

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
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Th5b

DATE: July 23, 2009

TO: Coastal Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Robert Merrill, North Coast District Manager

SUBJECT: **Appeal No. A-1-MEN-09-029 (Mendocino Land Trust, Sandra J. Babcock Trust, CDB #40-2009)**, Along the south side of Highway 20 and across Highway One to the beach at 32961 CR#447A, 1/2 mile south of Fort Bragg, Mendocino County. Filed June 11, 2009.

Recommendation: Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal A-1-MEN-09-029 was filed. **Staff recommends a YES vote on the following motion & resolution:**

***Motion & Resolution.** I move that the Commission determine and resolve that: Appeal Number A-1-MEN-09-029 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.*

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the following findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Findings: On May 14, 2009, the Mendocino County Coastal Permit Administrator approved a coastal development boundary line adjustment to transfer approximately 9 acres from a 14.8-acre parcel (Parcel 2) to a 3.2-acre parcel (Parcel 1) creating adjusted parcels of 5.8+- (Parcel 2) and 12.1+- acres (Parcel 1), at 1/2 mile south of Fort Bragg, along the south side of Highway 20 and across Highway 1 to the beach, at 32961 CR#447A, Mendocino County (see Exhibits 1-4). The adjustment would allow for the conveyance of the 5.8 acres lying west of Highway One to the Mendocino Land Trust with funding from the Coastal Conservancy for future public use. Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because a lot line adjustment is a development that is not listed in the certified LCP as the principal

permitted use in the zoning district where the development is located and portions of the development are located between the sea and the first public road paralleling the sea, within three hundred feet of the inland extent of a beach, and within one hundred feet of a wetland or stream.

Appellant Robert Calvert (see Exhibit 7) claims that the boundary line adjustment is inconsistent with the LCP because the development will lead to greater future public use of the adjusted parcel west of Highway One that will (1) destroy environmentally sensitive native plant, salmon, riparian, and beach habitat, and (2) pollute the environment with trash and human waste from public access users. The Appellant claims that these impacts of future use of the adjusted parcel have not been adequately addressed by environmental studies.

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.¹ Commission staff has analyzed the County's Final Local Action Notice for the development (Exhibit 8), appellant's claims (Exhibit 7), and the relevant requirements of the LCP (Attachment A). As discussed below, the appeal raises no substantial issue with respect to the LCP.

The appellant raises concerns about the impacts of potential future development rather than the development approved by the County's action on CBD #40-2009. The permit approved by the County only authorizes a boundary line adjustment. The local record indicates the boundary line adjustment will facilitate purchase of the westerly parcel by the Mendocino Land Trust, but the approved permit does not authorize the development of any trail improvements or the establishment of any specific public access uses. Future development of any trail improvements or opening up the property to additional public access use would require additional coastal development permit authorization. Indeed, the letter from the Mendocino Land Trust dated July 2, 2009 and attached as Exhibit No. 9 indicates that the issues raised in the current appeal will be addressed during future coastal development permit processing for construction of access improvements. The County, or the Commission on appeal, would have the opportunity to review the impacts of such development on coastal resources and the consistency of the development with the policies of the certified LCP and the public access policies of the Coastal Act when it reviews a future permit application for such development. Special Condition No. 9 of the County's approval requires recordation of a deed restriction that limits use of the westerly parcel to public access, habitat conservation, and open space. In limiting the possible uses of the site, however, the special condition does not authorize any particular development

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

or use. If a future coastal development permit application for additional public access trail facilities were found to be inconsistent with the certified LCP or public access policies of the Coastal Act, the permit could be denied or conditioned to address the concerns. If public access uses were determined to not be appropriate, the parcel could still be used by the Land Trust for conservation and open space purposes consistent with the deed restriction required by Special Condition No. 9 of the current County approval.

With regard to the possible future use of the westerly parcel for public access use, the Commission notes that the westerly parcel as adjusted is a location where the certified LCP calls for the provision of public access improvements. The certified LUP map for the area shows the route of an existing public access trail to Hare Creek Beach that extends from Shoreview Lane to the beach along the southwesterly side of the westerly parcel as adjusted. In addition, the certified LUP designates a proposed accessway extending from the Highway One Hare Creek Bridge along the north side of Hare Creek to the beach through the property. LUP Policy 4.4.12 states:

Public access to Hare Creek beach shall be an important feature of the local coastal plan in this area which is subject to rapidly increasing urbanization. A proposed shoreline access trail to Hare Creek beach is indicated on the land use map...Access beyond the college property to Hare Creek beach shall be required as a condition of approval for any future development...As an alternative to this proposal, the purchase and management by a responsible public agency of a shoreline access trail extending from the north side of Hare Creek in the vicinity of Bay View Avenue (County Road 439A) to Hare Creek beach is recommended by the plan. (emphasis added)

The only specific concern raised by the appellant about the approved boundary line adjustment itself is a statement in an email included as Attachment 1 of the appeal (See Exhibit 7) that “creating a new parcel consisting entirely of an Environmentally Sensitive Habitat Area, without any Habitat studies, is circumventing the intent of the law, and the EIR process.” The westerly parcel as adjusted would consist mostly of environmentally sensitive habitat, including dune, riparian, and rare plant habitat. Developing a residence on the parcel as adjusted, the principally permitted use under the Rural Residential zoning for the parcel, would be problematic as there appears to be very little non-ESHA area on the parcel where a home could be developed and still provide the minimum 100-foot buffer required by LUP Policy 3.1-7. However, as noted above, Special Condition No. 9 of the County’s approval requires recordation of a deed restriction that limits use of the westerly parcel to public access, habitat conservation, and open space. Therefore, residential use of the property would be precluded under the permit as approved by the County, and only the ESHA resource dependent uses of public access, conservation, and open space habitat would be allowed on the adjusted parcel. Therefore, the Commission finds that the appellant’s contention does not raise a substantial issue of conformance of the approved development with the ESHA protection policies of the LCP.

The County has provided factual and legal support for its decision (Exhibit 8). The scope of the development approved by the County is limited because although the boundary line adjustment will facilitate purchase of the westerly parcel by the Mendocino Land Trust, the approved permit does not authorize the development of trail improvements and the County's approval limits use of the westerly parcel to habitat conservation, public access, and open space. In addition, no adverse precedent will be set by approval of the project for future interpretations of the LCP.

For the reasons stated above, the Commission finds that Appeal Number A-1-MEN-09-029 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 of the approved development with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

ATTACHMENT A

LCP POLICIES AND STANDARDS

I. Public Access Policies

a. Coastal Act Access Policies

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the certified LCP. Coastal Act Sections 30210, 30211, 30212, and 30214 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 states:

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

[Emphasis added.]

Section 30211 states:

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

Section 30212 states, in applicable part:

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

Section 30214 states:

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

b. LCP Provisions

LUP Policy 3.6-5 states:

Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a non-profit land trust may be helpful and should be explored in the future. If other methods of obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking areas, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued. [Emphasis added.]

LUP Policy 3.6-24 states:

Public access policies shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- *topographic and geologic site characteristics;*
- *capacity of the site to sustain use and at what level of intensity;*
- *fragility of natural resource areas and proximity to residential uses;*
- *need to provide for management of the access;*
- *balance between the rights of individual property owners and the public's constitutional rights of access. [Emphasis added.]*

Section 4.4-12 of the LUP's Coastal Access Inventory states:

Hare Creek

Within the Fort Bragg to Hare Creek Planning Area, Ocean View Drive, North Harbor Drive and South Harbor Drive are shown on the Land Use Maps as existing shoreline access.

Location: West of Highway 1 Bridge, south of Highway 20.

Ownership: Private.

Existing Development: Sandy beach currently reached by path adjoining Bellow-Seacrest Subdivision on south side. Prescriptive rights may exist. Recorded offers

of dedication of lateral access along the south side of Hare Creek by Patterson, Trombetta and Emerson.

Potential Development: Access near Hare Creek Bridge from the north side in conjunction with development of the adjoining parcel to the north.

Policy 4.4.12:

Public access to Hare Creek beach shall be an important feature of the local coastal plan in this area which is subject to rapidly increasing urbanization. A proposed shoreline access trail to Hare Creek beach is indicated on the land use map.

As part of its planned development, the College of the Redwoods shall be required to provide for an internal pedestrian pathway and a public parking area conveniently situated on its property.

Access beyond the college property to Hare Creek beach shall be required as a condition of approval for any future development involving those properties which adjoin the west side of Highway 1 south of Ocean View Drive (County Road 439), and these properties adjoining the north side of Hare Creek and Hare Creek beach. As an alternative to this proposal, the purchase and management by a responsible public agency of a shoreline access trail extending from the north side of Hare Creek in the vicinity of Bay View Avenue (County Road 439A) to Hare Creek beach is recommended by this plan.(emphasis added)

Coastal Zoning Code Section 20.528.010(A) states:

In specified areas identified in Chapter 4 of the Coastal Element or as indicated on land use maps, prior to the issuance of a coastal development permit, an offer to dedicate an easement for public access shall be recorded unless required public access has otherwise been secured as provided herein. [Emphasis added.]

II. ESHA Protection Policies

LUP Policy 3.1-7 in applicable part states:

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 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...²

Section 20.308.040(F) of the Mendocino County Coastal Zoning Code (CZC) defines the term “environmentally sensitive habitat area” as follows:

‘Environmentally Sensitive Habitat Area’ means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities or developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals. [Emphasis added.]

CZC Section 20.496.010 states, in applicable part:

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

CZC Section 20.496.020 states, in applicable part:

(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

² The requirements for establishing buffers adjacent to all ESHAs and the buffer width adequacy standards of Policy 3.1-7 are implemented verbatim through CZC Section 20.496.020.]

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

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

(a) Biological Significance of Adjacent Lands. Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).

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

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

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*

- (iii) *An assessment of the impact and activity levels of the proposed development on the resource.*

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

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

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

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

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

(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the

landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff). [Emphases added.]

III. Land Use Classification and Zoning District

The project site is designated in the certified LUP with the Rural Residential land use classification and Rural Residential Zoning District.

The Rural Residential LUP land use classification is described as follows in the LUP:

Intent: The Rural Residential classification is intended to encourage local small scale food production (farming) in areas which are not well suited for large scale commercial agriculture, defined by present or potential use, location, micro-climate, slope, exposure, etc. The Rural Residential classification is not intended to be a growth area and residences should be located as to create minimal impact on agricultural viability.

Principal Permitted Use: Residential and associated utilities, light agriculture, home occupation.

Conditional Uses: Cottage industry; conservation and development of natural resources, public facilities and utilities determined to be necessary on Rural Residential lands; recreation-education.

The Rural Residential zoning district is described as follows in the Coastal Zoning Ordinance:

Sec. 20.376.005 Intent. This district is intended to encourage and preserve local small scale farming in the Coastal Zone on lands which are not well-suited for large scale commercial agriculture. Residential uses should be located as to create minimal impact on the agricultural viability. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.376.010 Principal Permitted Uses for RR Districts. The following use types are permitted in the Rural Residential District:

(A) Coastal Residential Use Types.

Family Residential: Single-family; Vacation Home Rental.

(B) Coastal Agricultural Use Types.

Light Agriculture; Row and Field Crops; Tree Crops.

(C) Coastal Open Space Use Types.

Passive Recreation. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.376.015 Conditional Uses for RR Districts.

The following are permitted uses upon the issuance of a coastal development use permit:

(A) Coastal Residential Use Types.

Family Residential: Cluster Development (RR:L-10 Districts Only); Mobile Home Park.

(B) Coastal Civic Use Types.

Alternative Energy Facilities: On-site; Alternative Energy Facilities: Off-site; Community Recreation; Day Care Facilities/Small School; Educational Facilities; Group Care; Lodge, Fraternal and Civic Assembly; Major Impact Services and Utilities; Minor Impact Utilities; Religious Assembly.

(C) Coastal Commercial Use Types.

Animal Sales and Services: Horse Stables; Cottage Industries.

(D) Coastal Agricultural Use Types.

Forest Production and Processing: Limited; Forest Production and Processing: Commercial Woodlots; Horticulture; Packing and Processing: Limited.

(E) Coastal Open Space Use Types.

Active Recreation.

(F) Coastal Extractive Use Types.

Mining and Processing.

(G) Coastal Natural Resource Use Types.

