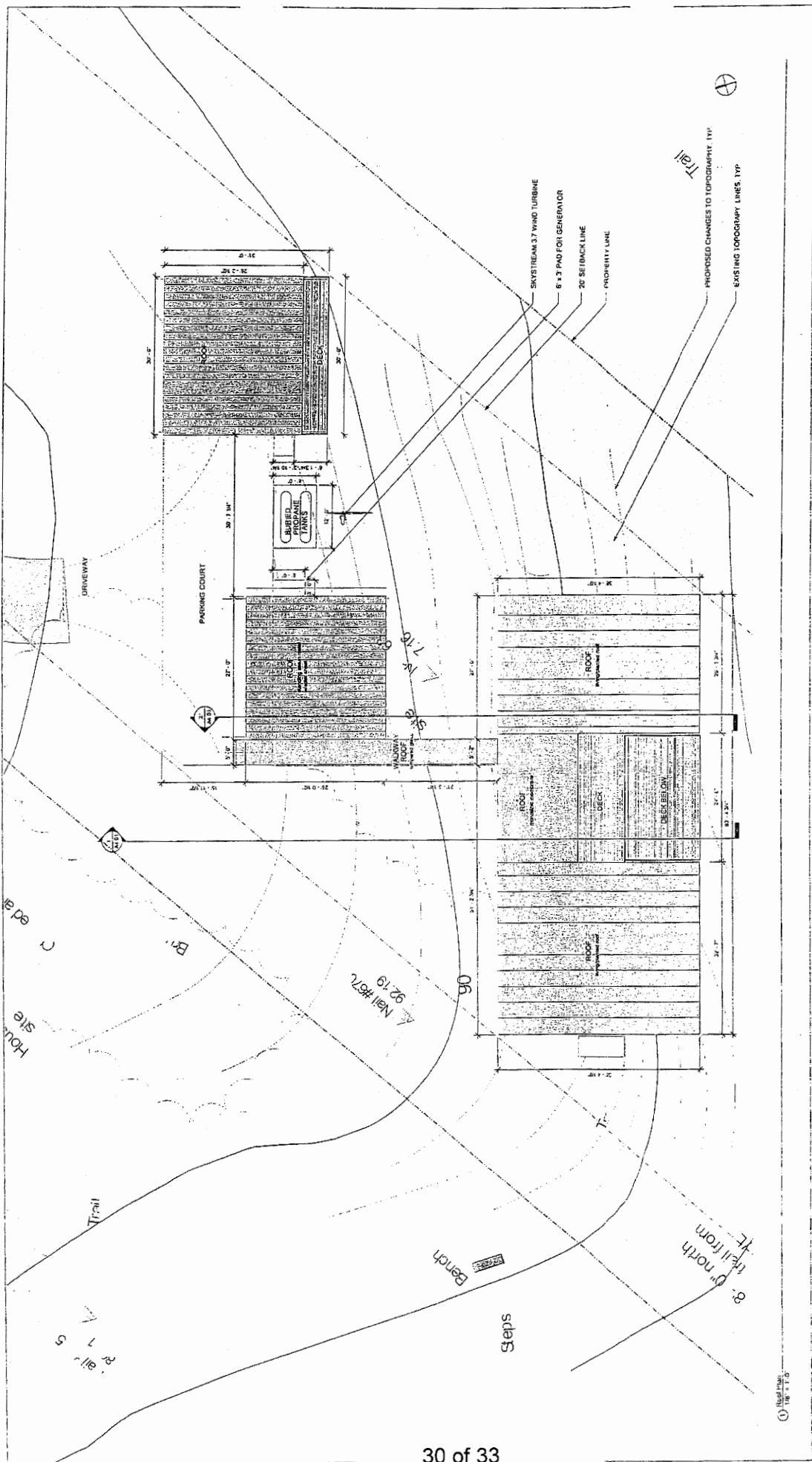
Main Floor Plan

A2.01

Revision	Sub	Issue Date
1	Permit Set	2.1.10
2		2.25.10
		7.9.10

OWNER:
LUNDBERG DEVELOPMENT
3200 TILDEN STREET
SAN FRANCISCO, CA 94107-2315
F 415.695.0110 F 415.695.9374

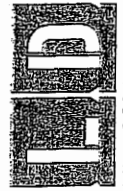
DESIGNER:
LUNDBERG DEVELOPMENT
3200 TILDEN STREET
SAN FRANCISCO, CA 94107-2315
F 415.695.0110 F 415.695.9374



