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DATE: Prepared November 18, 2011 for the December 9, 2011 hearing

TO: Coastal Commissioners and Interested Parties

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

SUBJECT: **Appeal No. A-1-MEN-11-045 (Hantzsche, Neth and Bishop**, local permit # CDMS 4-2006), Appeal by Commissioners Dayna Bochco and Esther Sanchez of Mendocino County decision approving a coastal development minor subdivision of a 23.16-acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres. The approved development includes an identified building site on the subdivided parcel which is described as "Parcel 2" and an existing single-family residential development on the portion described as "Parcel 1." The parcel is located near Anchor Bay, north of Gualala, and 0.25 mile west of Iversen Road on Hilltop Lane a.k.a. Timberwood Way Road (private), at 30300 Hilltop Lane (APN 141-100-35).

Appeal filed: November 17, 2011; 49th day: January 5, 2012.

Recommendation:

Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which Appeal No. A-1-MEN-11-045 has been filed and that the Commission hold a *de novo* hearing.

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

Motion & Resolution. *I move that the Commission determine and resolve that: Appeal No. A-1-MEN-11-045 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

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

effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners.

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

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

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

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

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

Findings:

1. Project and Site Description

On October 20, 2011, the County of Mendocino approved Coastal Development Minor Subdivision # CDMS 4-2006 of a 23.16-acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres. The approved development includes an identified building site on the subdivided parcel which is described as "Parcel 2." The undivided parcel in its current form contains an existing single-family residential development on the portion described as "Parcel 1" in the County staff report. The parcel

(APN 141-100-35) is located near Anchor Bay, north of Gualala, and 0.25 mile west of Iversen Road on Hilltop Lane a.k.a. Timberwood Way Road (private), at 30300 Hilltop Lane.

The County staff report indicates that according to the CA Natural Diversity Database (CNDDDB), pygmy cypress¹ trees are located in the area, and makes reference to a June 2008 botanical report prepared by a consulting biologist. Although not referenced in the County staff report, the June 2008 botanical report additionally identifies “several locations of rare plants and plant communities” present in the area. The County staff report includes excerpts from the botanical report that discuss development within ESHA buffer, but does not specify the distance between development and ESHA, except for 100-foot buffer setbacks from riparian ESHA that also occurs on the site. A site plan included in the June 2008 botanical report shows the existing access road and driveway that will serve Parcel 2 are located within rare plant ESHA and within the 50-foot minimum ESHA buffers.

The County staff report also references a site visit on June 11, 2009 with CA Department of Fish and Game (CDFG) staff who identified Bishop Pine (*Pinus muricata*) forest on the site. The building site identified for Parcel 2 is located within the Bishop pine forest, south of an existing 12-foot-wide unpaved driveway. Bishop pine forest (also known as Northern Bishop Pine Forest), is recognized as a rare and endangered plant community², however the consulting botanist characterized the approximately one-acre stand as non-ESHA “because of the size.”

The project as approved by the County includes special conditions that require, among other things, the following be completed prior to filing a Parcel Map: submittal to the Division of Environmental Health (DEH) of an acceptable water quantity evaluation to demonstrate adequate water supply (Condition No. 7); submittal to DEH evidence of an adequate septic site (Condition Nos. 4, 5, and 9); mitigation for botanical impacts by using permeable surfaces for the parking area and road surfaces on Parcel 2 in place of asphalt, and prohibiting planting of invasive landscaping plants within the ESHA buffers (Condition No. 11); improvements to the access easement road (Condition No. 16); improvements to the private driveway approach to increase width to 18 feet, with surfacing comparable to that of the County Road (Condition No. 17); and compliance with recommendations from California Department of Forestry (CalFire).

The parcels are designated on the Land Use Plan Map as Rural Residential, Ten Acre Minimum with a Rural Residential –Density Limit of ten acres (RR-10/ RR-10 DL). The parcels show a similar zoning designation on the Coastal Zoning Map (RR-10/ RR-10 DL). The parcel is located in a designated “critical water resources” area with a “high fire hazard” ranking.

¹ The CA Rare Plant Rank designation for Mendocino pygmy cypress (*Hesperocyparis pygmaea*) is 1B.2, meaning the species is Rare, threatened, or endangered in California and elsewhere, and fairly endangered in California. The global and state ranks for this species are G2/S2, respectively, indicating the species is imperiled.

² CDFG Biogeographic Branch (http://www.dfg.ca.gov/biogeodata/vegcamp/natural_communities.asp) ranks Bishop Pine forest as “G3S3,” highly imperiled, and of high priority for inventory in the CNDDDB.

2. **Appeal**

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the approved land division is a form of development that is not designated as the “principal permitted use” under the certified LCP.

The appellant (Commissioners Dayna Bochco and Esther Sanchez) claims that the approved project is inconsistent with the policies and standards of the Mendocino County certified Local Coastal Program (LCP) relating to protection of environmentally sensitive habitat areas (ESHAs), and to regulations regarding sewer and water services for coastal rural land divisions and other development.

3. **Substantial Issue Analysis**

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determined that no substantial issue exists with respect to the grounds on which the appeal has been filed.³ Commission staff has analyzed the County’s Final Local Action Notice for the development (Exhibit No. 6), appellant’s claims (Exhibit No. 5), and the relevant requirements of the LCP (Appendix B). Staff recommends that the Commission find that the appeal raises a substantial issue of conformance of the approved development with respect to the policies of the certified LCP regarding the protection of wetlands and ESHA as explained below.

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

The County staff report references a site visit on June 11, 2009 with CA Department of Fish and Game (CDFG) staff who identified Bishop Pine (*Pinus muricata*) forest on the site. The building site identified for Parcel 2 is located within the Bishop pine forest, south of an existing 12-foot-wide unpaved driveway. Bishop pine forest (also known as Northern Bishop Pine Forest), is recognized as a rare and endangered plant community, however the consulting botanist characterized the approximately one-acre stand as non-ESHA “because of the size.”

Northern Bishop Pine Forest ESHA

ESHA, as defined in Section 30107.5 of the Coastal Act, Section 3.1 of the certified Mendocino County LUP, and CZC Section 20.308.040(F) is “...*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 be easily disturbed or degraded by human activities.*” Thus, Coastal Act Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) set up a two part test for determining an ESHA. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b)

³ 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.

especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F).

The first test for determining ESHA under Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) is whether an **area** including plants or animals or their habitats is **either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem**. The CA Department of Fish and Game recognizes special status natural communities as communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects⁴. These communities may or may not contain special status species or their habitat. The CA Department of Fish and Game *List of California Terrestrial Natural Communities*⁵ ranks Bishop Pine forest community type as “G3S3⁶,” highly imperiled, and of high priority for inventory in the CNDDDB. Because of its relative rarity at the state and global levels, Northern Bishop pine forest meets the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies.