Fish and Wildlife Habitat Management; Watershed Management. (Ord. No. 3785 (part), adopted 1991)

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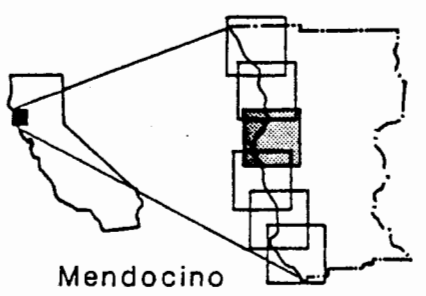
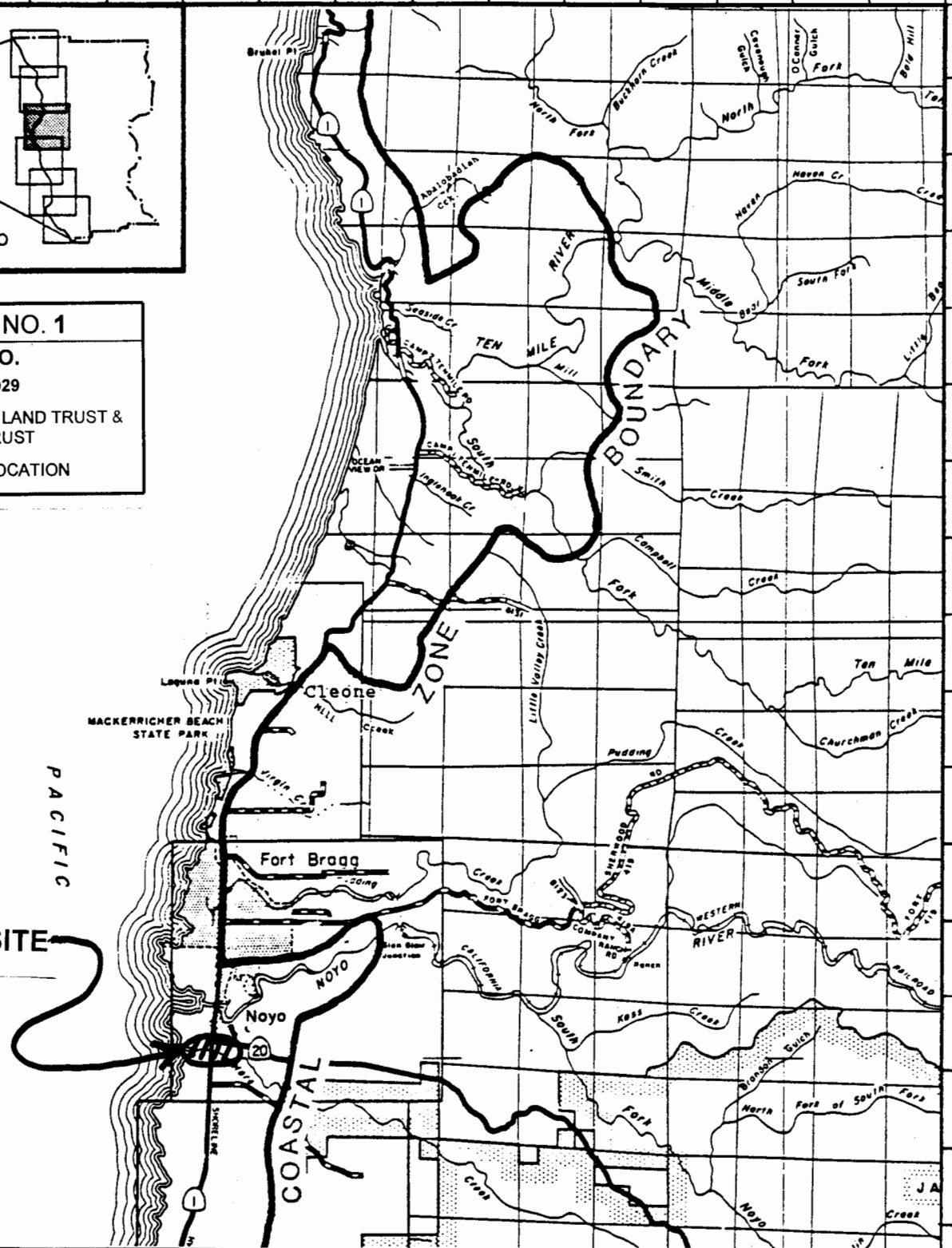
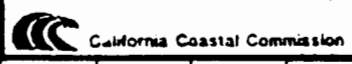


EXHIBIT NO. 1
APPEAL NO.
A-1-MEN-09-029
MENDOCINO LAND TRUST & BABCOCK TRUST
REGIONAL LOCATION

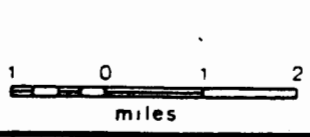


PACIFIC

PROJECT SITE



LOCATION MAP



County of Mendocino

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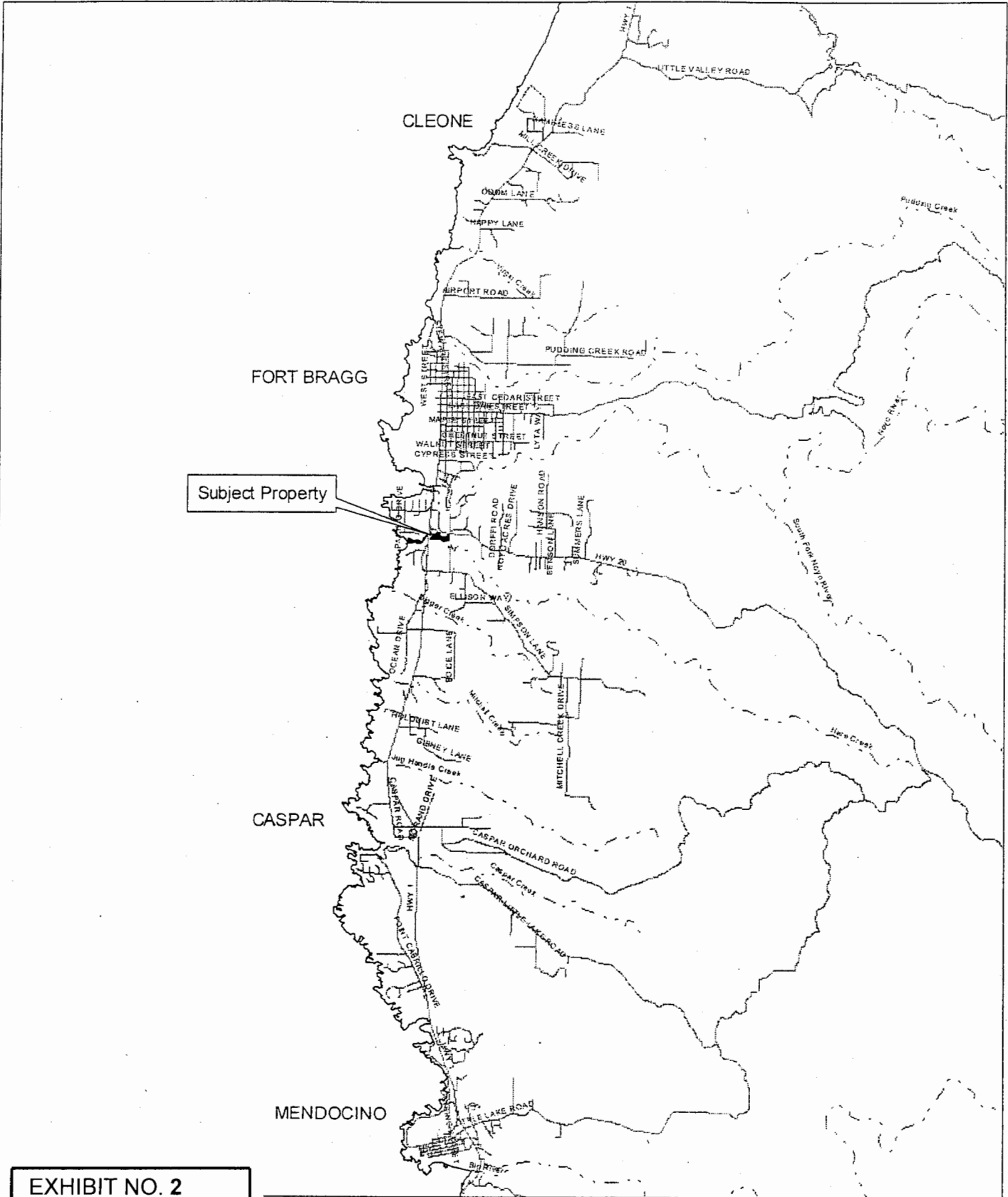
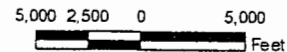


EXHIBIT NO. 2
APPEAL NO.
 A-1-MEN-09-029
 MENDOCINO LAND TRUST &
 BABCOCK TRUST
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are NOT SURVEY LINES, they are for viewing purposes only and should
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LOCATION MAP





Subject Property

EXHIBIT NO. 3
APPEAL NO.
A-1-MEN-09-029
MENDOCINO LAND TRUST &
BABCOCK TRUST
AERIAL PHOTOS (1 of 2)

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70-46 & 018-450-25

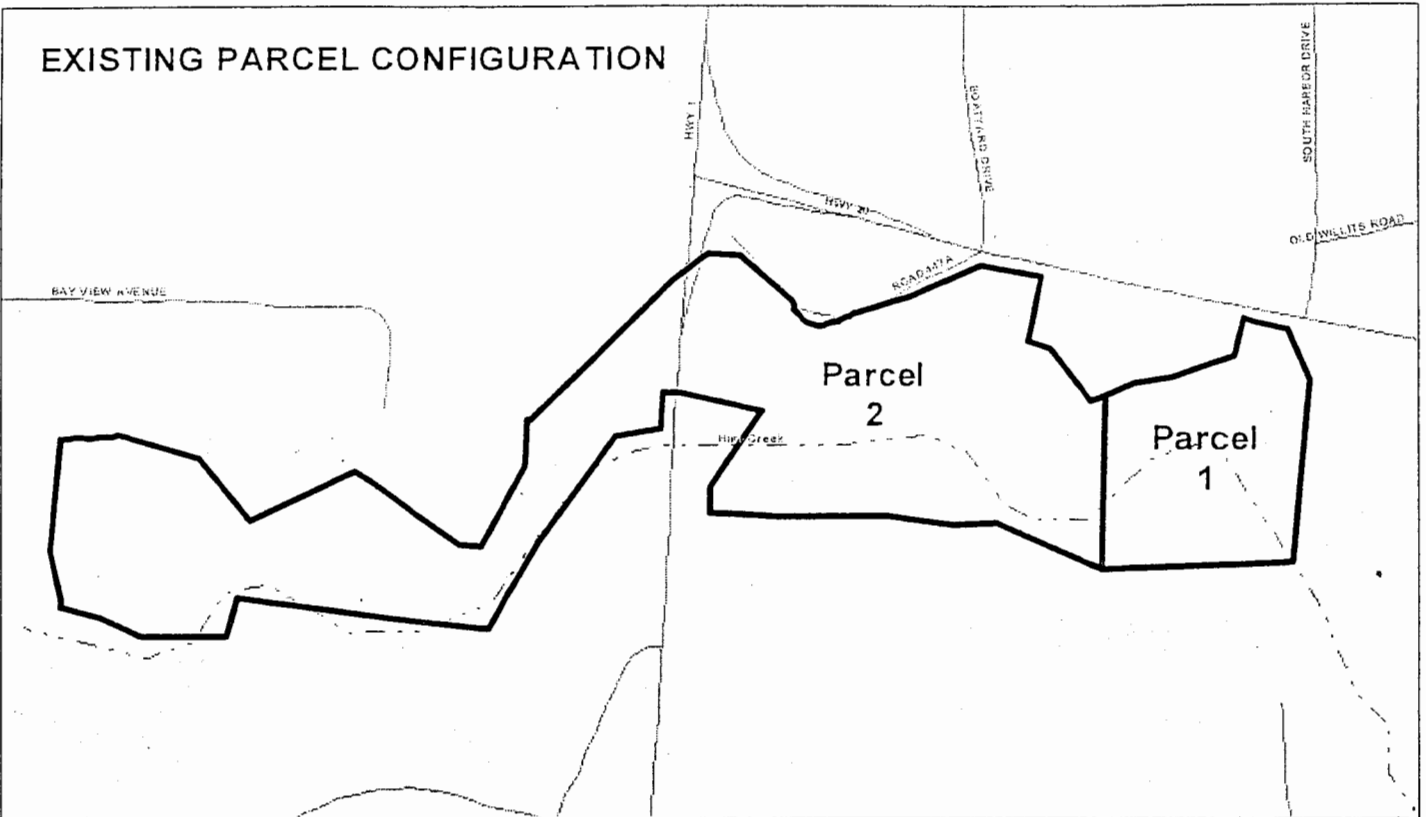
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ORTHOPHOTO - August 2005