(1) 1/4" = 1'-0"

Anchor Bay Residence

34570 South Highway 1
Anchor Bay, CA 95445



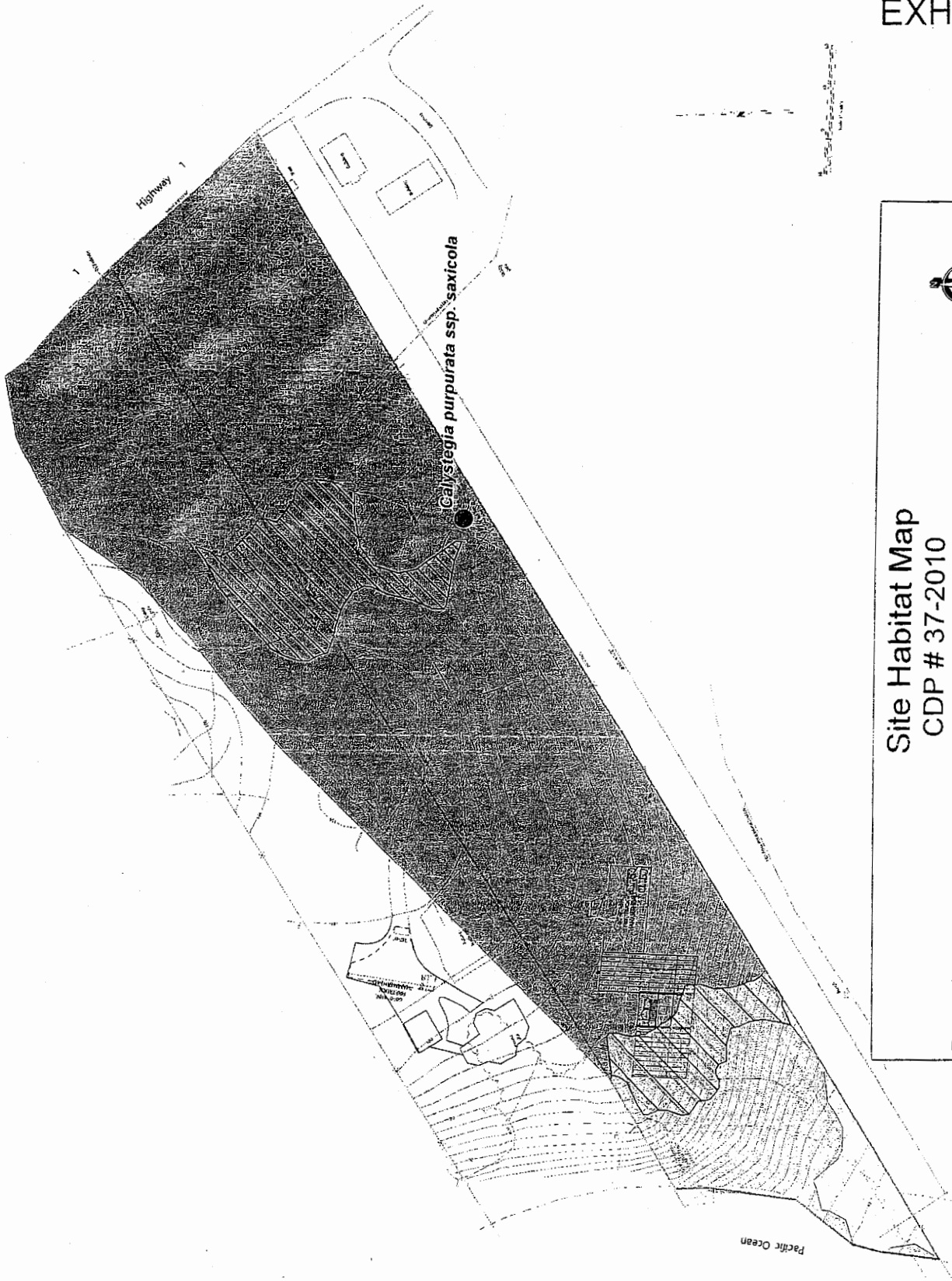
LUNDBERG DESIGN
3520 THIRD STREET
SAN FRANCISCO, CA 94107-3115
F 415.695.0110 F 415.695.0129