The second test for determining ESHA under Coastal Act Section 30107.5 (Section 3.1 of the certified LUP) is whether the habitat could be easily disturbed or degraded by human activities and developments. As described in *A Manual of California Vegetation*, “Bishop pine is a closed-cone conifer that produces cones at 5-6 years of age; cones remain closed for several years and open after fire or on hot days.”⁷ Northern Bishop pine forest has been extensively compromised in Mendocino County in recent years due to threats from Pitch pine canker (*Fusarium subglutinis* f. sp. *pini*) and needle blight caused by *Dothistromoa septospora*, in addition to threats from development. The concentrations of Bishop pine trees within the project foot print could be easily disturbed or degraded by human activities and developments such as those that would be necessary to develop the identified building site including grading, paving, building construction, foot trampling, etc. Additionally, the site is located in a designated high fire hazard area; California law (PRC 4291) requires property owners and/or occupants to create 100 feet of defensible space around homes and buildings, which would result in even greater clearance of Bishop pine forest around the building site that would result from the approved subdivision. Such activities would fragment or otherwise demolish the habitat, reduce habitat size, increase opportunities for establishment of nonnative and invasive species, and degrade and alter habitat quality and conditions that are integral to the “special nature” of the existing habitat area. Given these

⁴ Department of Fish and Game. November 24, 2009. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. Available online at http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols_for_Surveying_and_Evaluating_Impacts.pdf

⁵ <http://www.dfg.ca.gov/biogeodata/vegcamp/pdfs/natcomlist.pdf>. The rare natural communities are asterisked on this list.

⁶ In this case, the California Heritage (CNDDDB) ranking of G3/S3 describes the global rank (G rank) and the state rank (S rank) for Northern Bishop pine forest in California as vulnerable and at moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors making it vulnerable to extirpation.

⁷ Cope 1993e, in Sawyer et al. 2009. *A Manual of California Vegetation*, Second Edition. California Native Plant Society, Sacramento. 1300 pp.

threats, the Northern Bishop pine forest meets the second test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The consulting botanist states in the June 2008 botanical report (Exhibit 6, commencing on page 33) that “The bishop pine forest is approximately one acre and was not considered an ESHA” but offers no supporting documentation as to why a 1-acre stand would not be considered ESHA. In fact, the June 2008 botanical report describes a seemingly intact forest characterized by an assemblage of native understory plants that are often associated with Bishop Pine forest, including Manzanita (*Arctostaphylos glandulosa* ssp. *glandulosa*) and huckleberry (*Vaccinium ovatum*). It is also questionable whether the Bishop Pine forest community type is actually limited to the area delineated by the consulting biologist. The community type appears to extend beyond both the delineated area and beyond parcel boundaries. The consulting biologist describes the presence of approximately 15 individuals of the rare Mendocino pygmy cypress and approximately 3 acres of the rare Mendocino pygmy cypress forest community in the area, and describes vegetation on the site as “predominantly a forest of mixed conifers such as redwood (*Sequoia sempervirens*), Douglas-fir (*Pseudotsuga menziesii*), and bishop pine” but provides no characterization of percent cover of species. The Bishop Pine Forest Alliance⁸ includes several equally-rare plant associations, including Bishop pine-Mendocino pygmy cypress; Bishop pine-Douglas-Fir; and Bishop pine-Manzanita. Absent documentation, it is unclear whether the surrounding vegetation described by the botanist is in fact part of a greater assemblage of the Bishop Pine Forest Alliance. However, an April 1, 2010 floristic survey report prepared by another consulting biologist for the immediately adjacent parcel to the west (APN 141-100-34) identified several areas of Bishop pine forest. Given the relatively undeveloped surrounding landscape, and documented occurrences of Bishop pine forest on the adjacent parcel, it is possible that this forest community type extends beyond the artificial parcel boundaries at the site.

Regardless of whether the stand of Northern Bishop pine forest is 1 acre or larger, even 1 acre of Bishop pine forest may be contributing in a significant way to the forest ecosystem and the long-term sustainability of the habitat by providing such things as areas for regeneration of genetic diversity, wildlife habitat, or protection of genetic diversity in existing trees. Given recent pathogenic threats, protection of genetic diversity and potentially resistant strains through retention of trees becomes increasingly important to the long-term health and viability of the Northern Bishop Pine forest community type.

Land divisions and Residential Development are Not Allowable Uses in ESHA

The approved subdivision includes an identified building site that would be located within Northern Bishop Pine Forest ESHA, and steep slopes preclude locating the building site on much of the rest of proposed Parcel 2. However, the County’s findings fail to address how

⁸ The vegetation classification system is based on the classification put forth in the second edition of “A Manual of California Vegetation,” (MCV) which is the California expression of the National Vegetation Classification System (NVCS) (Grossman et al. 1998) and includes alliances (a floristically defined vegetation unit identified by its dominant and/or characteristic species) and associations (the finer level of classification beneath alliances).

these ESHA resources will not be significantly degraded by the proposed development as required by CZC Section 20.532.100(A)(1)(a).

LUP Policy 3.1-7 and CZC Section 20.496.020 (A)(1) allow for development to be permitted within a buffer area if the development is for a use that is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. CZC Section 20.532.100(A)(1)(a) requires that ESHA resources affected by development will not be significantly degraded by the proposed development. The LCP policies identify specific uses permitted in wetland and riparian ESHAs, but do not specifically identify what uses are allowed within rare plant community ESHA, and by extension, within the rare plant buffer.

Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. Although Section 30240 of the Coastal Act is not listed in the section of the certified Land Use Plan entitled, "Coastal Element Policies: Habitats and Natural Resources," which contains LUP Policy 3.1-7 and other LUP policies governing the protection of ESHA, Section 30240 is listed and referred to in the narrative for the section of the Land Use Plan containing the other LUP policies governing the protection of ESHA.

Although local governments are responsible for drafting the precise content of their LCPs, the Coastal Act requires that LCPs must, at a minimum, conform to and not conflict with the resource management standards and policies of the Coastal Act. It can be presumed that the County was aware that the Coastal Act established the minimum standards and policies for local coastal programs and knew, that in drafting its local coastal program, it was constrained to incorporate the development restrictions of Section 30240(a) of the Coastal Act, including the restriction that only uses dependent on those resources shall be allowed in those areas. It can also be assumed that in certifying the Mendocino County LCP, the Commission understood and found that the LCP conformed to (i.e. incorporated) the minimum policies and standards of the Coastal Act, including the development restrictions of Section 30240(a).

As noted above, the narrative for the section of the Land Use Plan containing LUP policies governing the protection of ESHA includes Section 30240. In addition, the narrative contains statements that acknowledge the protections afforded by Section 30240 and the County's commitment to incorporate those protections into the LCP, including the following statements:

- "The Coastal Act mandates the preservation of significant natural resources and habitats;"
- "Throughout all policies pertaining to Habitats and Natural Resources shall run the continuous theme that natural habitat areas constitute significant public resources which shall be protected not only for the wildlife which inhabits those areas but for the enjoyment of present and future populations of the State of California;"

- This Local Coastal Plan represents the commitment of the County of Mendocino to provide continuing protection and enhancement of its coastal resources

The LCP policies do not expressly authorize non-resource dependent uses nor any other uses within rare plant ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Commission finds that the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

With regard to the appellants' contention alleging an inconsistency of the approved development with land division provisions of the certified LCP that disallow land divisions within ESHA or ESHA buffers, LUP Policy 3.1-32 limits land divisions which are located within ESHAs and does not permit such land divisions if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7. In addition, CZC Section 20.496.020(A)(3) explicitly disallows new subdivisions that create or provide for new parcels entirely within a buffer area. Additionally, CZC Section 20.524.010(B)(g) requires that land divisions shall not have significant adverse effects, either individually or cumulatively, on ESHAs or on other coastal resources, and CZC Section 20.524.010(B)(m) requires that identified coastal resources within the proposed area to be divided are protected from significant adverse environmental impacts. Neither the approved subdivision nor the future residential development that the subdivision will facilitate are in any way dependent on the rare Northern Bishop Pine Forest ESHA habitat at the site, but would occur within a rare plant community ESHA and within buffer areas that are required to be established around rare plant ESHAs. The County's findings do not analyze alternatives, including the no-project alternative, to demonstrate options that would best avoid significant adverse effects on the ESHA.