EXISTING PARCEL CONFIGURATION



PROPOSED PARCEL CONFIGURATION

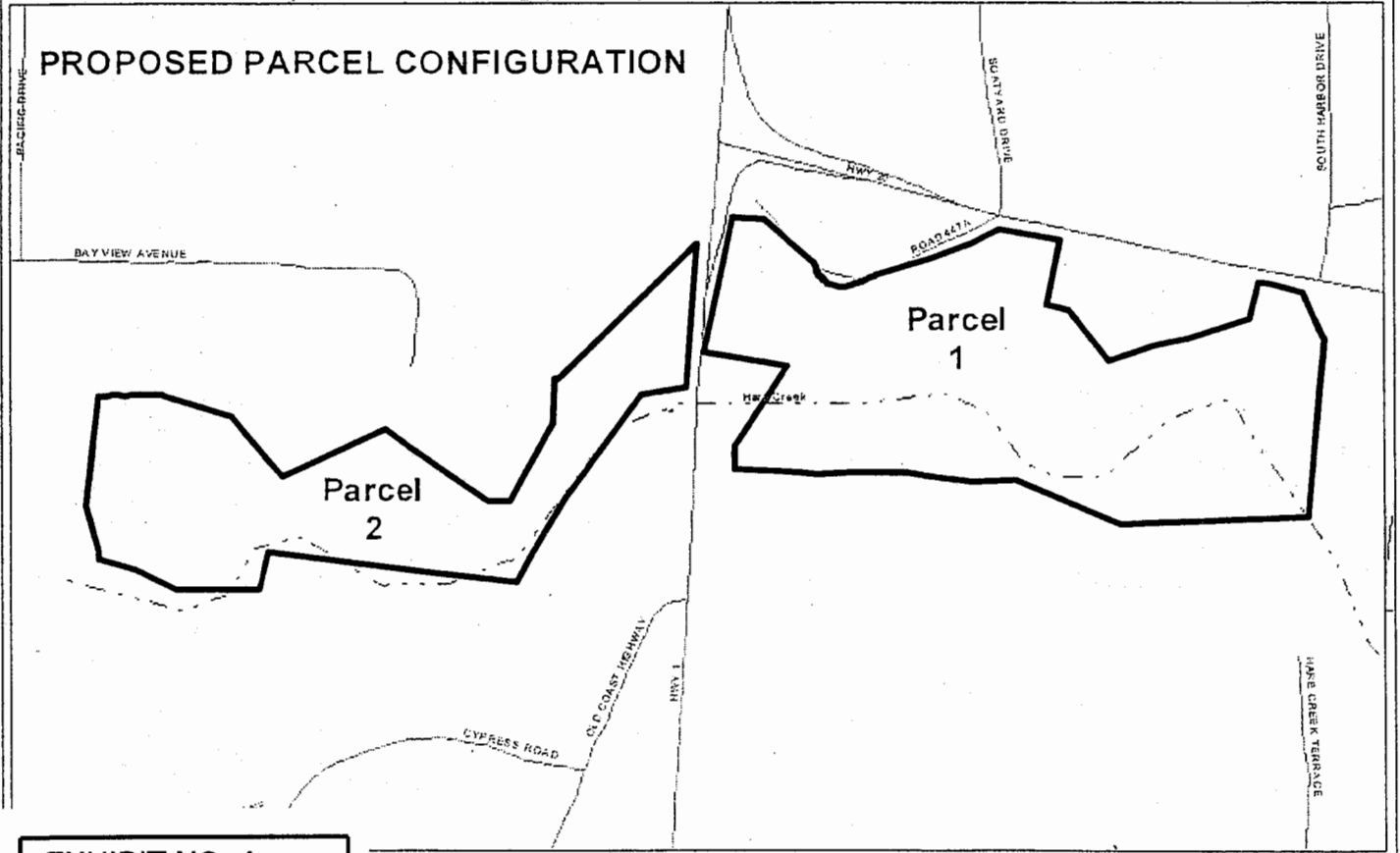
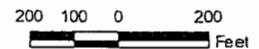


EXHIBIT NO. 4
APEAL NO.
A-1-MEN-09-029
MENDOCINO LAND TRUST &
BABCOCK TRUST
PROPOSED BOUNDARY LINE
ADJUSTMENT

LAND TRUST
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 70-46 & 018-450-25

EXISTING & PROPOSED PARCEL CONFIGURATION

are NOT SURVEY LINES, they are for viewing purposes only and should
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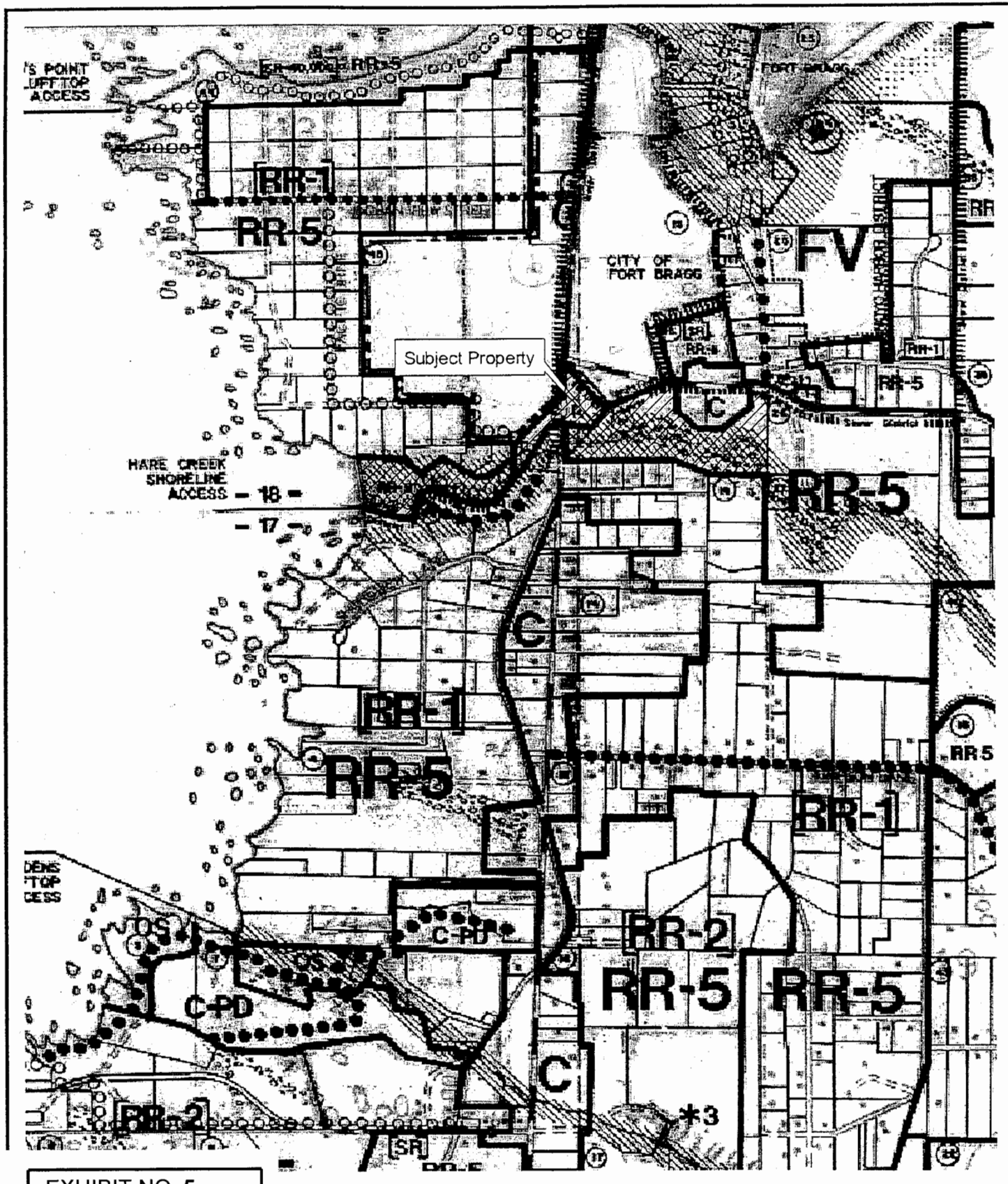



EXHIBIT NO. 5
APPEAL NO.
 A-1-MEN-09-029
 MENDOCINO LAND TRUST &
 BABCOCK TRUST
 COASTAL LAND USE PLAN
 MAP

) TRUST

J-46 & 018-450-25
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COASTAL PLAN LAND USE MAP No. 14

Not To Scale 

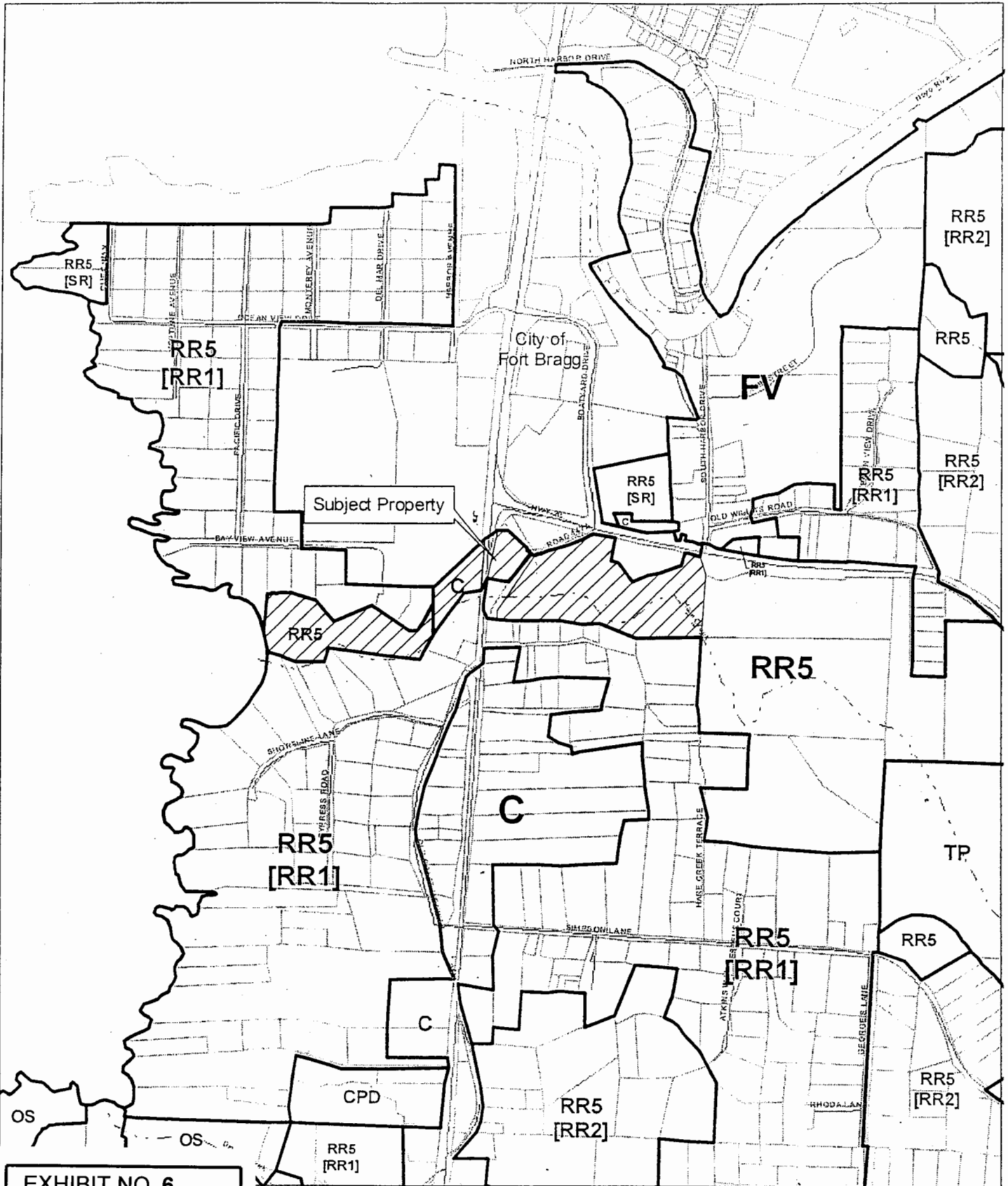


EXHIBIT NO. 6
APPEAL NO.
A-1-MEN-09-029
MENDOCINO LAND TRUST &
BABCOCK TRUST
ZONING MAP

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 70-46 & 018-450-25

ZONING DISPLAY MAP

are NOT SURVEY LINES, they are for viewing purposes only and should
 el line can be over 200 feet off. (Parcel lines are as of September 2007)



STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET, SUITE 200
EUREKA, CA 95501-8013
VOICE (707) 445-7033 FAX (707) 445-7077



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: ROBERT CALVERT
Mailing Address: 4125 KENNETH AVE
City: FAIR OAKS, CA Zip Code: 95628 Phone: 916-966-9267

SECTION II. Decision Being Appealed

RECEIVED

JUN 11 2009

CALIFORNIA
COASTAL COMMISSION

- Name of local/port government: MENDOCINO COUNTY
LOCAL PERMIT # CDB #40-2008
- Brief description of development being appealed:
COSTAL DEVELOPMENT BOUNDRY LINE ADJUSTMENT TO ADJUST APPROX 9.12 ACRES FROM 2 SEPARATE LEGAL PARCELS OF 5.8 ± ACRES AND 12.12 ± ACRES. APPLICATION NO. 1-MEN-09-014
- Development's location (street address, assessor's parcel no., cross street, etc.):
1/2 MILE SOUTH OF FT. BRAGG, ALONG SOUTH SIDE OF HWY 20 AND ACROSS HWY 1 TO THE BEACH, AT 32961 CR #447A, MENDOCINO COUNTY (APN: 018-170-48, 018-170-49, 018-170-33, 018-450-25)
- Description of decision being appealed (check one.):

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

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-09-029
DATE FILED: 6/11/09
DISTRICT: North Coast

EXHIBIT NO. 7

APPEAL NO.
A-1-MEN-09-029
MENDOCINO LAND TRUST &
BABCOCK TRUST
APPEAL (1 of 6)

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: MAY 14, 2009

7. Local government's file number (if any): CDR 40-2008

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:

MENDOCINO LAND TRUST
 P.O. BOX 1094
 MENDOCINO, CA 95460

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) ROBERT & LYNDY CALVERT MAILING ADDRESS:
 31201 BAYVIEW AVE 4125 KENNETH AVE
 FT. BRAGG, CA 95437 FAIR OAKS, CA 95628

(2) LARRY & JUDY HARRINGER
 31191 BAYVIEW AVE
 FT. BRAGG, CA 95437

(3) LARRY & CAROL ZANUTTO
 31325 BAYVIEW AVE
 FT BRAGG, CA 95437

(4) MR & MRS WADDINGTON
 31301 BAYVIEW AVE
 FT. BRAGG, CA 95437

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.

