



## MEMORANDUM

DATE: AUGUST 24, 2023  
TO: COASTAL PERMIT ADMINISTRATOR  
FROM: LIAM CROWLEY, PLANNING STAFF  
SUBJECT: CDP\_2022-0018 (MCNABB) CLARIFICATIONS

As noted on Page CPA-3 of the staff report, comments were received from the Environmental Health Division on August 5, 2022, noting that the Division could not 'clear' the Coastal Development Permit until a Qualified Site Evaluator had submitted an acceptable septic permit application. The applicant subsequently endeavored to design a new septic system for the proposed reconstructed single-family residence. As noted on Page CPA-8, a septic system application was submitted and cleared by the Environmental Health Division. However, this new septic system was not subsequently included in the project description within the staff report, nor was it explicitly analyzed with regard to Environmentally Sensitive Habitat Areas (ESHA) and the Takings Analysis. Therefore, staff offers this memorandum to clarify the project description, Takings Analysis, ESHA discussion, findings, and conditions of approval considering the newly designed septic system.

**Project Description:** On Page CPA-1, the project description would be amended as follows:

*"The project involves application for a Standard Coastal Development Permit to legalize after-the-fact demolition of an existing 1,366 square foot residence and permit construction of new residence in the same location. An electrical power pole would also be installed. The applicant previously demolished three walls of an existing single-family residence on the project site, leaving one standing wall and a perimeter foundation. The project would make use of the existing foundation for the new residence. The residence would be 18 feet in height. No additional landscaped area is proposed. Electric service exists to the parcel via Pacific Gas & Electric. No use of natural gas is proposed. The project would include exterior lighting, including front porch lights at the front door and a light at the back of the house at the covered porch area. The project would use an existing well ~~and septic system~~. **A new septic system would be installed per Septic Permit SP24077.** No grading or road construction is planned. No vegetation removal is planned."*

**Takings Analysis:** As shown on the attached Septic System Site Maps and Rare Plant and ESHA Areas Map, several elements of the septic system would be located within the identified Wetland ESHA and/or within the buffer areas for either the *Hosackia gracilis* or *Hesperocyparis pygmaea* individuals. Because the septic system is associated with the proposed residential development, which is not a permitted use within Wetland ESHA, the proposed septic system would be inconsistent with the LCP, and the finding contained in Section 20.532.095(A)(1) cannot be made. Therefore, the proposed septic system must also be analyzed to determine if denial would result in a taking. The proposed septic system is inherently tied to the rest of the proposed development because it is required by the Environmental Health Division and Coastal Element Policy 3.9-1 to support the residence. As such, staff finds that the same reasonable investment-backed expectation to demolish and reconstruct a single-family residence applies to the development of a septic system which supports the new residence. Because the proposed residence has been determined to be of appropriate size when compared to nearby development, the appurtenant 2-bedroom septic system is similarly appropriate. Each of the surrounding properties analyzed within the staff report were approved under a Coastal Development Permit, and each had associated septic systems which must have been determined to be adequate to support their respective development under Coastal Element Policy 3.9-1. The LCP wetland regulations interfere completely with development of a septic system because residential development is not permitted in a wetland and the entirety of the parcel was determined to be a Wetland ESHA. Denial of the project, including the proposed septic system, would appear to deprive the owner of all economically viable use of their property for the same reasons explained in the staff report.

**Environmentally Sensitive Habitat Areas:** As shown on the attached maps, several elements of the septic system would be located within the identified Wetland ESHA and/or within the buffer areas for either the *Hosackia gracilis* or *Hesperocyparis pygmaea* individuals. With regard to the Wetland ESHA, there is no feasible less environmentally damaging alternative for the septic system. A septic system supporting the proposed residence must be approved to avoid a taking. As the entirety of the parcel has been determined to be a Wetland ESHA, there is no other area to place the septic tank, leach fields, or other elements of the system without encroaching upon the Wetland ESHA. With regard to the rare plant ESHAs, there is no less feasible environmentally damaging alternative because the location of the septic system is constrained by regulatory buffers, existing structures, shape, and size of the parcel. As shown on the attached maps, the proposed sewage line and septic tank are located outside of the 50-foot rare plant ESHA buffers. The proposed transport line and leach fields would be located within the 50-foot buffers. However, any other orientation or site of the transport line and leach fields would either be located within the 50-foot buffers or would not meet Environmental Health's requirement that the leach field maintain a 100-foot setback from the well.