The degree of factual and legal support for the County's action is lacking, given that the findings do not adequately evaluate or demonstrate why the one-acre size of Northern Bishop Pine Forest community was excluded from ESHA designation. In addition, as discussed below, the County staff report does not disclose or discuss that the road improvements required as conditions of the approved subdivision may result in direct impacts to Mendocino pygmy cypress trees and/or thin-lobed horkelia plants. The protection of ESHA in the coastal zone is an issue of statewide concern addressed by Section 30240 of the Coastal Act. In addition, the degree of factual and legal support for the County's action is further lacking because the findings do not adequately evaluate or

represent the full extent of habitat conditions and threats to rare habitats in relation to the approved subdivision.

Therefore, as neither the approved subdivision or the future residential use it will facilitate are listed in the LCP as allowable uses within rare plant ESHA and ESHA buffers, and the Coastal Act only allows resource dependent uses within an ESHA, the Commission finds that the appeal raises a substantial issue with respect to conformance of the County-approved development with the use limitations of the certified LCP, including its references to 30240, and including but not limited to LUP Policies 3.1-7 and 3.1-32, and CZC Sections 20.496.020 and 20.524.010.

Land divisions and Residential Development are Not Allowable Uses in ESHA buffers

The appellants allege that the approved land division is inconsistent with LCP provisions pertaining to ESHA buffers. The County staff report (Exhibit 6) indicates that according to the CA Natural Diversity Database (CNDDDB), pygmy cypress⁹ trees are located in the area, and makes reference to a June 2008 botanical report prepared by a consulting biologist (Exhibit 6, commencing on page 33), but does not address ESHA buffer setback distances from the rare Mendocino pygmy cypress trees, which the botanical report indicates occur on the site. Although not referenced in the County staff report, the June 2008 botanical report additionally identifies “several locations of rare plants and plant communities” present in the area. The botanical report further indicates that the rare plants known as thin-lobed horkelia (*Horkelia tenuiloba*¹⁰) and Mendocino cypress (*Hesperocyparis pygmaea*¹¹) occur in the area in addition to the rare plant community known as Mendocino pygmy cypress forest¹², and several watch-list¹³ species. The botanical report indicates that thin-lobed horkelia plants were observed “on the road bench edge or the inboard ditch and cut slope associated with Timberwood Way Road,” and that the Mendocino pygmy cypress forest occurs on the opposite side of the road from the subject parcel.

The County staff report includes excerpts from the botanical report that discuss development within ESHA buffer, but does not specify the distance between development and ESHA, except for 100-foot buffer setbacks from riparian ESHA that also occurs on the

⁹ The CA Rare Plant Rank designation for Mendocino pygmy cypress (*Hesperocyparis pygmaea*) is 1B.2, meaning the species is Rare, threatened, or endangered in California and elsewhere, and fairly endangered in California.

¹⁰ The CA Rare Plant Rank designation for thin-lobed horkelia (*Horkelia tenuiloba*) is 1B.2, meaning the species is Rare, threatened, or endangered in California and elsewhere, and fairly endangered in California. The global and state ranks for this species are G2/S2.2, respectively, indicating the species is imperiled and fairly threatened in California, with a moderate degree and immediacy of threat.

¹¹ Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., http://ucjeps.berkeley.edu/about_ICPN.html). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

¹² CDFG Biogeographic Branch (*Ibid.* 2) ranks Mendocino pygmy cypress woodland as “G2S2,” highly imperiled, and of high priority for inventory in the CNDDDB.

¹³ The California Rare Plant Rank (CRPR) system assigns a “watch list” designation to plants that are of limited distribution or infrequent throughout a broader area in California, and whose vulnerability or susceptibility to threat appears low at this time. While these plants are not considered “rare” from a statewide perspective, they are uncommon enough that their status should be monitored regularly.

site. The June 2008 botanical report recommends reduced buffers from sensitive plant habitats but does not specify buffer setback distances for most rare plant ESHAs. A site plan included in the June 2008 botanical report shows the existing access road and driveway that will serve Parcel 2 are located within rare plant ESHA and ESHA buffers. Table 4 of the botanist's report states in Item 4(k) that: "The greatest protection is given to the watercourse with a 100' buffer. Mendocino cypress buffers are less than 50' because the plants occur next to an existing entrance road and will likely not be impacted from use or maintenance of the road. The bishop pine forest is approximately one acre and was not considered an ESHA."

In Table 4 of the June 2008 botanical report included in the County staff report, the consultant addresses buffer area requirements of CZC Section 20.496.020(A) by stating in part that:

...Buffers were measured from the outer edge of the occurrences of Mendocino cypress on the parcel because they are adjacent to pygmy forest across the street. However, there is an existing road immediately adjacent to these trees and the pygmy forest, and if this vegetation is protected, there would not likely be damage to the ESHA from a building envelope on the proposed parcel...The Mendocino cypress is suitably adapted to disturbance immediately adjacent to it. The pygmy forest, however, is not suited to disturbance as clearings and road scars usually remain long after the initial disturbance. Pygmy forest is mapped within 100' of the parcel, but Timberwood Way skirts the outer edge of it on the adjacent parcel...The Mendocino cypress along the driveway should remain free of additional landscaping or open clearing. Brush can be removed from the area but the ESHA should remain free of introduced plant species.

The County staff report describes the existing driveway as 12 feet wide, and the tentative map included with the staff report shows the existing access road (Timberwood Way) as 18 feet wide. The project as approved by the County includes Special¹⁴ Condition No. 16 which states the following:

An eighteen (18) foot wide road shall be constructed within the access easement including four (4) inch minimum rock base, one hundred sixty (160) foot minimum radius of horizontal curve, grade not to exceed fifteen (15) percent, drainage culverts where necessary. New or replaced culverts shall be a minimum of 18 inches in diameter. In areas where radius of horizontal curve is less than 125 feet, roadway shall be widened to 22 feet.

Additionally, Special Condition No. 17 states the following:

A standard private road approach shall be constructed to a minimum width of eighteen (18) feet, area to be improved twenty (20) feet from the edge of the County road, to be surfaced with surfacing comparable to that on the County road.

Therefore, the approved development requires road improvements that will expand beyond the footprint of existing development and will occur within the 50-foot buffers of several rare plant ESHAs, including Mendocino pygmy cypress, Mendocino pygmy forest, thin-leaved horkelia, and Northern Bishop pine forest. While the County staff report quotes a portion of the botanical report that acknowledges possible impacts to ESHA resulting from

¹⁴ The final conditions as approved by the County are all described as "Standard Conditions," rather than separating "Standard Conditions" from "Special Conditions." Commission staff herein interprets the site-specific conditions imposed to address project-specific issues to be "Special Conditions."

development of the driveway/entrance road and that suggests mitigating by use of permeable surfaces, the County staff report does not disclose or discuss that the subdivision approved by the County will require road widening and improvements that may directly impact rare plant ESHA. Based upon the site plan in the June 2008 botanical report, road widening and resurfacing requirements between the county road and the private driveway may additionally directly impact Mendocino pygmy cypress trees.