Revision	Set	Issue Date
1	Permit Set	2/1/10
2		2/25/10
		7/9/10

Roof Plan

A2.03

EXHIBIT 6



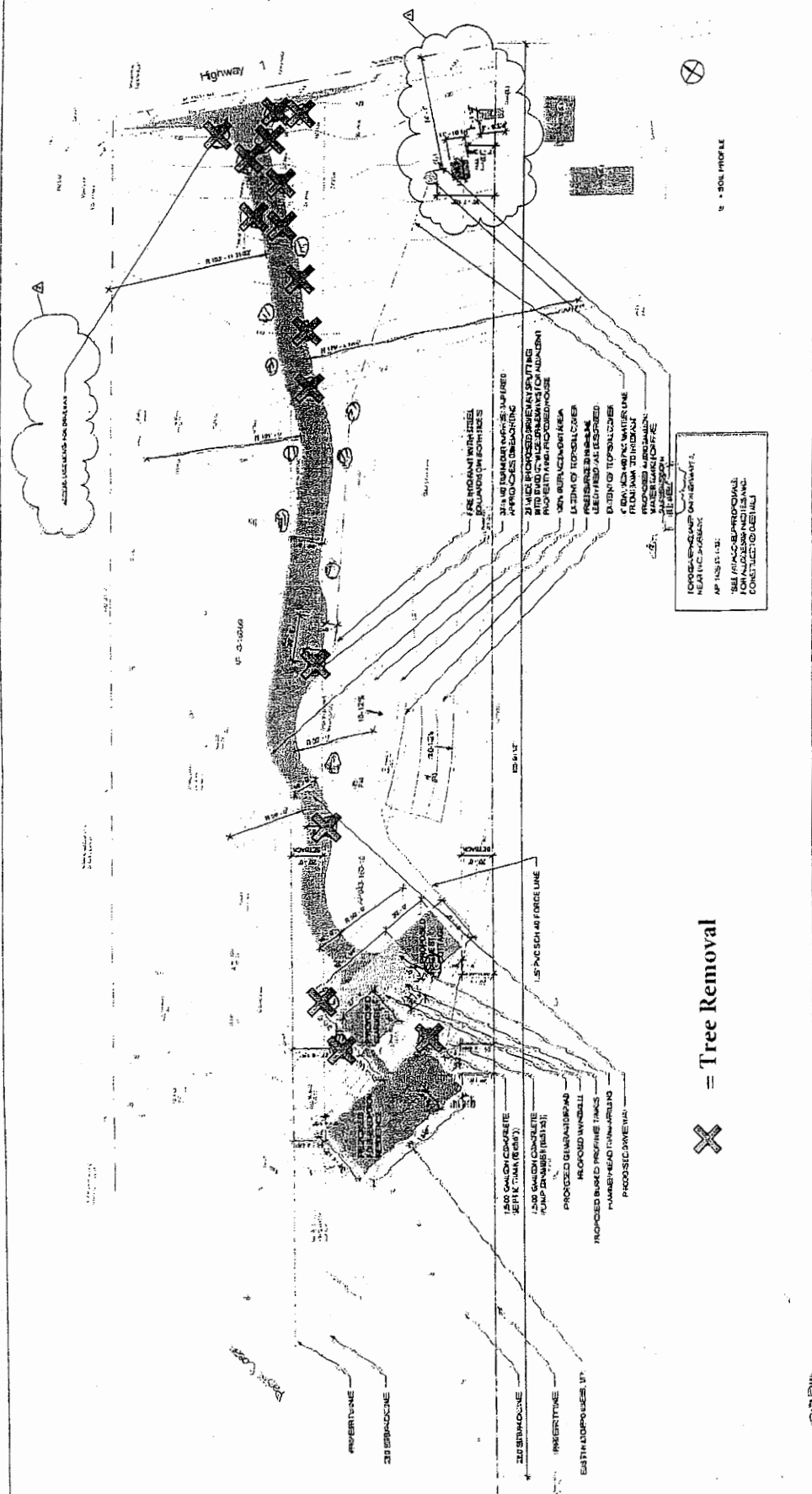
Site Habitat Map CDP # 37-2010



1:1,200

NCRM
October 29, 2013

- | | | |
|-----------------------------|---------|------------------|
| Rare plant ● | Cleared | Thick Understory |
| Central Maritime Chaparral | Vernal | |
| Coastal Terrace Prairie | | |
| Northern Bishop Pine Forest | | |