The proposed septic system may result in the removal of wetland vegetation. To adopt all feasible mitigation measures capable of reducing this, staff recommends an additional condition of approval. As the potential impacts to the wetland would occur only from temporary construction over an area of less than 0.25 acres, a restoration plan with a mitigation ratio of 1:1 would be appropriate if wetland vegetation does not recover to comparable size/age class within 12 months from initial disturbance. This would ensure compliance with the LCP to the extent feasible even though the proposed septic system must be approved to avoid a taking regardless of its LCP inconsistencies.

**Mitigated Negative Declaration:** Potentially significant impacts to the wetland due to development, including the potential removal of wetland vegetation, were previously identified within the Mitigated Negative Declaration associated with this project. However, when considering the proposed septic system, Mitigation Measure BIO-1 would not be feasible to fully reduce potential impacts to wetland vegetation. Therefore, staff recommends the substitution of Mitigation Measure BIO-1 with a new, more effective Mitigation Measure which would provide for restoration of the wetland vegetation lost due to development if it does not regenerate within 12 months of the initial disturbance. CEQA Guidelines Section 15074.1 notes that a Mitigated Negative Declaration need not be recirculated where Mitigation Measures are substituted with equivalent or more effective measures, a public hearing is held, and the lead agency adopts a written finding that the new measure is equivalent or more effective and will not cause any potentially significant effects itself. Therefore, staff recommends that the Coastal Permit Administrator adopt additional Finding #10 below and that Mitigation Measure BIO-1 within the Mitigated Negative Declaration be substituted with the following measure to be adopted as conditions of approval:

**BIO-1 (substituted): The applicant shall comply with all recommendations outlined in the 'Biological Resources Assessment and ESHA Analysis' prepared in association with the project, including required buffers, insect nest avoidance, and avoidance of wetland vegetation removal described below. In addition, the applicant shall comply with Wetland Restoration Procedures as outlined below:**

- **Only work within the existing footprint of the house site shall be conducted. To the extent feasible, the stilts and perimeter foundation shall be kept in place and the wetland plants within the existing perimeter foundation shall not be removed or disturbed.**
- **If wetland vegetation does not recover to a comparable size/age class within 12 months of initial disturbance due to septic system development, the applicant shall prepare a Wetland Restoration Plan to allow for wetland vegetation to be replaced at a minimum ratio of 1:1. The Wetland Restoration Plan shall be submitted, reviewed, and approved in accordance with the procedures outlined in Mendocino County Code Section 20.532.065.**

The proposed amendments to the findings, conditions of approval, and mitigation measure BIO-1 would not significantly alter the Mitigated Negative Declaration or the findings contained therein. No additional potential impacts have been identified that were not previously addressed in the Mitigated Negative Declaration, and the proposed substitution of Mitigation Measure BIO-1 would serve to provide an equivalent or more effective Mitigation Measure in accordance with CEQA Guidelines Section 15074.1

**Findings:** Based on the discussion above, staff recommends that Finding number 7 & 8 within the staff report be amended, and that a new finding be adopted as follows:

7. Pursuant to MCC Section 20.532.100(A)(1)(a), the resource (wetland) as identified will not be significantly degraded by the proposed development ~~development~~ **residence**. Use of the existing foundation would not significantly disturb wetland plants, thus protecting the functionality of the wetland. **The wetland may be significantly degraded by installation of the septic system, including removal of wetland plants due to trenching and leach field installation. However, based on the evidence in the record, the size and location of the proposed septic system is necessary to support the proposed residence and must be approved to avoid a possible taking.** Nevertheless, mitigation measures have been included as conditions of approval to protect the resource to the extent feasible; and