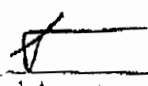
SEE ATTACHED LETTER TO MENDOCINO COUNTY BOARD OF SUPERVISORS AND ZONING ADMINISTRATOR. (ATTACHMENT 1)

1. ENVIRONMENTAL ISSUES (SENSITIVE NATIVE PLANTS & ANIMAL DISRUPTIONS) HAVEN'T BE PROPERLY ADDRESSED - EIR RULES CIRCUMVENTED. HARE CREEK - SALMON HABITATE
2. ADEQUATE TRASH/GARBAGE DISPOSAL ISSUES NOT ADDRESSED.
3. HUMAN WASTE (TOILETS) NOT ADEQUATELY ADDRESS - WE ALREADY ARE DEALING WITH HUMAN WASTE PROBLEMS ON THE BEACH. EASIER ACCESS WITHOUT ADDRESSING THE TOILET ISSUE ONLY EXACERBATES THE PROBLEM.
4. RECOMMEND DISSAPPRVAL UNTIL ALL ISSUES ADEQUATELY ADDRESSED AND RESOLVED.

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

SECTION V. Certification

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

Signature on File 
Signature of Appellant(s) or Authorized Agent

Date: 6-10-09

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

RCalvert

From: RCalvert [rcalvert@l-t-c.com]
Sent: Tuesday, May 12, 2009 6:47 PM
To: LTC Corporation
Subject: FW: #CDB 40-2008 Board meeting of May 14, 2009

ATTACHMENT 1
(2 PAGES)

-----Original Message-----

From: RCalvert [mailto:rcalvert@l-t-c.com]
Sent: Tuesday, May 12, 2009 3:20 PM
To: 'spadet@co.mendocino.ca.us'
Subject: #CDB 40-2008 Board meeting of May 14, 2009

Subject: #CDB 40-2008 Board meeting of May 14, 2009

Theresa,

This application sites several codes sections which state the beach should be open to the public for use. The beach at Hare Creek is open to the public and the current use is heavy for this small beach. In this application there were no study conducted to ascertain what affect additional public usage of the beach would have upon the sensitive creek area, and wild life habitat. The application mentions opening the access to the public without any study of the affect additional access would have on the habitat or how the trust will maintain the beach-river habitat, or any mention of developmental plans for the new access and how it would tie into the parcel. It all sounds good at first glance, "open the parcel to the Public", but there is no consideration to the environment and the sensitive nature of the Habitat Area. Opening the beach for further use by the public will destroy the native plants and ruin a natural resource that many people now enjoy. Creating a new parcel consisting entirely of an Environmentally Sensitive Habitat Area, without any Habitat studies, is circumventing the intent of the law, and the EIR process. **Prior to allowing this parcel line adjustment, a full Environmental - native plant/habitat study should be performed and all issues addressed.** This applications future intent is to open this beach further for heavier public access. Currently the beach is accessed from a trail on the south side located in a residential neighborhood - the trail may already have prescriptive rights. The Hare Creek beach is used frequently by surfers, divers and families. Occasionally, there are also unauthorized campers at the beach. The beach currently has no facilities, fresh water, bathrooms or trash pickup. And the neighbors that live around the beach are left with taking care of the beach, trash, camper's debris. It is also my understanding that there will not be restroom facilities brought to the beach because the area is located in a flood zone (**and we are already dealing with people's excrement at various places around the beach**), and there is no access for servicing of any maintenance facilities. It appears to allow a Lot line adjustment, and to create a parcel that is entirely located within a

Sensitive Habitat should address the affects upon the habitat an additional access for public would create. It confounds me to see the application being promoted as good for the public, when there is no consideration what is good for the environment and how this will all fit together without any studies performed.

I would appreciate my comments being submitted to the board and read at the meeting. We own property that is adjacent to the application located on the south west of this parcel. Please forward this e-mail for comments at the meeting.

If there are any questions I can be reached at (916) 966-9267. Lynda and Robert Calvert



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
501 LOW GAP ROAD · ROOM 1440 · UKIAH · CALIFORNIA · 95482

IGNACIO GONZALEZ, DIRECTOR
Telephone 707-463-4281
FAX 707-463-5709
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

May 25, 2009

RECEIVED
MAY 29 2008
CALIFORNIA
COASTAL COMMISSION

NOTICE OF FINAL ACTION

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

CASE#: CDB 40-2008

DATE FILED: 7/24/2008

OWNER: SANDRA J. BABCOCK TRUST C/O HARRY BABCOCK

APPLICANT: MENDOCINO LAND TRUST

AGENT: ROBERT ARMITAGE

REQUEST: Coastal Development Boundary Line Adjustment to adjust approximately 9.12 acres from 2 separate legal parcels to create parcels of 5.8+/- and 12.12+/- acres.

LOCATION: Within the Coastal Zone, on half mile south of Fort Bragg, along the south side of Highway 20 and across Highway 1 to the beach, located at 32961 CR# 447A; AP#'s 018-180-46, 018-170-46, 018-170-33 and 018-450-25.

PROJECT COORDINATOR: TERESA SPADE

ACTION TAKEN:

The Coastal Permit Administrator, on May 14, 2009, approved the above described project. 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-09-029

MENDOCINO LAND TRUST &
BABCOCK TRUST

NOTICE OF FINAL LOCAL
ACTION (1 of 20)



FINAL FINDINGS AND CONDITIONS OF APPROVAL
CASE #CDB 40-2008 – SANDRA J BABCOCK TRUST C/O HARRY BABCOCK
MAY 14, 2009

The Coastal Permit Administrator approves Coastal Development Boundary Line Adjustment #CDB 40-2008, subject to the following conditions of approval, finding that the application and supporting documents and exhibits contain sufficient information and conditions to establish, as required by the Coastal Zoning Code, that:

1. The proposed boundary line adjustment is in conformance with the Coastal Element; and,
2. The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities.
3. The proposed boundary line adjustment is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district; and,
4. The proposed boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA).
5. The proposed boundary line adjustment will not have any adverse impacts on any known archaeological or paleontological resource.
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 the Coastal Element of the General Plan.
8. The Environmentally Sensitive Habitat Area as identified will not be significantly degraded by the proposed development, there is no feasible less environmentally damaging alternative and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

CONDITIONS OF APPROVAL:

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 (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. This application is valid for 24 months from the effective date. No extensions can be granted.
2. That for each proposed adjusted parcel, provide one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

"Any and all lands and any and all interest thereto lying within the following described real property"
(perimeter description of the adjusted parcel(s).)

and,

"This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment #CDB 40-2008 and is intended to create no new parcel."

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have reviewed the documents and accepted them as correct, we will notify you. DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S) BY THIS DEPARTMENT IN WRITING. PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with exact names.)

4. Per Mendocino County Code Section 17-17.5(1)(2):

"That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustment have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made."

The enclosed Certificate of the Official Redeeming Officer must be certified by the Treasurer-Tax Collector and a copy returned to the Department of Planning and Building Services.

5. After you have been given clearance to record the new documents, you must send a **copy** of the recorded deed(s) to the Department of Planning and Building Services. Upon receipt of this information, you will receive a Completion Certificate.
6. In the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
7. A note shall be placed on the deeds and/or legal descriptions stating that "Future development may require additional studies and/or may be subject to restrictions" and that "Future development may require additional studies and or be subject to restrictions" and that "Future development shall be in conformance with the criteria for development within Sensitive Habitat and other Resource Areas as set forth in the Coastal Plan and Costal Zoning Code".
8. A note shall be placed on the deeds and/or legal descriptions stating "The Boundary Line Adjustment shall not relinquish, remise, release or terminate any prior right, interest in rights-of-way easements, or other rights which may be appurtenant to and/or an encumbrance to the subject properties."
9. A note shall be placed on the deed and/or legal description for APN 018-450-25 stating that: "The parcel is dedicated to public access, habitat conservation, and open space."

NOTE: APPLICANTS OR OTHER PERSONS WHO ARE DISSATISFIED WITH A DECISION OF THE COASTAL PERMIT ADMINISTRATOR FOR A COASTAL DEVELOPMENT PERMIT FOR A BOUNDARY LINE ADJUSTMENT MAY APPEAL THE ACTION TO THE BOARD OF SUPERVISORS. AN APPEAL MUST BE MADE IN WRITING ALONG WITH THE APPLICABLE FEE TO THE CLERK OF THE BOARD OF SUPERVISORS WITHIN TEN (10) DAYS OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION. THE APPEAL ISSUE WILL BE PLACED ON THE NEXT AVAILABLE BOARD OF SUPERVISOR'S AGENDA FOR CONSIDERATION, AND THE APPELLANT WILL BE NOTIFIED OF THE TIME AND DATE. APPEALS TO THE BOARD OF SUPERVISORS DO NOT NECESSARILY GUARANTEE THAT THE COASTAL PERMIT ADMINISTRATOR'S DECISION WILL BE OVERTURNED, IN SOME CASES, THE BOARD OF SUPERVISORS MAY NOT HAVE THE LEGAL AUTHORITY TO OVERTURN THE DECISION OF THE ADMINISTRATOR.

OWNERS: SANDRA J BABCOCK TRUST
C/O HARRY BABCOCK
32300 SANDY LANE
FORT BRAGG, CA 95437

APPLICANT: MENDOCINO LAND TRUST
PO BOX 1094
MENDOCINO, CA 95460

AGENT: ROBERT ARMITAGE
690 SOUTH MAIN STREET
FORT BRAGG, CA 95437

REQUEST: Coastal Development BLA to adjust approximately 8.96 ac from AP#s 018-170-48 (7.75± ac), 018-170-33 (1.21± ac), and 018-450-25 (5.8± ac) forming a parcel of 14.76± acres, into 018-170-49 (3.18± ac) to create parcels of 5.8± ac and 12.14± ac, respectively.

LOCATION: In the Coastal Zone, ½ mile south of Fort Bragg, along the south side of Highway 20 and across Highway 1 to the beach, at 32961 No Name Road (CR 447A).

	<u>Parcel</u>	<u>Existing / Proposed</u>
TOTAL ACREAGE:	018-170-49	3.18± ac / 12.14± ac
	018-170-48, -33, & 018-450-25	14.76± ac / 5.8± ac

ZONING: RR: L-5, C

GENERAL PLAN: RR5, C

EXISTING USES: Commercial/Passive Recreation

SUPERVISORIAL DISTRICT: 4

OTHER RELATED APPLICATIONS:

Coastal Development Use Permit 14-1972 requested approval of a 103 space campground along Hare Creek. The permit was never completed.

Coastal Development Use Permit CDU 17-84 on parcel 018-170-33 for temporary use of a travel trailer as a caretaker residence in association with an RV sales and repair business was approved in 1984 for a term of five years. The permit was not renewed and expired in 1986.

Zoning Code Violation ZC 90-27 on parcel 018-170-33 resulted from the continued use of the caretaker residence after #U 17-84 expired. It also included two unapproved carports.

Coastal Development Use Permit 21-91 on parcel 018-170-33 approved a permanent mobile home to replace the travel trailer and resolved the Zoning Code Violation.

Coastal Development Use Permit CDU 1-00 on parcel 018-170-33 approved two carports after the fact on parcel 018-170-33 on September 21, 2000 further resolving the Zoning Code Violation.

Certificate of Compliance #CC 15-2008 was approved for the subject property, recognizing parcel 018-170-46 as two separate legal parcels, 018-170-48 & -49.

PROJECT DESCRIPTION: The applicant is requesting a Coastal Development Boundary Line Adjustment (CDB) to adjust approximately 8.96 ac from two separate legal parcels. AP#s 018-170-48 (7.75± ac), 018-170-33 (1.21± ac), and 018-450-25 (5.8± ac) form one legal parcel with a total of 14.76± acres, which would transfer 8.96± acres into 018-170-49 (3.18± ac) to create parcels of 5.8± ac and 12.14± ac, respectively. The subject properties are located in the Coastal Zone, ½ mile south of Fort Bragg, along the south side of Highway 20 and across Highway 1 to the beach, at 32961 No Name Road (CR 447A).