Reduced Tree Removal Based on Reduced Driveway Width & Building Footprint (Mitigation Measure 1.a)

Anchor Bay Residence

94570) South Highway 1
Anchor Bay, CA 95445

Revision	Set	Issue Date
	Permit Set	2.1.10
1		2.25.10
2		7.9.10

Drawn By:	Rev'd
Checked By:	TO:
Scale:	1" = 30'-0"

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CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 EIGHTH STREET • SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
FACSIMILE (707) 826-8960

**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:

RECEIVED**FEB 20 2014****CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT****SECTION II. Decision Being Appealed**

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Coastal Development Permit to construct a new 2,688 square foot, 2-story, 16-foot high, single-family dwelling with 850 square feet of deck, a 567 square foot detached 2-car garage and a detached 590 square foot, 1-story guest cottage with 300 square feet of decks, all served by an on-site septic system and well, a 4,000 gallon fire suppression water storage tank, and a shared driveway. Temporary use of a travel trailer during construction is requested.

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

34570 SOUTH HIGHWAY 1, GUALALA (Mendocino County) CA 95545 (APN 143-161-10)

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

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

EXHIBIT NO. 9

APPEAL NO.
A-1-MEN-14-0009
McGEE
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-14-0009

DATE FILED:

2/20/14

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: January 23, 2014

7. Local government's file number (if any): CDP 37-2010

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 and Shannon McGee
823 Alvarado Road
Berkeley CA 94705

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) Craig Wesley Graffin and Anna Jeannine Graffin
28 LEXINGTON CT.
NAPA, CA 94559

(2) Eric and Yun Swenson
1132 BRACE AVE
SAN JOSE, CA 95125

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

See Attachment B.

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: Ma **Signature on File** u
Appellant or Agent

Date: February 20, 2014

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

Signed: _____

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 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.)

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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: February 20, 2014

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

Signed: _____

Date: _____

ATTACHMENT A

SECTION I. Appellant(s)

1. Mary Shallenberger
P. O. Box 354
Clements, CA 95227-0354

(415) 904-5200
2. Dayna Bochco
45 Fremont Street, Suite 2000
San Francisco, CA 94105

(415) 904-5200

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) between the sea and the first public road paralleling the sea; (2) within 100 feet of a wetland or stream; and (3) within 300 feet of the top of the seaward face of a coastal bluff.

BACKGROUND:

On January 23, 2014, the County of Mendocino conditionally approved Coastal Development Permit (CDP) # CDP 37-2010 for construction of a new two-story, 26-foot-tall, 2,688-square-foot single-family residence with a rooftop entrance, plus 850 square feet of decking and a 21-foot-long catwalk connecting to a 567-square-foot detached garage. The approved development also authorizes construction of an onsite septic system and well, and an approximately 565-foot-long, variable-width driveway that will meander through both the vacant parcel to the north and through the subject parcel. The County staff report describes the intent of the "shared driveway" as potentially serving an additional, future building site on the currently undeveloped, separately-owned adjacent parcel. The subject 2.63-acre bluff-top parcel is located approximately ¼ mile north of Anchor Bay and west of Highway One, at 34570 North Highway One in Mendocino County (APN 143-161-10).

The County staff report describes the property as consisting entirely of Environmentally Sensitive Habitat Areas (ESHAs) that include: a) Northern Bishop Pine Forest (*Pinus muricata*) over the majority of the parcel; b) coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) plants; c) a wetland that spans the width of the parcel adjacent to Highway One and covers approximately one quarter of the parcel; d) Maritime Chaparral near the bluff edge; and e) Coastal Terrace Prairie on a lower bluff terrace near the southwestern parcel boundary. The County staff report also describes the presence of: f) riparian vegetation along the southern

property line associated with an off-site creek that supports suitable habitat for the federally-threatened California red-legged frog (*Rana draytonii*¹); and g) the federally-endangered Behren's silverspot butterfly (*Speyeria zerene behrensii*) that has been observed on the property. The County staff report additionally describes that similar biological features, including the above-described wetland, exist on the property to the north.