8. Pursuant to MCC Section 20.532.100(A)(1)(b), there is no feasible less environmentally damaging alternative. The only less environmentally damaging alternative would be to deny the project, but this would constitute a regulatory taking. Thus, the proposed project is the least environmentally damaging alternative because a different size or location for the residence would require some fill of the wetland. Use of the existing foundation would allow the project not to fill the wetland any further. In addition, the size of the proposed septic system is necessary to support the proposed residence. An alternative location for the proposed septic system would either not be allowable due to Environmental Health setback regulations or would result in direct impact to the identified rare plant ESHA. The septic system would be located within the Wetland ESHA regardless of where it is placed; and

10. In accordance with CEQA Guidelines Section 15074.1, Mitigation Measure BIO-1 within the Mitigated Negative Declaration has been substituted with a more effective Mitigation Measure that would require restoration of wetland vegetation beyond what was previously recommended (should wetland vegetation not regenerate). This substituted Mitigation Measure would not cause potentially significant effects on the environment because it would serve to restore the natural environment (wetland) to its original functional capacity. The substitution of this Mitigation Measure would not substantially alter the existing Mitigated Negative Declaration or the findings contained therein. No additional impacts have been identified that were not previously addressed in the Mitigated Negative Declaration.

**Conditions of Approval:** In order to allow some leach field development to occur within the rare plant ESHA buffer and minimize the impact of septic system development on Wetland ESHA, staff recommends the following:

Condition #10 would be amended as follows:

10. *\*\*The applicant shall follow the recommendations outlined in the 'Biological Resources Assessment and ESHA Analysis' prepared in association with the project and the following conditions derived from the report:*

- a. A 50-foot buffer shall be maintained between the project site, including construction activities, and the two (2) populations of *Hosackia gracilis* (harlequin lotus) as shown on Map #9 of the 'Biological Resources Assessment and ESHA Analysis', except that leach fields may be constructed in the location depicted on the site plan for septic permit SP24077.
- b. A 100-foot buffer shall be maintained between the project site, including construction activities, and the two (2) *Hesperocyparis pygmaea* (pygmy cypress) trees as shown on Map #9 the 'Biological Resources Assessment and ESHA Analysis', except that leach fields may be constructed in the location depicted on the site plan for septic permit SP24077.
- c. To the maximum extent feasible, only work within the existing footprint of the house site shall be conducted, the stilts and perimeter foundation shall be used, and the wetland plants within the existing perimeter foundation shall not be removed or disturbed.
- d. If any special-status insect nests are observed during construction, the nests shall not be removed, relocated, or otherwise disturbed until the nest becomes inactive.

To ensure that Mitigation Measure BIO-1 is fully adopted, an additional condition of approval would be added as follows:

16. *\*\*If wetland vegetation does not recover to a comparable size/age class within 12 months of initial disturbance due to septic system development, the applicant shall prepare a Wetland Restoration Plan to allow for wetland vegetation to be replaced at a minimum ratio of 1:1. The Wetland Restoration Plan shall be submitted, reviewed, and approved in accordance with the procedures outlined in Mendocino County Code Section 20.532.065.*

**Recommendation:** Staff recommends that the Coastal Permit Administrator adopt the Mitigated Negative Declaration and approve CDP\_2022-0018 based on the amended facts and findings in the record, including the staff report and this memorandum, subject to the amended conditions of approval within the staff report and this memorandum.

ATTACHMENTS:

- A. Septic System Site Maps
- B. Rare Plan and ESHA Areas Map

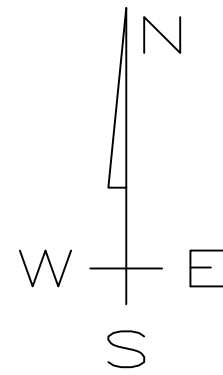


SITE PLAN

SCALE 1"=50'

NOTES:

1. LEACH LINES SHALL FOLLOW EXISTING CONTOURS, HAVE A LEVEL BOTTOM & BE OF UNIFORM DEPTH.
2. LEACH LINES SHALL BE CONSTRUCTED IN THE LOCATION SHOWN ON THE LEACH FIELD SITE MAP. IF ANY DEVIATION IN THE LOCATION IS MADE WITHOUT WRITTEN CONFIRMATION FROM ENGINEER, ENGINEER WILL NOT BE RESPONSIBLE FOR FUNCTIONAL DEFECTS.
3. CONSTRUCTION OF THE LEACH FIELD SYSTEM SHOULD BE DURING DRY WEATHER. THE RAINY SEASON SHALL BE AVOIDED. WORK MAY BE PERFORMED NO EARLIER THAN MAY 1 AND NO LATER IN THE YEAR THAN NOVEMBER 1 WITHOUT WRITTEN APPROVAL FROM THE MENDOCINO COUNTY DEH.
4. THE PROPOSED HOUSE SITE IS SELECTED BY THE OWNER. NO SOILS ENGINEERING HAS BEEN DONE FOR THE HOUSE SITE. NO RECOMMENDATION OR APPROVAL BY THE OFFICE OF MUNSALLE CIVIL ENGINEERING SHALL BE IMPLIED BY REASON OF THIS MAP.
5. MCE HAS NOT SURVEYED PROPERTY LINES. OWNER SHALL INDICATE TO CONSTRUCTION CONTRACTOR THE LOCATION OF PROPERTY BOUNDARY PRIOR TO INSTALLATION OF SYSTEM.
6. COVER SOIL OVER HIGH LINE SYSTEM SHALL HAVE A GRANULAR CONSISTENCY FALLING INTO ZONE 2C OR BETTER AND HAVE NO MORE THAN 50% COARSE PARTICLES.



MUNSALLE CIVIL ENGINEERING  
 CIVIL ENGINEERING & SURVEYING  
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 UKIAH, CA 95482  
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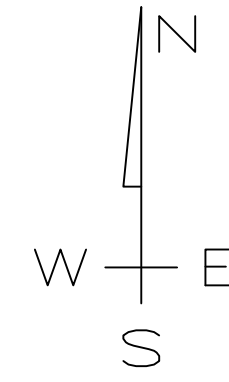


OVERALL SITE MAP  
 ERIN MCNABB  
 32601 ALBION RIDGE RD  
 ALBION, CA

DATE:  
 MAY 2023

JOB NO.  
 40-23

SHEET 1 OF 3



SCALE: 1" = 40'



(GRAPHIC SCALE IN FEET)