According to Sawyer et al. (2009¹⁵), “residential development threatens many [Mendocino pygmy] cypress stands. Lichens, especially *Cladina portentosa* ssp. *pacifica*, create cryptogamic crusts in older stands, which are easily destroyed by foot traffic, fire, and air pollution. Ditches change the local hydrology. Leach lines from homes add nutrients.” Thus, 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 subdivision.

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

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

Furthermore, CZC 20.496.020 (A)(1)(f) specifies that where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required. The subject parcel occurs in a largely undeveloped area surrounded by parcels designated and zoned on the County general plan Coastal Plan Map and Coastal Zoning Map as Rural Residential (10 acre minimum) on all sides.

¹⁵ *Ibid.* 7

The County staff report includes excerpts from the botanical report that acknowledge both potential impacts to rare plants resulting from development and road improvements, and mitigation measures that may minimize impacts. The two mitigation measures included as Special Condition No. 11 are as follows:

Mitigation Measure 1a: Use permeable surfaces for parking area and road surfaces on Parcel 2. To reduce the potential for concentrated water runoff from leaving the proposed develop sites, a permeable surface such as permeable pavers or crushed rock will be used in place of concrete or asphalt for roads and parking areas.

Mitigation Measure 2a: Planting of invasive landscaping plants will not occur. Landscaping within the ESHA buffers will not include any of the invasive plants in Appendix C that are commonly used in landscaping. They include the following species:

- blue gum eucalyptus
- jubata grass or pampas grass
- ivies: English ivy, Algerian ivy. Or cape ivy
- periwinkle
- cotoneaster
- Brooms: Bridal broom, French broom, Portuguese broom, Scotch broom or Spanish broom

Providing mitigation for impacts to ESHA does not eliminate LCP requirements that minimum buffers be established between ESHA and development. CZC Section 20.496.020 and LUP Policy 3.1-7 require that a buffer shall not be less than 50 feet in width, after consultation and concurrence from DFG. Furthermore, LUP Policy 3.1-7 requires that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA. Approval of the subject development raises a substantial issue of conformance with the ESHA policies of the certified LCP including, but not limited to, LUP Policies 3.1-7 and 3.1-18, and CZC Section 20.496.020, because the County not only failed to acknowledge the proximity of rare plant ESHA both within: a) the newly-created parcel resulting from the approved subdivision; and b) along the roads that require improvements to access the new parcel, but further did not address how a buffer for rare plant ESHA that is less than the minimum of 100 feet is consistent with the requirements of LUP Policy 3.1-7 and CZC Sections 20.496.020(A)(1) and (3). Furthermore, the degree of factual and legal support for the County's action is lacking, given that the County failed to demonstrate how approval of a subdivision and the future residential development it will facilitate are allowable uses within rare plant ESHA and how the County could approve a subdivision with an identified building site that occurs in Northern Bishop Pine forest ESHA, inconsistent with LUP policies including but not limited to LUP Policy 3.1-7, 3.1-18, and CZC 20.496.020.

Therefore, the appeal of the subdivision as approved by the County raises a substantial issue of conformance with the ESHA policies of the certified LCP including, but not limited to, LUP Policies 3.1-7, 3.1-32 and CZC Section 20.496.020, because (a) the land division as approved does not appear to retain the widest and most protective buffer zone feasible as required by CZC 20.496.020(A)(1)(f); and (b) the County fails to address the consistency of the project with the ESHA buffer requirements of LUP Policies 3.1-7, 3.1-32, and 3.1-18 and CZC Section 20.496.020, including how a buffer for rare Bishop Pine

Forest, Mendocino pygmy cypress forest, and Mendocino pygmy cypress and thin-lobed horkelia plant habitat that is less than the minimum of 100 feet is consistent with the requirements of LUP Policy 3.1-7 and CZC Sections 20.496.020(A)(1) and (3).

B. Substantial Issue With Respect to Adequacy of Water and Sewage Services Policies of the Certified LCP

The appellants claim that the approved land division is inconsistent with LCP water and sewage supply policies related to both coastal development projects in general and coastal land divisions in particular (see Appendix B).

LUP 3.8-9 states that *approval* of the creation of any new parcels shall be *contingent* upon an adequate water supply. Moreover, LUP Policy 3.8-1 and CZC Section 20.532.095(A)(2) require, in applicable part, that the granting of any coastal development permit shall be supported by findings which establish that the proposed development will be provided with adequate utilities. Furthermore, both CZC Section 20.532.100(C)(1)(a) and CZC Section 20.524.010(B)(1)(c) specify that land division in rural areas *may be permitted only if proof is provided that adequate water and sewage service is available and an adequate water supply exists* during dry months to accommodate proposed parcels. The County acknowledged the area is a critical water resources area but did not include any findings justifying approval of the development without any prior proof of adequate water supply. While the final findings from the Planning Commission hearing include a comment from the applicant's agent regarding a test well's output, the County findings lack information on whether testing occurred pursuant to the dry month requirements. Furthermore, no evidence of adequate septic was provided prior to project approval.

The County staff report indicates that County Division of Environmental Health (DEH) "has reviewed the project with regard to on-site water and sewage disposal systems. The Environmental Health Divisions requirements to meet Conditions 4, 5, 6, 7, 8 and 9 are recommended to mitigate any potential environmental concerns that may arise from the placement of on site sewage disposal and replacement areas, or the placement of wells for potable water." As described above, the project as approved by the County includes special conditions that require, among other things, the following be completed prior to filing a Parcel Map: a submittal to DEH of an acceptable water quantity evaluation to demonstrate adequate water supply (Condition No. 7); and submittal to DEH evidence of an adequate septic site (Condition Nos. 4, 5, and 9).

Therefore, the County's approval of the project was granted without factual support that the newly-created parcel will have adequate water supplies or sewage capacity to serve future development and use of the parcels, and thus without factual support that the approved project is consistent with the water and sewage services policies of the certified LCP cited above.

Because the subject development was approved prior to submittal of proof of adequate water supply or an adequate sewage site and without any findings demonstrating adequate water supply or sewage capacity, the appeal raises a substantial issue of conformance of the project as approved with LCP water and sewer services policies related to both coastal development projects in general and coastal land divisions in particular, including but not

limited to, LUP Policies 3.8-1, 3.8-7, and 3.8-9, and CZC Sections 20.524.010, 20.532.095, and 20.532.100.