APN 018-170-49 is the easternmost 3.18 acres of the property and is one separate legal parcel. This parcel was recognized by Certificate of Compliance #CC15-2008 and is currently undeveloped. The boundary line adjustment would result in this parcel merging with APNs 018-170-33 and 018-170-48.

The remaining three parcels constitute the other separate legal parcel:

APN 018-450-25 is the westernmost 5.8 acres, and would become its own separate legal parcel as a result of this boundary line adjustment. This parcel is undeveloped except for an existing access trail. This property is currently used by the public for passive recreation – this is a popular beach.

APN 018-170-33 is 1.04 acres in size and is developed with a 2,000± square foot commercial structure, two carports (750 sq. feet and 500 sq. feet) and a canopy (300 sq. feet). These structures are in association with a Recreational Vehicle rental and repair business on the property.

APN 018-170-48 is 7.75 acres in size and is currently undeveloped.

Upon completion of the CDB the 5.8 acre parcel would be located entirely on the west side of Highway One, and the remaining 12.14 acres would be on the east side of the Highway.

SPECIFIC COASTAL PLAN CONSIDERATIONS:

Public Access

Section 3.6 of the Coastal Element states in part (Access Issues, paragraph 2, page 89 (1-15-02):

Access to the shoreline is a key mandate of the Coastal Act. The term "maximum access" as used by the Act is intended to make the shoreline – a public resource – readily available to the public and to prevent it from becoming the private enclave of those fortunate or wealthy enough to own property near the shore.

Land Use maps show an existing public access to Hare Creek Beach, located on parcel 018-450-25, the 5.8 acre parcel that would become an undeveloped separate legal parcel as a result of this boundary line adjustment. A public access trail extends from Shoreview Lane (CR 438A) to the beach along the southwesterly side of property.

According to Section 4.4 of the Coastal Element, existing development at this location includes the following:

Sandy beach currently reached by path adjoining Bellow-Seacrest Subdivision on south side. Prescriptive rights may exist. Recorded offers of dedication of lateral access along the south side of Hare Creek by Patterson, Trombetta and Emerson.

Policy 4.4.12 of the Coastal Element states in part:

Public access to Hare Creek shall be an important feature of the local coastal plan in this area which is subject to rapidly increasing urbanization. A proposed shoreline access trail to Hare Creek beach is indicated on the land use map.

The subject 5.8 acre parcel to be created would be purchased by the Mendocino Land Trust with funding from the California Coastal Conservancy. This funding requires that the land trust dedicate the property for "public access, habitat conservation and open space in accordance with the Public Resources Code Section 31116(b)."

Division 21, Public Resources Code, Chapter 9 Section 31400.2 states in part (as outlined in Section 3.6, (California Constitution, page 87 (11-5-85), the Coastal Element):

The State Coastal Conservancy is the state agency authorized to acquire property needed for accessways and is authorized to...provide up to the total cost of the acquisition of interests in lands...

The proposed boundary line adjustment would facilitate dedication of the existing access to public use, consistent with LCP requirements.

Natural Resources

The boundary line adjustment would result in the creation of one undeveloped 5.8 acre undeveloped parcel adjacent to the ocean, and one commercially developed 12.4 acre parcel on the east side of Highway One. The undeveloped 5.8 acre area is currently used as a public beach. There is an existing trail to the beach providing access from Shoreview Lane (CR 438A). The 5.8 acre area is likely entirely an Environmentally Sensitive Habitat Area: the area consists primarily of the beach, Hare Creek where it enters the ocean, and riparian vegetation. A rare plant survey was not conducted because the area is already considered ESHA.

Section 20.496.020(A)(3) of the Mendocino County Coastal Zoning Code requires:

New divisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.

The intent of this code section is to ensure that parcels created as a result of a boundary line adjustment or subdivision contain developable area outside natural resource areas and their respective buffer zones. Although the division would not create a parcel "entirely within a buffer area," it would likely create a parcel entirely composed of ESHA. Normally this would be inconsistent with the intent of the code, however, this case differs because of the proposed use of the property. As outlined in the December 29, 2008 letter to Nash Gonzalez from the Mendocino Land Trust, the parcel is to be purchased with State Coastal Conservancy money, subject to the requirement that MLT dedicate the property for "public access, habitat conservation and open space on accordance with Public Resources Section 31116(b)." For this reason, the proposed boundary line adjustment is consistent with the intent of the LCP, and would facilitate the protection of coastal natural resources.

Archaeological/Cultural Resources

The County Archaeological Commission considered the project at the April 8, 2009 hearing and determined that no survey is needed at this time for the proposed boundary line adjustment. Staff recommends Condition Number 6 (Discovery Clause) to ensure protection of any archaeological resources encountered during future development.

COASTAL POLICY CONSISTENCY REVIEW: Staff reviewed the project relative to coastal issues and determined the following:

1. The boundary line adjustment will not result in a change in density;
2. The boundary line adjustment will not create any new parcels;
3. Hare Creek runs through the property, and there is a large, mature riparian area associated with this creek. The Coastal Land Use Maps indicate presence of coast lily (*Lilium maritimum*) in this vicinity. The property is predominantly within a 100 year Flood Plain to Hare Creek. The boundary line adjustment is intended to create a 5.8 acre parcel for public access, habitat conservation and open space use, and the remainder of the property, a resulting 12.4 acre parcel is currently developed with a commercial use. Any future development shall maintain compliance with the Local Coastal Plan Policies and further studies may be required at that time. See Condition Number 6.
4. The adjustment will result in a parcel without a building site, however the parcel is to be dedicated to public access, habitat conservation and open space, per Condition Number 9. The other parcel is currently commercially developed.
5. No substandard lot will result from the adjustment.
6. The site is located within an area mapped as Severe Water Resource (SWR), as shown in the 1982 Coastal Groundwater Study prepared by the Department of Water Resources. The project would not result in an increased need for groundwater extraction. The boundary line adjustment is consistent with the County Coastal Groundwater Study.
7. The boundary line adjustment is not located on property containing pygmy vegetation.
8. The property subject to the adjustment is not located in a designated "Highly Scenic" area.
9. The boundary line adjustment is located in an appealable area.

ENVIRONMENTAL RECOMMENDATION: The application is Categorically Exempt - Class 5a. Therefore, no further environmental review is required.

COASTAL ELEMENT CONSISTENCY RECOMMENDATION: As conditioned, the proposed project is consistent with applicable goals and policies of the General Plan and Coastal Element.

RECOMMENDED MOTION: The Coastal Permit Administrator approves Coastal Development Boundary Line Adjustment #CDB 40-2008, subject to the following conditions of approval, finding that the application and supporting documents and exhibits contain sufficient information and conditions to establish, as required by the Coastal Zoning Code, that:

1. The proposed boundary line adjustment is in conformance with the Coastal Element; and,

2. The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities.
3. The proposed boundary line adjustment is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district; and,
4. The proposed boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA).
5. The proposed boundary line adjustment will not have any adverse impacts on any known archaeological or paleontological resource.
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 the Coastal Element of the General Plan.
8. The Environmentally Sensitive Habitat Area as identified will not be significantly degraded by the proposed development, there is no feasible less environmentally damaging alternative and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

CONDITIONS OF APPROVAL:

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 (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. This application is valid for 24 months from the effective date. No extensions can be granted.
2. That for each proposed adjusted parcel, provide one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

"Any and all lands and any and all interest thereto lying within the following described real property" (perimeter description of the adjusted parcel(s).)

and,

"This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment #CDB 40-2008 and is intended to create no new parcel."

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have reviewed the documents and accepted them as correct, we will notify you. **DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S) BY THIS DEPARTMENT IN WRITING.**

PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with their exact names).

4. Per Mendocino County Code Section 17-17.5(l)(2):

"That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustment have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made."

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6. In the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
7. A note shall be placed on the deeds and/or legal descriptions stating that " Future development may require additional studies and/or may be subject to restrictions" and that "Future development shall be in conformance with the criteria for development within Environmentally Sensitive Habitat and Special Treatment Areas as set forth in the Coastal Plan and Coastal Zoning Code."
8. A note shall be placed on the deeds and/or legal descriptions stating "The Boundary Line Adjustment shall not relinquish, remise, release or terminate any prior right, interest in rights-of-way, easements, or other rights which may be appurtenant to and/or an encumbrance to the subject properties."
9. A note shall be placed on the deed and/or legal description for APN 018-450-25 stating that: "The parcel is dedicated to public access, habitat conservation, and open space."

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4-21-09

DATE



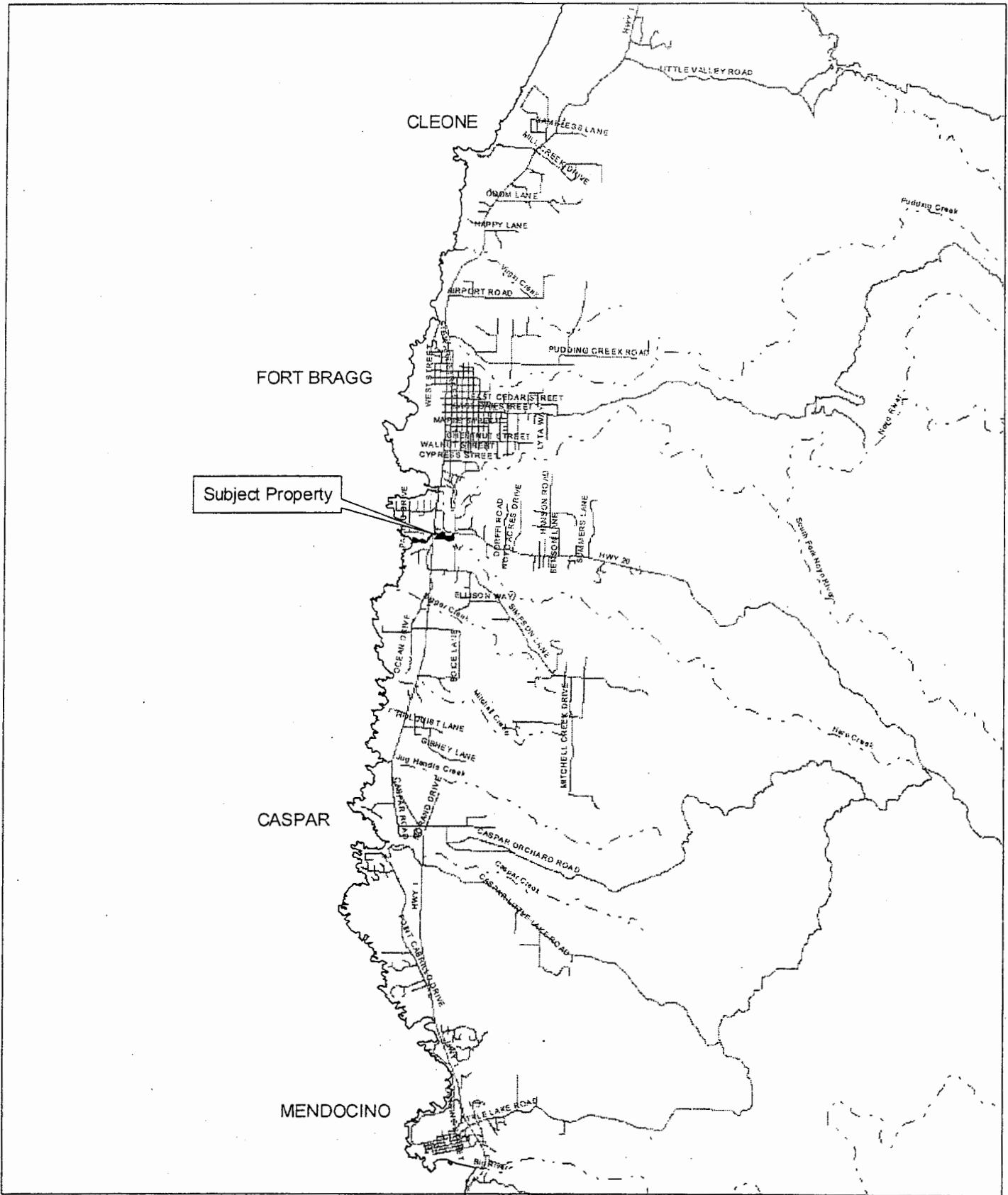
TERESA SPADE
PLANNER II

TS:
4/21/09

Categorically Exempt

Appeal Fee - \$945.00
Appeal Period: 10 days

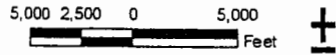
REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
Planning- Ukiah		APN 018-170-46 is now 018-170-48 & -49.	
Dept of Transportation			Recommend approval.
Env. Health – FB	X		
Building Inspection- FB Assessor	X	X	
Sonoma State University Trails Advisory Committee	X		X
Fort Bragg City Planning	X		
Dept of Fish and Game	X		
Coastal Commission	X		
Native Plant Society	X		