MUNSELLE CIVIL ENGINEERING  
◆ CIVIL ENGINEERING ◆ SURVEYING ◆  
◆ LAND PLANNING SERVICES ◆  
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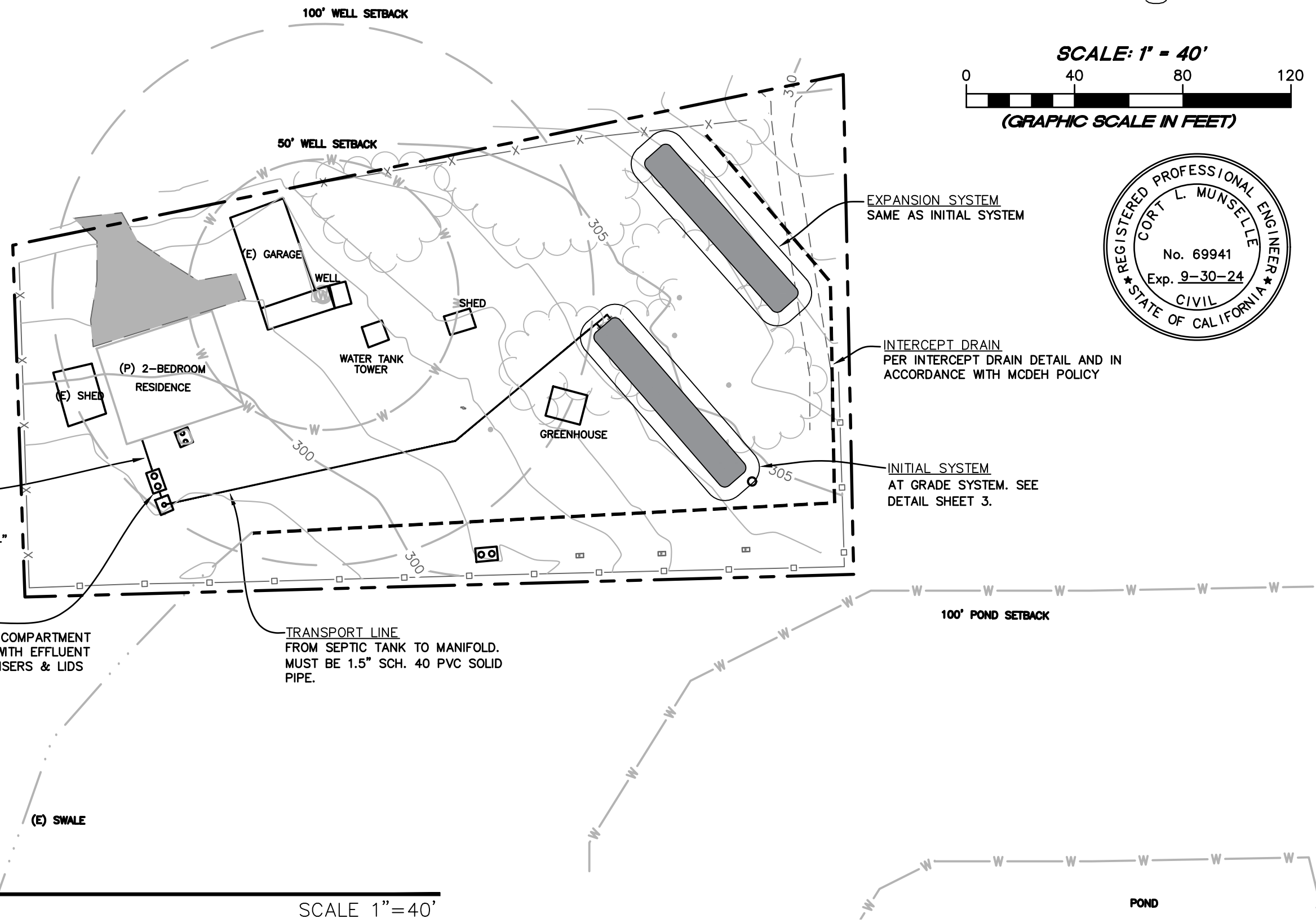


**DETAILED SITE MAP**  
**ERIN MCNABB**  
**32601 ALBION RIDGE RD.**  
**ALBION, CA**

DATE:  
MAY 2023

JOB NO.  
40-23

SHEET 2 OF 3



SEWAGE LINE  
FROM HOUSE TO SEPTIC TANK.  
MUST BE 3" or 4" SCH. 40 ABS.  
MIN. FALL OF NO LESS THAN 1/4"  
PER FOOT.

SEPTIC TANK  
1500-GALLON, 2-COMPARTMENT  
CONCRETE TANK WITH EFFLUENT  
FILTER, ACCESS RISERS & LIDS

TRANSPORT LINE  
FROM SEPTIC TANK TO MANIFOLD.  
MUST BE 1.5" SCH. 40 PVC SOLID  
PIPE.

EXPANSION SYSTEM  
SAME AS INITIAL SYSTEM

INTERCEPT DRAIN  
PER INTERCEPT DRAIN DETAIL AND IN  
ACCORDANCE WITH MCDEH POLICY

INITIAL SYSTEM  
AT GRADE SYSTEM. SEE  
DETAIL SHEET 3.