Summary of Findings:

The Commission finds that the appeal raises a substantial issue with respect to conformance of the County-approved land division development with LCP policies relating to protection of environmentally sensitive habitat areas (ESHAs), and to regulations regarding sewer and water services for coastal rural land divisions and other development. The Commission finds a substantial issue exists, because (1) the County failed to address in its findings why the one-acre Northern Bishop Pine Forest surrounding the identified building site in the approved subdivision was excluded from ESHA designation; (2) the County approved a development for a non-allowable use in ESHA and ESHA buffers without adequate factual or legal findings that justify the action; (3) the County approved a land division that does not provide for a minimum 50-foot buffer between the development and the Northern Bishop Pine Forest and other rare plant ESHA that exists on the site without addressing the consistency of the project with the ESHA buffer requirements of LUP Policies 3.1-4, 3.1-7, and 3.1-18 and CZC Section 20.496.020, including how a buffer that is less than the minimum of 50 feet is allowable under the LCP; (4) the land division as approved does not appear to retain the widest and most protective ESHA buffer zone feasible; (5) the County approval does not adequately demonstrate that the land division will not have significant adverse effects, either individually or cumulatively, on ESHAs; (6) the County has not demonstrated there is not a feasible less environmentally damaging alternative to locating the development within the ESHA, inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-4, 3.1-7, and 3.1-18, and CZC Sections 20.496.020 and 20.532.095; and (7) the County approval did not include any findings demonstrating adequate water supply or sewage disposal and replacement area exist to support a land division.

Information Needed for *De Novo* Review of Application

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

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

1. Submittal of Current Biological Report

As discussed previously, the project raises a substantial issue of conformance with the policies of the LCP regarding the protection of environmentally sensitive habitat areas (ESHA), as (1) it is unclear why the Northern Bishop Pine Forest community was excluded from ESHA designation; and (2) the map depicting ESHA features does not appear to designate minimum 50-foot buffers around any rare plant or sensitive natural community ESHA.

Therefore, to determine the presence and extent of all potential sensitive plant community and wetland and riparian habitat at and adjacent to the project site, a current botanical survey and wetland delineation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be provided. The survey should be prepared by a qualified biologist and should include, but not be limited to: (1) a map of all environmentally sensitive habitat areas (ESHA) identified by the survey that addresses Northern Bishop Pine Forest not previously identified as ESHA; and (2) a mapped delineation of all Coastal Commission-jurisdictional wetland and riparian features at a legible scale (typically 1 inch = 200 feet as per CZC Section 20.532.060). 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. All proposed developments should be superimposed on the map, and the map should depict 50-foot and 100-foot buffers between all ESHAs and proposed development.

2. Alternatives Analysis for Proposed Reduced ESHA buffers

The County's findings do not analyze alternatives, including the no-project alternative, to demonstrate options that would best avoid significant adverse effects on the ESHA.

Thus, an alternatives analysis must be provided that addresses the feasibility of different building site and access alternatives for the site, including alternatives and combinations of alternatives that would avoid or minimize encroachment into wetland, riparian, and rare plant ESHAs and ESHA buffers, and the "no project" alternative. Alternative building site and related access road locations should be evaluated that would avoid or minimize encroachment into ESHAs and ESHA buffers. Furthermore, different building envelope sizes should be evaluated, including smaller envelopes that would rely on a multi-story building design. The alternatives analysis should include: (1) a detailed description of each alternative and combination of alternatives; (2) what access improvements would be needed for each alternative (e.g., amount of grading and filling, any proposed watercourse crossing plans including but not limited to bridges, drainage control measures, etc.); (3) an analysis of ESHA impacts associated with each alternative (e.g., amount of vegetation requiring removal, amount of encroachment into rare plant or plant community ESHA, etc.); and (4) mitigation measures proposed for each alternative to minimize impacts to water quality, natural resources, and sensitive habitats.

3. Revised ESHA Buffer Analysis

CZC Section 20.496.010 defines ESHA and includes "wetlands," "riparian areas," and "habitats of rare and endangered plants and animals." Therefore, as ESHA, wetlands, riparian areas, and rare species habitats are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. According to these policies, a buffer area

of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width. CZC Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed. Furthermore, CZC 20.496.020 (A)(1)(f) specifies that where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

Table 4 of the botanist's report states in Item 4(k) that: "The greatest protection is given to the watercourse with a 100' buffer. Mendocino cypress buffers are less than 50' because the plants occur next to an existing entrance road and will likely not be impacted from use or maintenance of the road." However, the approved development requires road improvements that will expand beyond the footprint of existing development and will occur within the 50-foot buffers of several rare plant ESHAs, including Mendocino pygmy cypress, Mendocino pygmy forest, thin-leaved horkelia, and Northern Bishop pine forest. Based upon the site plan in the June 2008 botanical report, road widening and resurfacing requirements between the county road and the private driveway may additionally directly impact Mendocino pygmy cypress trees.

In Table 4 of the June 2008 botanical report included in the County staff report, the consultant additionally addresses buffer area requirements of CZC Section 20.496.020(A) by stating in part that:

...Buffers were measured from the outer edge of the occurrences of Mendocino cypress on the parcel because they are adjacent to pygmy forest across the street. However, there is an existing road immediately adjacent to these trees and the pygmy forest, and if this vegetation is protected, there would not likely be damage to the ESHA from a building envelope on the proposed parcel...The Mendocino cypress is suitably adapted to disturbance immediately adjacent to it. The pygmy forest, however, is not suited to disturbance as clearings and road scars usually remain long after the initial disturbance. Pygmy forest is mapped within 100' of the parcel, but Timberwood Way skirts the outer edge of it on the adjacent parcel...The Mendocino cypress along the driveway should remain free of additional landscaping or open clearing. Brush can be removed from the area but the ESHA should remain free of introduced plant species.

The June 2008 buffer analysis submitted by the consultant is inconsistent with the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. Therefore, if the alternatives analysis required under Item 2 above demonstrates there are no feasible alternatives that do not encroach into 100-foot buffer areas, a buffer analysis shall be provided for each alternative that includes a determination of adequate buffers as prescribed in Coastal Zoning Code 20.496.020(A)(1)(a-g) and should depict buffers in relation to proposed development on a map. The revised buffer analysis should include: (1)

a thorough evaluation of the potential impacts and disturbance to ESHAs as a result of all elements of the proposed development; and (2) a discussion of any recommended mitigation measures to ensure that the development would be sited and designed in a manner that would prevent impacts that would significantly degrade the area and provide for the continuance of the ESHA. Additionally, consultation and agreement by DFG that a protective buffer of less than 100 feet as determined pursuant to CZC 20.496.020 is adequate to protect the ESHA resource is required if development would occur within 100 feet of any delineated ESHA.

4. Submittal of Permit Evidence for Test Well

The project description questionnaire included in the County referral submittal includes a project description from the applicant that states “This is a simple division of a 23.16 acre parcel into two parcels. The only improvement contemplated is the drilling of one well on Parcel 2- This well was already drilled in October 2005 under a valid well drilling permit.” There does not appear to be evidence of a permit on file for previous well drilling activities on the described Parcel 2. The well site as shown on the tentative map is located within Northern Bishop Pine Forest ESHA. The Commission does not allow previous unpermitted activities in ESHA to justify further impacts to ESHA. Therefore, the coastal development permit history for the previous well drilling activities must be provided.

5. Submittal of Evidence of Adequate Water Supply and Sewer Capacity

As discussed previously, LUP Policy 3.8-1 requires that the adequacy of water and sewage services, among other factors, be evaluated when coastal development permit applications are granted or modified. LUP Policy 3.8-9 states the following (Emphasis added):

Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health’s Land Division requirements as revised. (Appendix 6)

Additionally, LUP Policy 3.9-1, and Coastal Zoning Code Section 20.532.095 require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit. The Mendocino Coastal Groundwater study recommends that proof of water be provided for development in Critical Water Resource Areas, including the area where the subject property is located.