The approved development has been sited on the westernmost portion of the property, on a 30% slope located 50 feet from the edge of the ocean bluff as depicted in the geologic reports prepared for the subject development. The County staff report indicates that the approved driveway, which begins on the parcel to the north and continues approximately 565 feet to the approved house and garage, will impact approximately 5,000 square feet of wetlands. In its findings for approval, the County indicates that "there is no feasible wetland free access to the site," and further indicates that "In this case prohibiting development in wetland areas would deprive the owner of all economic use of the property." The County's findings for approval conclude that "The revised project as modified by the mitigated measures set forth by the recommended MND, minimizes the extent of development, locates it in the least sensitive portions of the site, and incorporates all feasible mitigation measures."

The parcel is designated and zoned as Rural Residential, Five Acre Minimum (RR-5-DL), with an alternate zoning designation of two acre minimum (RR-2-DL) on the County general plan Coastal Plan Map and Coastal Zoning Map, respectively. Additionally, both the land use and zoning maps depict an overlay of Development Limitations (DL). According to Mendocino County Coastal Zoning Code Section 20.416.00, the "DL" overlay pertains to parcels or portions of parcels that "according to available data have serious constraints that may prevent or seriously limit development. Such constraints include slopes over 30 percent, erosion or landslide potential or other geophysical hazards."

REASONS FOR APPEAL:

The approved development is inconsistent with the policies of the certified LCP, including but not limited to the policies contained in the "Habitats and Natural Resources" sub-sections of Section 3: Resources and Development Issues and Policies of the Land Use Plan, and the development regulations and standards of Sections 20.496 and Section 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:

¹ Formerly known as *Rana aurora draytonii*, California red-legged frog is treated as *Rana draytonii* in the current taxonomic literature

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.

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

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

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

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

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

LUP Policy 3.1-4 states:

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

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

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

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

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

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

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

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

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

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

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

(10) *Nature study purposes and salmon restoration projects.*

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

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

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

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

CZC Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states in part 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.

...

(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).

...

(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 3.1-18 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...

CZC Section 20.532.100 states, in applicable part, the following (emphasis added):

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.

...

Coastal Act Section 30010 addresses takings and states as follows:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Discussion:

The County staff report prepared for the January 23, 2014 Coastal Permit Administrator (CPA) hearing indicates that the currently vacant parcel consists entirely of Environmentally Sensitive Habitat Areas (ESHAs) that include: a) Northern Bishop Pine Forest (*Pinus muricata*) over the majority of the parcel; b) coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) plants; c) a wetland that spans the width of the parcel from Highway One and covers approximately one quarter of the parcel; d) Maritime Chaparral near the bluff edge; and e) Coastal Terrace Prairie on a lower bluff terrace near the southwestern parcel boundary. The County staff report also describes the presence of: f) riparian vegetation along the southern property line associated with an off-site creek that supports suitable habitat for the federally-threatened California red-legged frog (*Rana draytonii*²); and g) the federally-endangered Behren's silverspot butterfly (*Speyeria zerene behrensii*) that has been observed on the property. The County staff report additionally describes that similar biological features, including the above-described wetland, extend on the property to the north.

In a March 2012 biological addendum prepared for the subject site, the consulting biologist describes the parcel as primarily comprised of Northern Bishop Pine Forest "with some potential wetland area." The consulting biologist describes that "The forest turns into a dense stand of Central Maritime Chaparral (G2, S2.2) at the bluff edge above the Pacific Ocean, sloping south to a lower terrace of Coastal Terrace Prairie (G2, S2.1) habitat," and describes the presence of one occurrence of coastal bluff morning-glory mapped within the forest near the southeastern parcel boundary. The biologist concludes in the March 2012 addendum that:

All of the ESHAs were considered when identifying the appropriate location for the proposed development. Avoidance of the riparian habitat and the listed morning glory *Calystegia purpurata* ssp. *saxicola*, at the east side of the parcel, lead to the recommendation that the development be sited far to the west at the margin of the Northern Bishop Pine Forest and the Maritime Chaparral habitats while allowing for enough of a setback to avoid encroaching on the sites Coastal Terrace Prairie and bluff face.