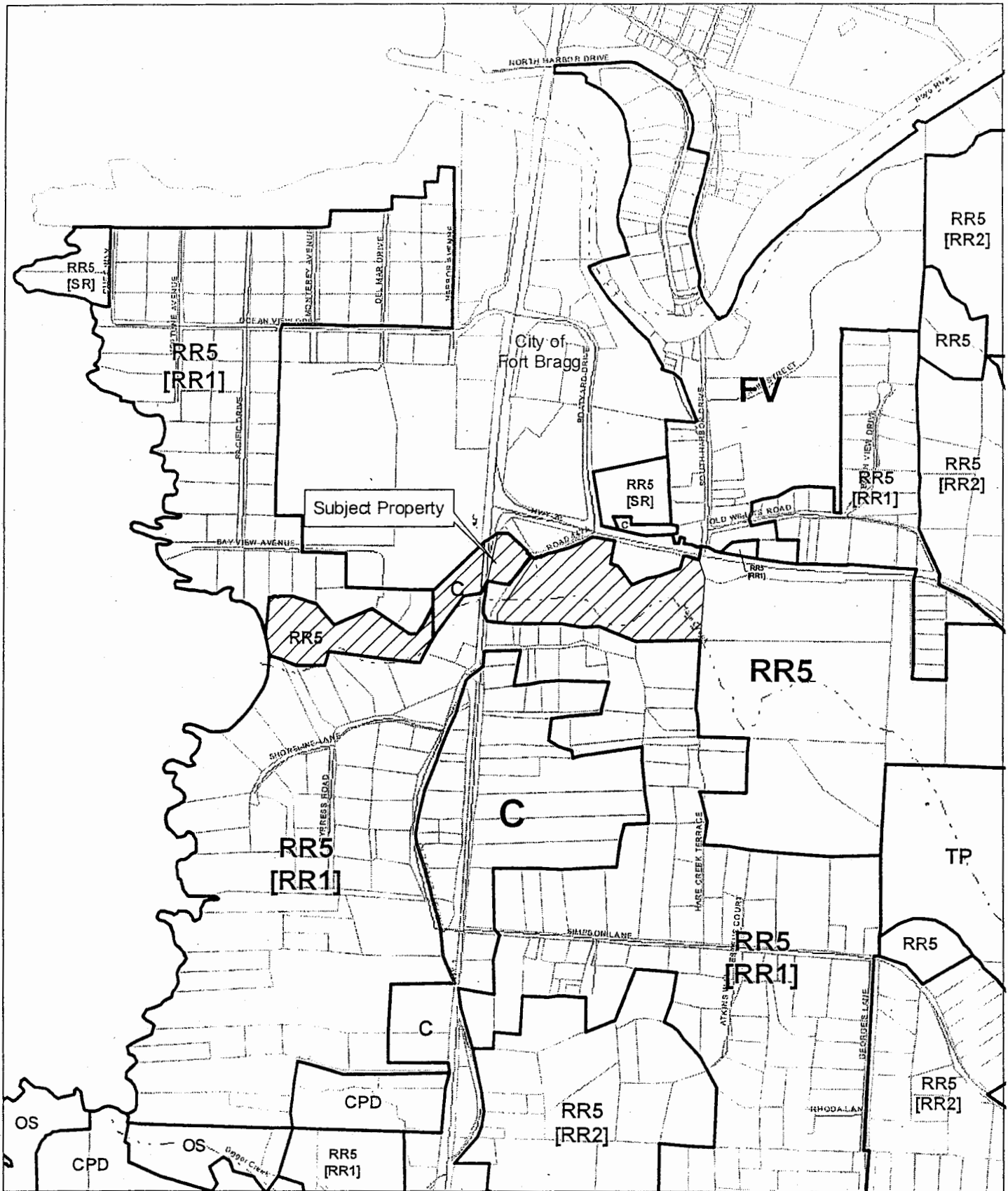


OWNER: BABCOCK, Sandra
 APPLICANT: MENDOCINO LAND TRUST
 AGENT: ARMITAGE, Robert
 CASE #: CDB 40-2008
 APN: 018-170-33, 018-170-46 & 018-450-25

LOCATION MAP

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of September 2007)



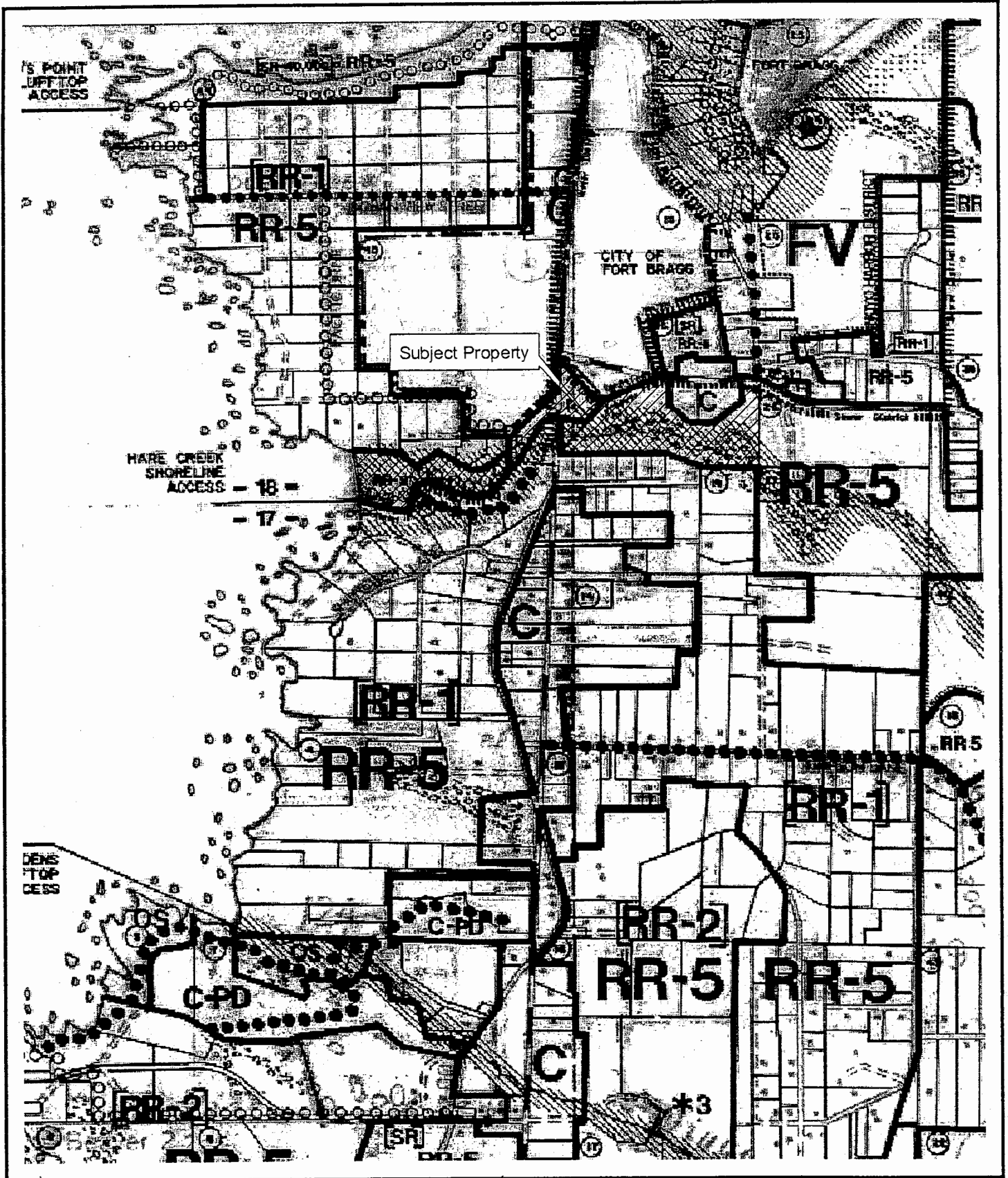


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ZONING DISPLAY MAP

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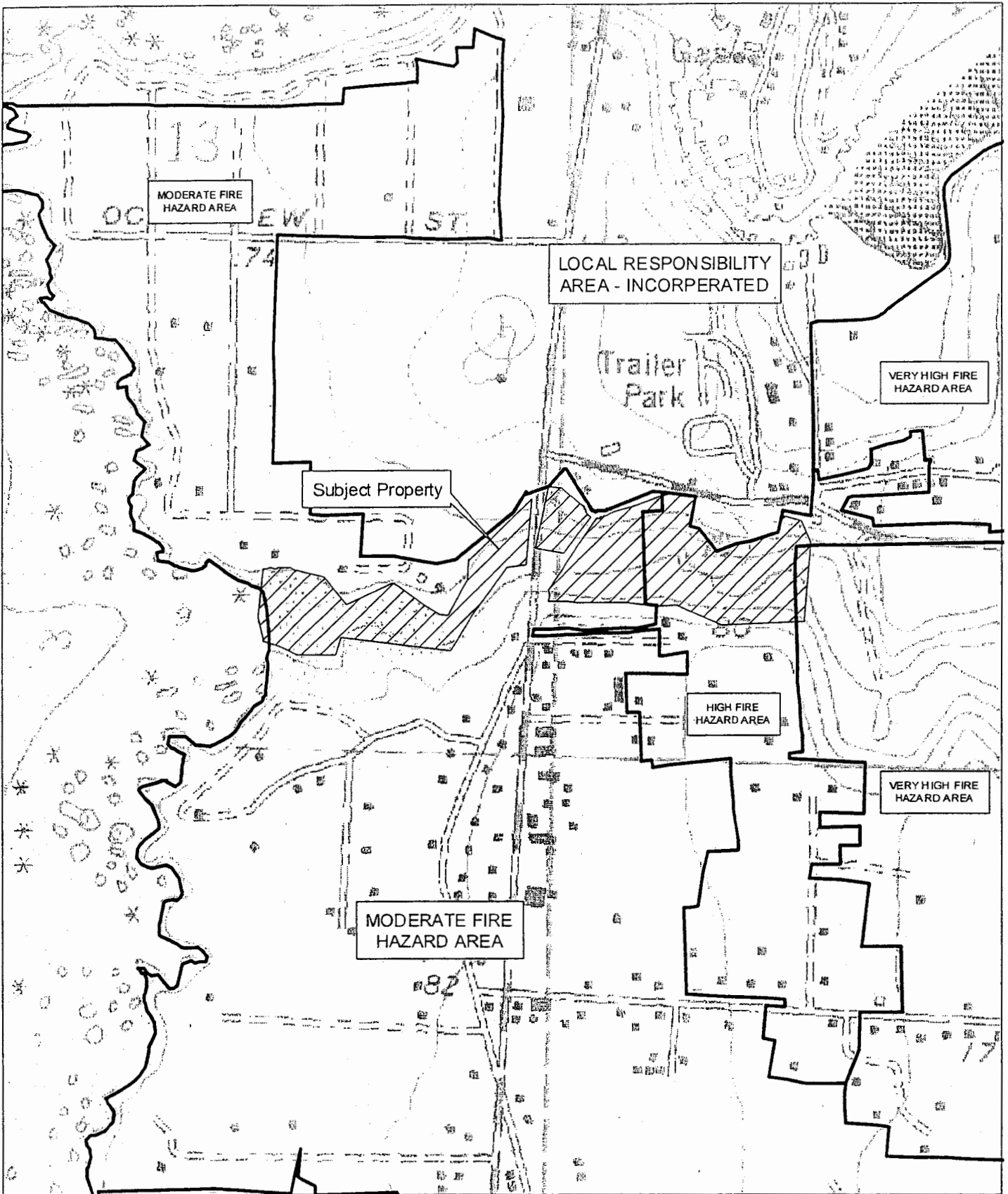




OWNER: BABCOCK, Sandra
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 CASE #: CDB 40-2008
 APN: 018-170-33, 018-170-46 & 018-450-25