Therefore, a dry-summer-month hydrological study involving the drilling of a test water well(s) or other demonstration of proof of water is needed to evaluate whether adequate water will be available to serve future development on Parcel 2 of the divided property, consistent with the certified LCP.

In terms of septic capacity, LUP Policy 3.8-7 states the following (Emphasis added):

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.

The project as approved by the County did not demonstrate that an adequate site for a sewage system exists, but instead included special conditions that require, among other things, submittal to Department of Environmental Health evidence of an adequate septic site. Therefore, evidence of adequate septic capacity must also be provided.

APPENDICES

APPENDIX A: Commission's Appeal Jurisdiction Over Project

APPENDIX B: Excerpts from the Humboldt County Local Coastal Program

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Aerial Photo with Parcel Overlay
4. Tentative Map
5. Appeal
6. Notice of Final Local Action and Findings for Approval (Includes June 2008 botanical report commencing on Exhibit 6 page 33)

APPENDIX A

COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On October 20, 2011, the County of Mendocino approved Coastal Development Minor Subdivision # CDMS 4-2006 of a 23.16-acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres. The approved development includes an identified building site on the subdivided parcel which is described as "Parcel 2." The undivided parcel in its current form contains an existing single-family residential development on the portion described as "Parcel 1" in the County staff report. The parcel (APN 141-100-35) is located near Anchor Bay, north of Gualala, and 0.25 mile west of Iversen Road on Hilltop Lane a.k.a. Timberwood Way Road (private), at 30300 Hilltop Lane.

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 land division is a form of development that is not designated as the "principal permitted use" under the certified LCP.

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received at the Commission's North Coast District Office on November 7, 2011 (Exhibit No. 6). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

One appeal was filed with the Commission's North Coast District Office on November 17, 2011 from Commissioners Dayna Bochco and Esther Sanchez (Exhibit No. 5). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action.

APPENDIX B

EXCERPTS FROM THE MENDOCINO COUNTY CERTIFIED LOCAL COASTAL PROGRAM

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

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

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

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

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

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

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

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

shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

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.

LUP Policy 3.1-32 states the following (emphasis added):

Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7.

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

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

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

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

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

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

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

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

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

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

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

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

(g) Type and Scale of Development Proposed. *The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis*

depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CZC Section 20.532.095 “*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; ...*

B. Summary of Applicable LCP Policies Relating to Adequate Services:

Land Use Plan (LUP) Policy 3.8-1 states, in applicable part, as follows (Emphasis added):

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies.

...

Land Use Plan (LUP) Policy 3.8-7 states the following (Emphasis added):

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal

system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.

Land Use Plan (LUP) Policy 3.8-9 states the following (Emphasis added):

Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised. (Appendix 6)

Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use.

CZC Section 20.524.010, “Coastal Rural Land Divisions,” of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

*(A) **Applicability.** This section shall apply to lands located in the County's coastal zone outside of the urban/rural boundaries as designated on the land use/zoning maps.*

*(B) **Required Conditions for Approval of Rural Land Divisions.** Land division in rural areas may be permitted only if all of the following conditions are satisfied:*

...

(1)(b) ...a satisfactory site for an individual sewage system with one hundred (100) percent back-up area for an alternative leach field exists.

(1)(c) Proof is provided that adequate water and sewage service is available and an adequate water supply exists during dry months to accommodate proposed parcels without adversely affecting the groundwater table of contiguous or surrounding areas. For proof of water definition, see Section 20.308.095.

...

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

(B) 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(C) “*Land Division Findings*” states, in applicable part, the following (emphasis added):

(1) **All Coastal Land Divisions.** No coastal lands shall be divided unless the following findings are made:

(a) *The new lots have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them...*

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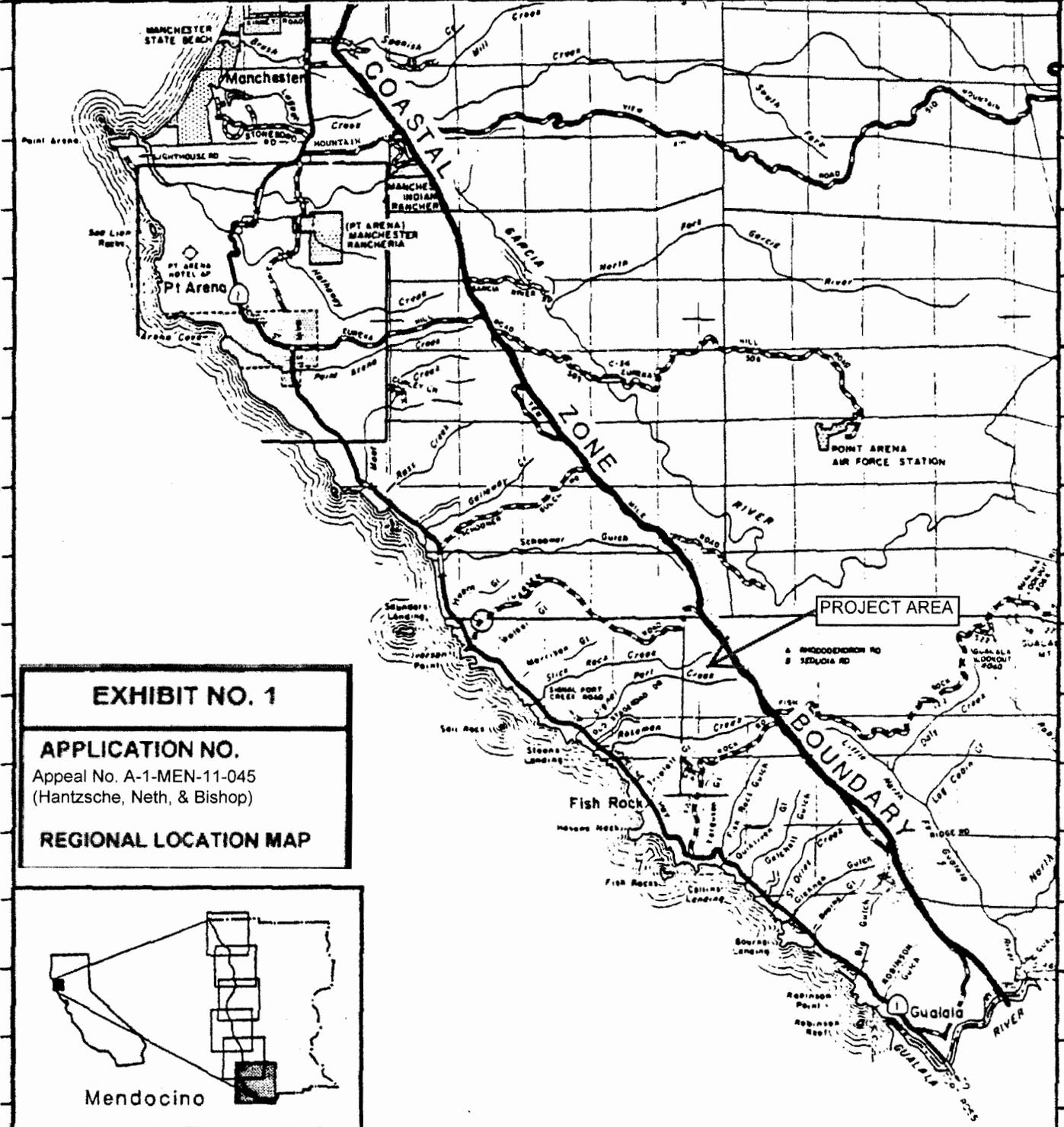
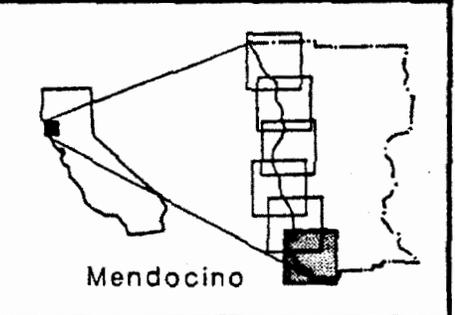