The County-approved development relies on construction of an approximately 565-foot-long driveway that begins on another owner's property to the north, and that the County acknowledges could eventually branch to serve a future development on the northern property (as depicted on the October 29, 2013 "Site Habitat Map"). The October 29, 2013 "Site Habitat Map" prepared by the consulting biologist shows the driveway meandering between the northern property and the subject property, and impacting wetlands on both properties. The construction of the driveway and residence will also result in the removal of 21-26 trees: the County staff report indicates that the driveway width can be reduced to 10 feet plus a turnaround area to result in impacts to fewer trees, but notes that "the driveway will need to be improved to road standards (18' wide) or receive an exception from the Fire Safe Regulations before it is considered suitable to serve an additional residence [on the northern parcel]." The Final Findings and Conditions for Approval acknowledge that the site is located in a designated "high" fire hazard severity area and

² Formerly known as *Rana aurora draytonii*, California red-legged frog is treated as *Rana draytonii* in the current taxonomic literature

includes Special Condition No. 1 requiring compliance with California Department of Forestry ("CalFire") conditions of approval for address standards, driveway standards, and defensible space standards (CDF #336-09). While the County acknowledges that one exception request was provided by CalFire to allow for a reduced property line setback, the County staff report does not address the additional vegetation clearance around the driveway and residential development that will be required to satisfy the defensible space/Fire Safe Regulations.

The approved project is inconsistent with the ESHA protection policies, including but not limited to LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496 and 20.532, because the approved development is not an allowable use in ESHA or ESHA buffers. While the County has indicated that development must occur within ESHA and ESHA buffer, inconsistent with the ESHA protection policies of the LCP to avoid a taking of private property, the County must still comply with the requirements of the LCP to the maximum extent possible. The County fails to adequately demonstrate in its findings for approval that the project as designed is the least environmentally damaging, most feasible alternative. The County's findings for approval describe that siting the house and garage 50 feet from the edge of the ocean bluff within the maritime chaparral habitat, and developing a driveway that will impact approximately 5,000 square feet of wetlands "locates it in the least sensitive portions of the site, and incorporates all feasible mitigation measures." In making this determination, the County appears to rely upon the January 2009 biological report and March 2012 biological addendum. The County additionally notes that: "Email correspondence from the U.S. Fish and Wildlife Arcata Field Office and site visits attended by botanical consultants, County Planners, California Coastal Commission staff, and maritime chaparral specialists from San Francisco State University and California Native Plant Society representatives helped inform the submitted botanical studies."

Commission staff possessing 16 years of botanical experience visited the subject site on March 16, 2011 to observe maritime chaparral habitat on the site as part of a field trip coordinated by the CA Native Plant Society (CNPS). Participants included County planning staff, CNPS representatives, maritime chaparral specialists from San Francisco State University, and a local biology professor and botanical consultant. During the site visit, Commission staff and other botanists observed within the maritime chaparral habitat the presence of both the rare coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) and western dog violet (*Viola adunca*), which is the host plant for the federally endangered Behren's silverspot butterfly. During the site visit, County planning staff indicated that the botanical report prepared for the property did not depict the rare plant locations observed by the group, and on March 24, 2011 Commission staff provided comments to the County via electronic mail recommending that new floristically-appropriate surveys should be conducted by a qualified botanist to more accurately map all rare plant occurrences on the site. The consulting biologist for the project indicates in their March 19, 2012 addendum that a follow-up site visit conducted on September 13, 2011 "focused on mapping plant communities and their boundaries, identifying all plant species present, and determining the least impactful potential building location from a biological perspective."

The consulting biologist did not conduct the biological survey during the floristically-appropriate time of year for the target species. Furthermore, while the March 2012 Biological addendum contains as Appendix E the preliminary plant list that was prepared by participants of the March 2011 site visit, and while the list specifies the presence of both western dog violet and coastal

bluff morning-glory within the maritime chaparral habitat, the consulting biologist's revised site map dated October 29, 2013 does not depict the additional locations of either species that occur within the maritime chaparral. As noted above, the approved house is located within the maritime chaparral habitat. Additionally, while the consulting biologist's recommendation for a building site is based in part upon avoidance of riparian habitat and an off-site creek, none of the maps provided in the County staff report depict the location of the creek or of any riparian habitat.