COASTAL PLAN LAND USE MAP No. 14

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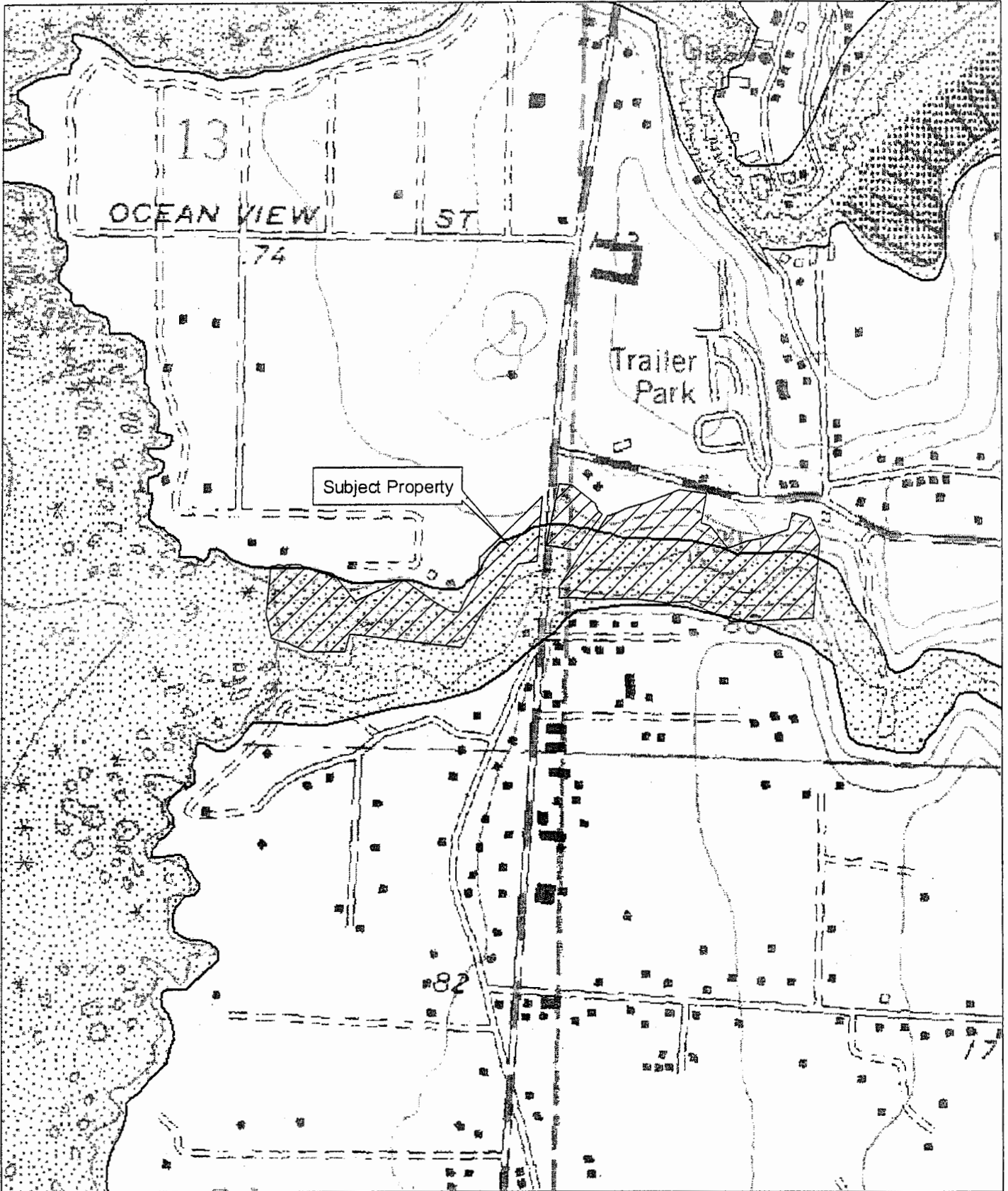


OWNER: BABCOCK, Sandra
 APPLICANT: MENDOCINO LAND TRUST
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 CASE #: CDB 40-2008
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FIRE HAZARD SEVERITY ZONES
 FORT BRAGG RURAL FIRE PROTECTION DISTRICT

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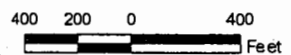


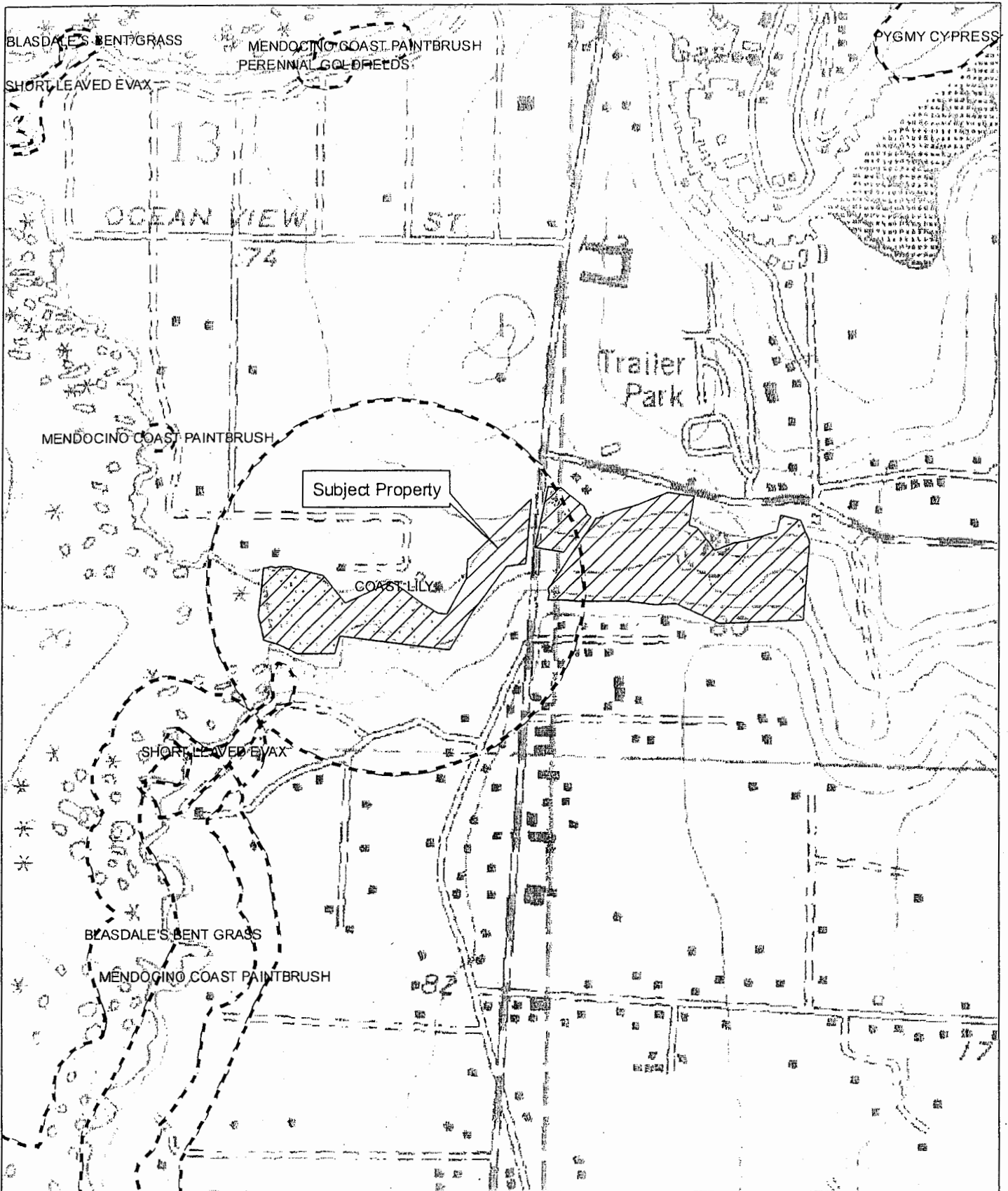
OWNER: BABCOCK, Sandra
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 CASE #: CDB 40-2008
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 100 YEAR FLOOD ZONE and
 COASTAL FLOOD VELOCITY (WAVE ACTION)

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES and should not be used to determine legal boundary lines. Parcel line can be over 20

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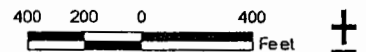




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 CASE #: CDB 40-2008
 APN: 018-170-33, 018-170-46 & 018-450-25

**CALIFORNIA NATURAL DIVERSITY
 DATABASE RAREFIND** (JULY 2008)

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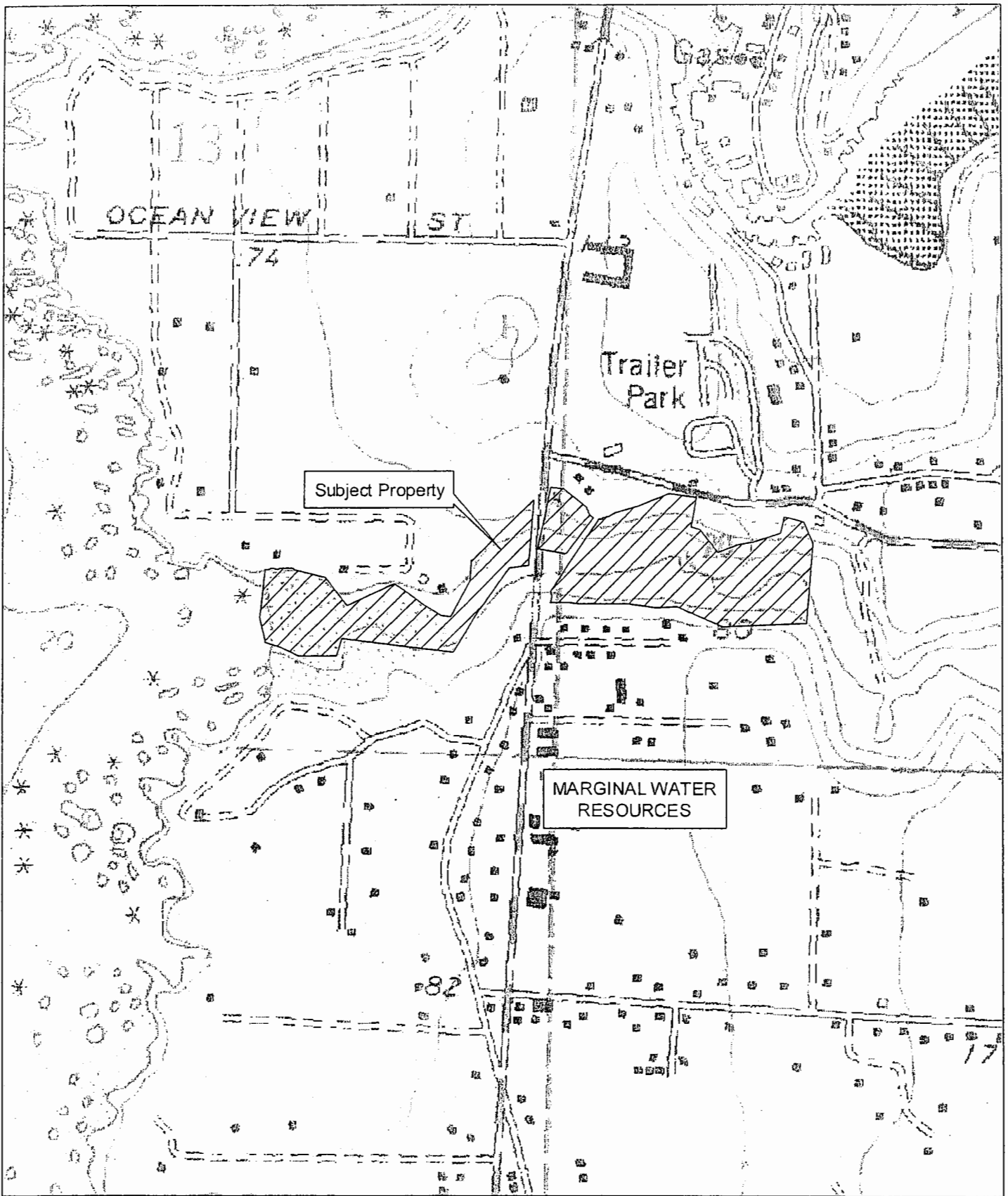
OWNER: BABCOCK, Sandra
APPLICANT: MENDOCINO LAND TRUST
AGENT: ARMITAGE, Robert
CASE #: CDB 40-2008
APN: 018-170-33, 018-170-46 & 018-450-25