EXHIBIT NO. 1

APPLICATION NO.
Appeal No. A-1-MEN-11-045
(Hantzsche, Neth, & Bishop)

REGIONAL LOCATION MAP



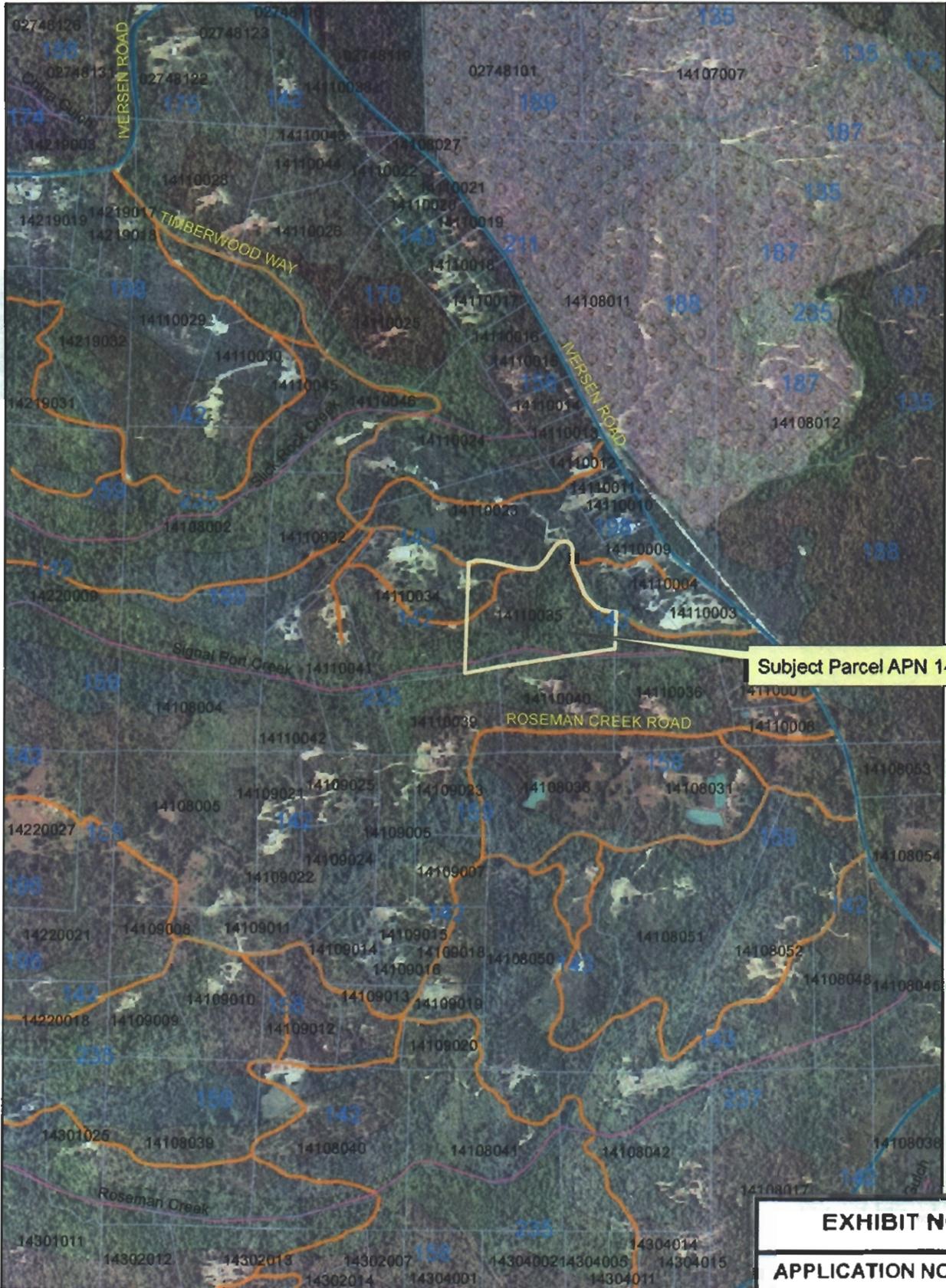
California Coastal Commission

LOCATION MAP

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County of Mendocino

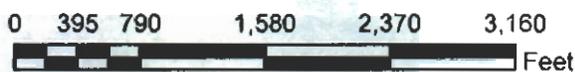


Subject Parcel APN 141-100-35

EXHIBIT NO. 3
APPLICATION NO.
 Appeal No. A-1-MEN-11-045
 (Hantzsche, Neth, & Bishop)
AERIAL PHOTO with
PARCEL OVERLAY