The LCP policies mandate consideration of siting the development in the least environmentally damaging location pursuant to LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496.020(A)(4), 20.496.025(B)(1), and 20.532.100, and consistent with other applicable Coastal Element policies and development standards of the division. These policies additionally require, among other things, 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.

The biological evaluations the County used as the basis for its findings relative to minimizing impacts to ESHA lack key factual information (including but not limited to the mapped location of all ESHA features) that informs the siting of the development in the least environmentally damaging, most feasible alternative location.

It is also unclear how the consulting biologist's determination that "Avoidance of the riparian habitat and the listed morning glory *Calystegia purpurata* ssp. *saxicola*, at the east side of the parcel, lead[s] to the recommendation that the development be sited far to the west..." as the least environmentally damaging alternative. For example, it appears that development could be sited closer to the highway and to the northern parcel boundary, while avoiding the rare plant occurrence near the southern parcel boundary. Similarly, an alternative driveway alignment could potentially minimize impacts to wetlands and Northern Bishop Pine Forest, by siting the driveway entrance on the portion of the northern parcel that is outside of mapped wetland areas. Additionally, while the County approval eliminated the proposed guest cottage, the overall development footprint could be further reduced by (a) siting the house closer to the highway to reduce the length of driveway that impacts sensitive habitat communities, and (b) by attaching the currently detached two-car garage to the residence. It is also unclear how the biologist concluded that siting the home within maritime chaparral that occurs on less than $\frac{1}{4}$ of the property was less environmentally damaging than siting the development within the Northern Bishop Pine Forest that occurs on more than $\frac{3}{4}$ of the property and that will be impacted by the driveway construction. The Site Habitat Map and Residence Site Plans also depict an "open grassy area" adjacent to the mapped "thick understory area." In its approved configuration, the driveway will eliminate a portion of the thick understory area. It is not clear why the residential development was not sited within the open grassy area and within a portion of the thick understory area that will be cleared for the driveway. Therefore, the County findings fail to address how the approved development located farther from the road is the least environmentally damaging alternative, inconsistent with LUP Policies 3.1-4 and 3.1-7, and CZC Sections

20.496.020(A)(4), 20.496.025(B)(1), and 20.532.100. Because the County relied on the consulting botanist's recommendations that lack key factual information such as the depiction of all rare plant occurrences and riparian features, there is insufficient basis to establish that the approved development is the least environmentally damaging alternative.

Furthermore, the County has included requirements for mitigating direct impacts to wetlands (2:1) and to the removed bishop pine trees (4:1), but because the entire site is ESHA, it is not clear where and how the mitigation can be provided without adversely affecting existing ESHA. The County did not identify whether a feasible mitigation site exists prior to permit approval. 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.

While the County has indicated that development must occur within ESHA and ESHA buffer, inconsistent with the ESHA protection policies of the LCP to avoid a taking of private property, the County must still comply with the requirements of the LCP to the maximum extent possible. Any approved development must avoid, to the maximum extent feasible, the significant disruption of habitat values at the site to ensure the ESHA resources will not be significantly degraded by the proposed development as required by CZC Section 20.532.100(A)(1)(a). To achieve consistency with the LCP's ESHA policies in light of constitutional takings issues, the project must be mitigated to the maximum extent feasible to best avoid the significant disruption to sensitive habitat that would accompany any development of this property.

CONCLUSION:

The approved 2,688-square-foot residence with 567-square-foot detached garage and approximately 565-square-foot driveway are not allowable uses in ESHA. While the County indicated that approval is necessary to avoid a constitutional takings, the County failed to demonstrate how the approved development sited near the edge of the coastal bluff and with reliance on a driveway that impacts wetlands and Northern Bishop pine forest would be the least environmentally damaging, most feasible alternative. Additionally, the County approval did not include identification of a feasible site to mitigate for impacts to ESHAs. Therefore, the project as approved is inconsistent with the LCP policies regarding the protection of ESHAs, including but not limited to LUP Policies 3.1-4 and 3.1-7, and CZC Sections 20.496, and 20.532.100(A)(1).