100' POND SETBACK

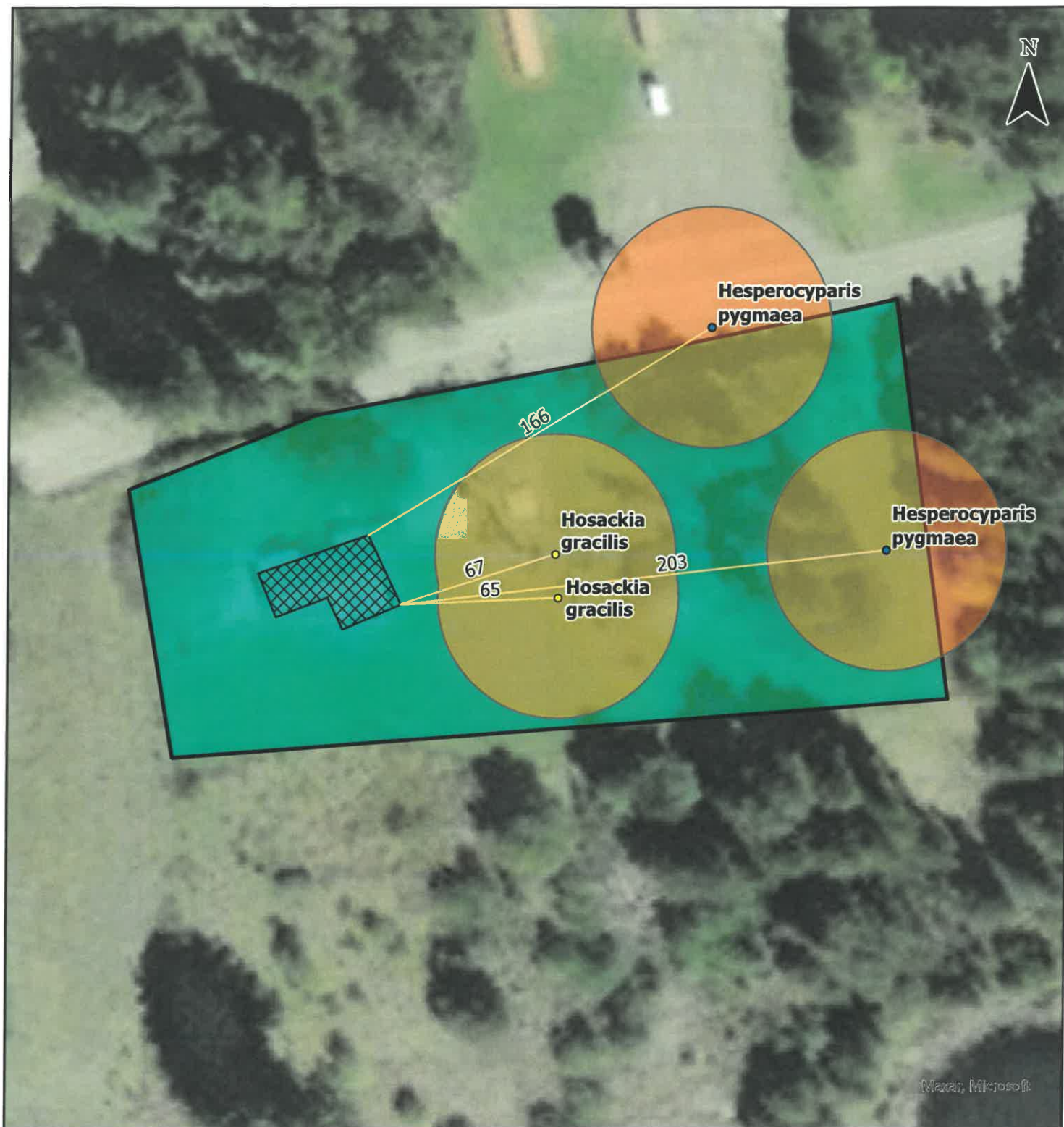
100' WELL SETBACK

50' WELL SETBACK

(E) SWALE

SITE PLAN

SCALE 1"=40'



**McNabb Biological Resource Assessment:  
Rare Plant and ESHA Areas**

Applicant: Erin McNabb  
 Site Address: 32601 Albion Ridge Road, Albion, CA  
 APN(s): 123-210-07  
 Parcel Area Acreage: 1.08  
 Section 27, T16N, R17W, MDBM  
 Elk USGS 7.5 Minute Quadrangle



- Project Area
- Parcel Boundary
- Wetland - ESHA
- Hosackia gracilis*
- Hesperocyparis pygmaea*
- 50ft Buffer
- Distance from Project Area (ft)