17 of 20

ORTHOPHOTO - August 2005

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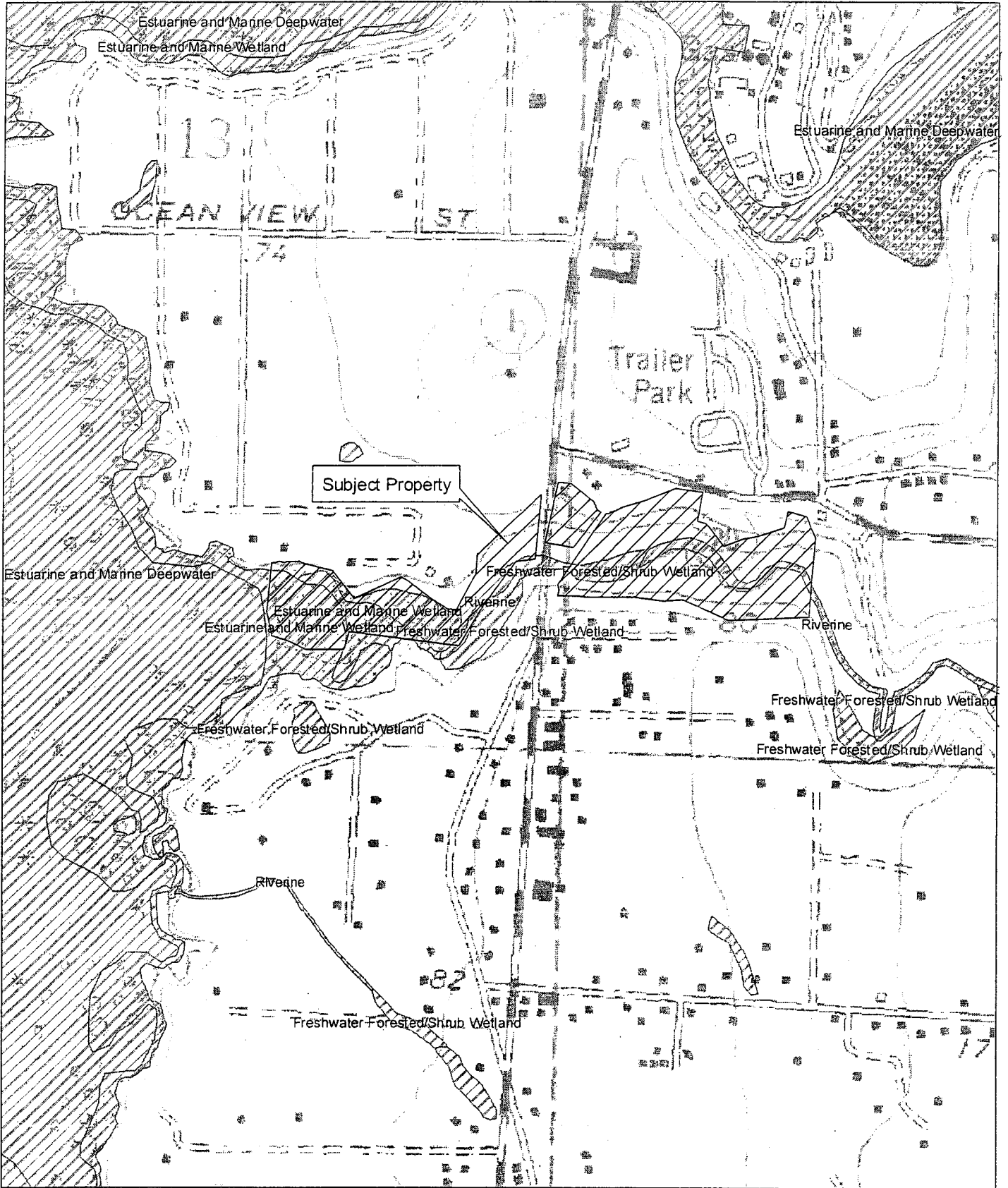


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COASTAL GROUND WATER RESOURCES

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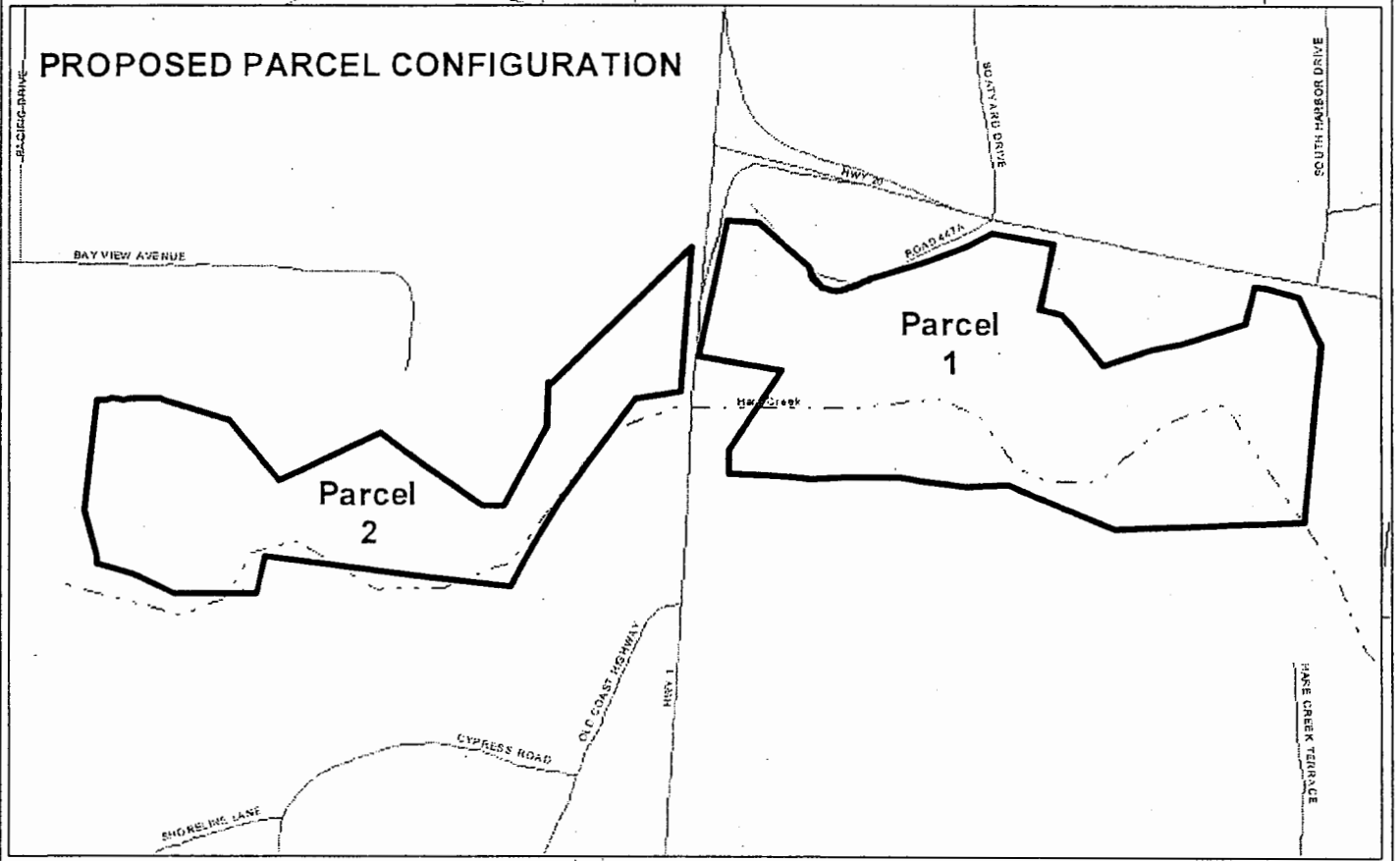
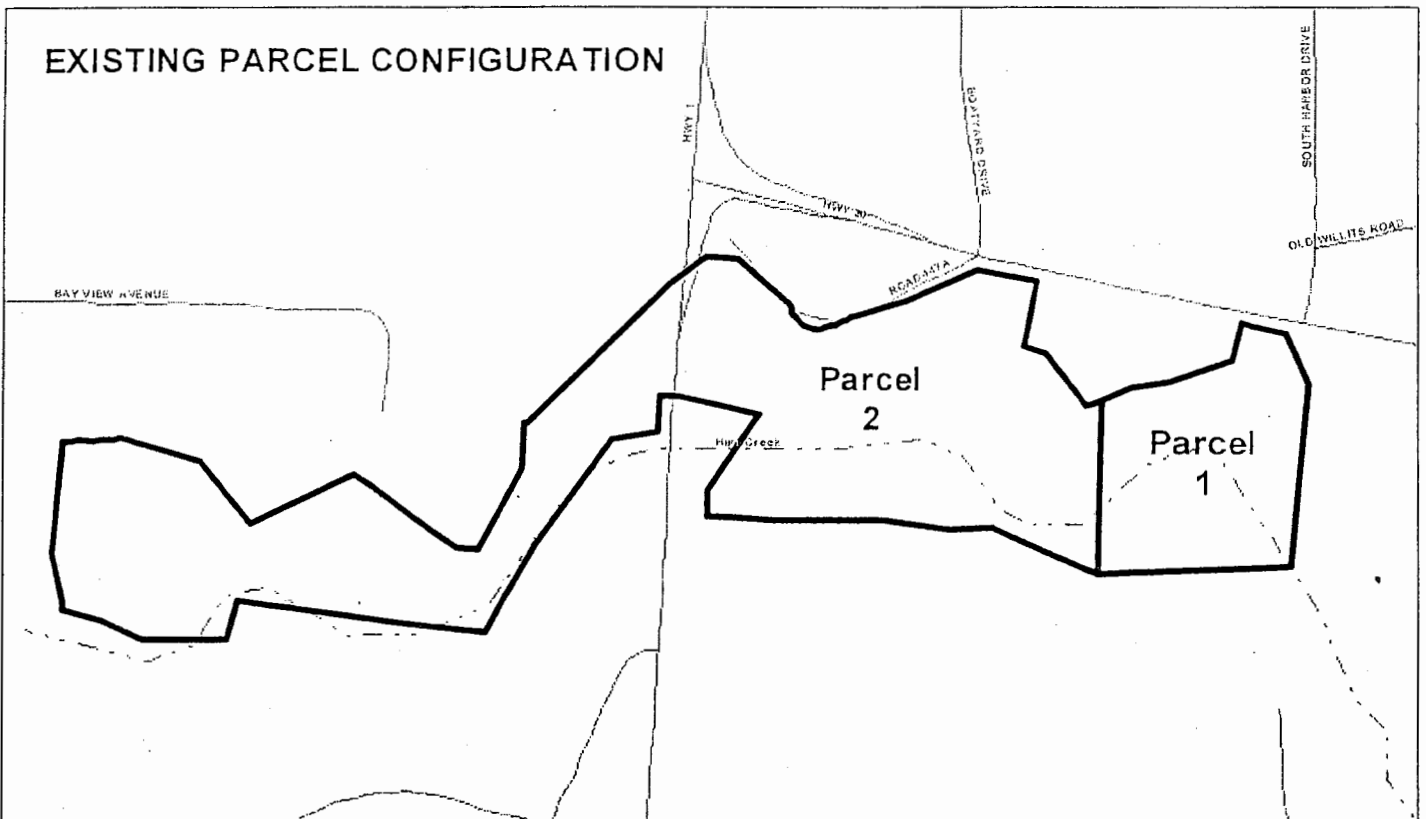
WETLANDS

US Fish & Wildlife
Division of Habitat and Resource Conservation

Parcel lines are approximate. Parcel lines on this map are NOT SUF not be used to determine legal boundary lines. Parcel line can be

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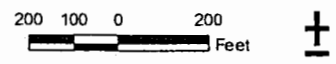




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EXISTING & PROPOSED PARCEL CONFIGURATION

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JUL 08 2009

CALIFORNIA
COASTAL COMMISSION



July 2, 2009

Robert Merrill, District Manager
710 E Street, Suite 200
Eureka, CA 95501

Subject: Appeal No. A-1-MEN-09-029

EXHIBIT NO. 9

APPEAL NO.

A-1-MEN-09-029

MENDOCINO LAND TRUST &
BABCOCK TRUST

APPLICANT'S
CORRESPONDENCE (1 of 2)

Dear Mr. Merrill:

This letter is to address issues raised in the appeal of CDB#40-2008, a boundary line adjustment for the creation of a 5.8 acre parcel for purchase by the Mendocino Land Trust (MLT). The BLA would result in the creation of a separate parcel to be acquired using State Coastal Conservancy funding in order to conserve the property for conservation and recreation. The acquisition and management of the beach parcel (APN 018-450-25) by Mendocino Land Trust will result in a protected public beach with legal access, facilitation of new public access trail from the north side of Hare Creek Beach, and construction of a new segment of the California Coastal Trail. MLT holds a 10-foot wide offer-to-dedicate public access easement adjacent to the Babcock/Hare Creek parcel which would allow hikers to walk from a public road to the beach. This access would represent the only legal public access to Hare Creek Beach, a community asset that has long been used by families, birders, and surfers, and is one of the only accessible beaches in the Fort Bragg area. This new access will also facilitate a connection with the Redwood Community College to the north who anticipates playing a role in the stewardship and study of Hare Creek and its environs.

LCP policies support public access improvements at Hare Creek Beach. Policy 4.4.12 of the Coastal Element states that "public access to Hare Creek shall be an important feature of the local coastal plan in this area which is subject to rapidly increasing urbanization. A proposed shoreline access trail to Hare Creek beach is indicated on the land use map."

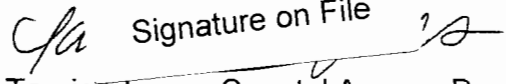
The State has committed acquisition money for the purchase of the parcel (Grant Agreement No. 08-133) as well as funding for a Management Plan process including needed technical studies. This planning process will commence after

Mendocino Land Trust, INC., PO BOX 1094, MENDOCINO CA 95460, PHONE: 707-962-0470, FAX: 707-962-0444, EMAIL: MLT@MCL.ORG

closing on the property and will include at least two public meetings to address management issues and proposed improvements. The issues raised in the appeal will be addressed in this process and subsequent coastal development permit proceedings for construction of improvements. Unfortunately, the appeal of the BLA has jeopardized the ability of MLT to acquire grant funding for the project by the December 2009 deadline. Coastal Conservancy funding has been guaranteed until the end of the year with uncertainty of funding for 2010 should the project be delayed further. We ask that the Coastal Commission find no substantial issue raised in the appeal at the next possible hearing date and uphold the Mendocino County Subdivision Committee and Coastal Permit Administrator's approval of the project.

As always, I am available to answer any questions and to discuss the project in further detail.

Best Regards-

 Signature on File
Tamira Jones, Coastal Access Program Manager

Cc: Bob Armitage, Mendo Realty
Cc: Matt Gerhart, State Coastal Conservancy
Cc: Linda Locklin, California Coastal Commission