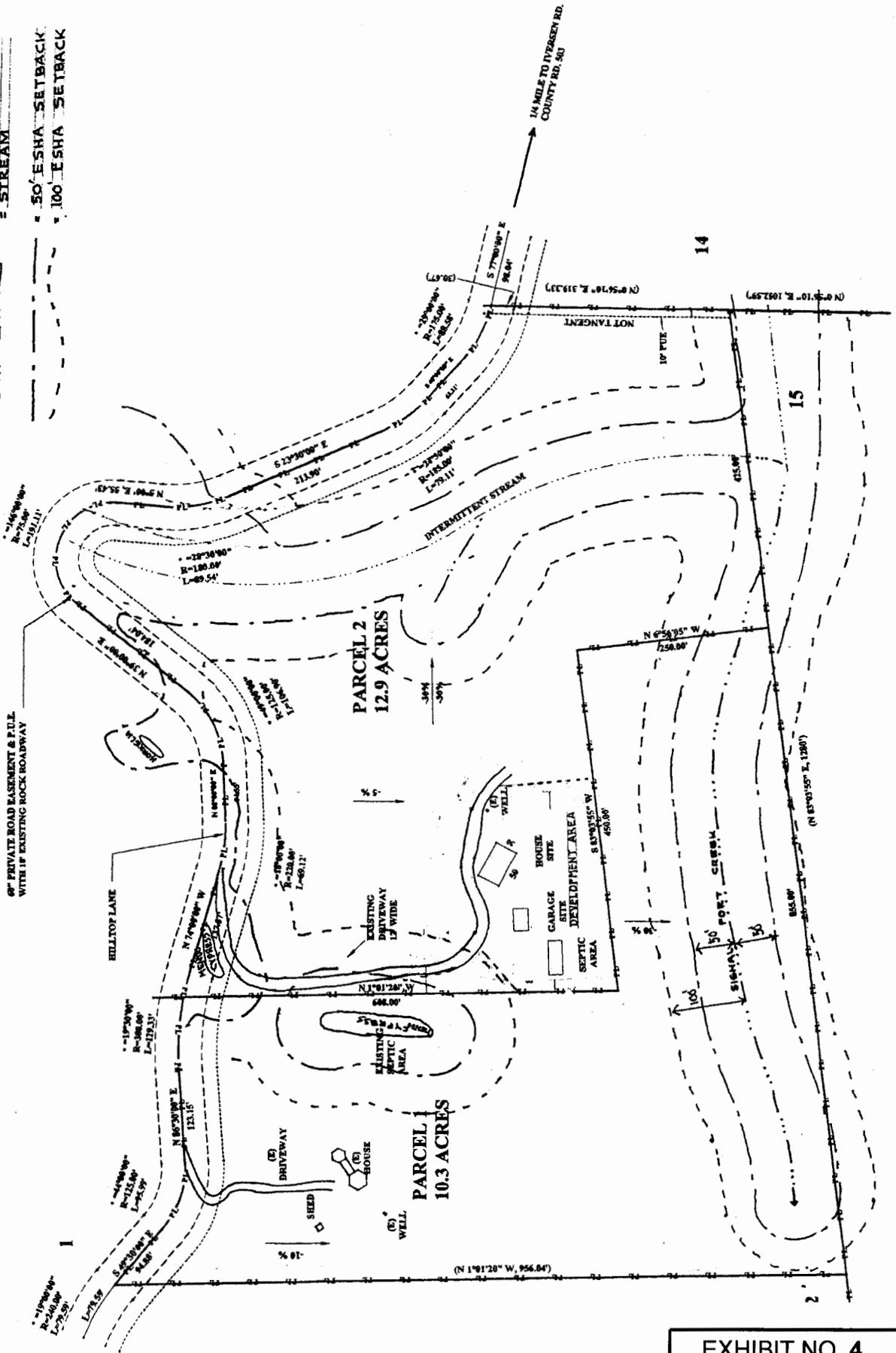


1:13,938



LEGEND

- ⊙ = FOUND 3/4" REBAR, LS3348
- △ = SPIKE ON PROPERTY LINE
- ▲ = SPIKE
- = TREE
- () = RECORD DATA
- = PROPERTY LINE
- - - = EASEMENT
- · - · = 20' BUILDING SETBACK
- · - · - · = STRREAM
- · - · - · = 50' E SHA SETBACK
- · - · - · = 100' E SHA SETBACK



OWNER: HANTZSCHE, Lisa

EXHIBIT NO. 4
 APPEAL NO.
 A-1-MEN-11-045
 HANTZSCHE, NETH & BISHOP
 TENTATIVE MAP

IAF

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: SEE ATTACHMENT A
Mailing Address:
City: Zip Code: Phone:

RECEIVED

NOV 17 2011

CALIFORNIA
COASTAL COMMISSION

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Coastal Development Minor Subdivision of a 23.16 acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres.

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

30300 Hilltop Lane, Gualala (Mendocino County), A.P.N. 141-100-35

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

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

EXHIBIT NO. 5
APPEAL NO.
A-1-MEN-11-045
HANTZSCHE, NETH & BISHOP
APPEAL (1 of 21)

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.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	A-1-MEN-11-045
DATE FILED:	11/17/11
DISTRICT:	North Coast

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

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

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

6. Date of local government's decision: October 20, 2011

7. Local government's file number (if any): CDMS 4-2006

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:

Lisa Hantzsche, Pat Neth, Brian & Deborah Bishop
P. O. Box 900
Gualala, CA 95445

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.

David E. Paoli
Paoli Engineering & Surveying
535 East Chestnut Street
Fort 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 Attachment B.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

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

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

SECTION V. Certification

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

Signed: _____ Signature on File
Appellant or Agent _____

Date: 11/17/11

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.)

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~~ ^{above} are correct to the best of my/our knowledge.

Signed: _____

Appellant/Agent

Signature on File

Date: 11/17/11

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

(760) 435-0971

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 land division is a form of development that is not designated as the “principal permitted use” under the certified LCP.

BACKGROUND:

On October 20, 2011, the County of Mendocino approved Coastal Development Minor Subdivision # CDMS 4-2006 of a 23.16-acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres. The approved development includes an identified building site on the subdivided parcel which is described as “Parcel 2.” The undivided parcel in its current form contains an existing single-family residential development on the portion described as “Parcel 1” in the County staff report. The parcel (APN 141-100-35) is located near Anchor Bay, north of Gualala, and 0.25 mile west of Iversen Road on Hilltop Lane a.k.a. Timberwood Way Road (private), at 30300 Hilltop Lane.

The County staff report indicates that according to the CA Natural Diversity Database (CNDDDB), pygmy cypress¹ trees are located in the area, and makes reference to a June 2008 botanical report prepared by a consulting biologist. Although not referenced in the County staff report, the June 2008 botanical report additionally identifies “several locations of rare plants and plant communities” present in the area. The County staff report includes excerpts from the botanical report that discuss development within ESHA buffer, but does not specify the distance between development and ESHA, except for 100-foot buffer setbacks from riparian ESHA that also occurs on the site. A site plan included in the June 2008 botanical report shows the existing access road and driveway that will serve Parcel 2 are located within rare plant ESHA and within the 50-foot minimum ESHA buffers.

¹ The CA Rare Plant Rank designation for Mendocino pygmy cypress (*Hesperocyparis pygmaea*) is 1B.2, meaning the species is Rare, threatened, or endangered in California and elsewhere, and fairly endangered in California. The global and state ranks for this species are G2/S2, respectively, indicating the species is imperiled.

The County staff report also references a site visit on June 11, 2009 with CA Department of Fish and Game (CDFG) staff who identified Bishop Pine (*Pinus muricata*) forest on the site. The building site identified for Parcel 2 is located within the Bishop pine forest, south of an existing 12-foot-wide unpaved driveway. Bishop pine forest (also known as Northern Bishop Pine Forest), is recognized as a rare and endangered plant community², however the consulting botanist characterized the approximately one-acre stand as non-ESHA “because of the size.”

The project as approved by the County includes special conditions that require, among other things, the following be completed prior to filing a Parcel Map: submittal to the Division of Environmental Health (DEH) of an acceptable water quantity evaluation to demonstrate adequate water supply (Condition No. 7); submittal to DEH evidence of an adequate septic site (Condition Nos. 4, 5, and 9); mitigation for botanical impacts by using permeable surfaces for the parking area and road surfaces on Parcel 2 in place of asphalt, and prohibiting planting of invasive landscaping plants within the ESHA buffers (Condition No. 11); improvements to the access easement road (Condition No. 16); improvements to the private driveway approach to increase width to 18 feet, with surfacing comparable to that of the County Road (Condition No. 17); and compliance with recommendations from California Department of Forestry (CalFire).

The parcels are designated on the Land Use Plan Map as Rural Residential, Ten Acre Minimum with a Rural Residential –Density Limit of ten acres (RR-10/ RR-10 DL). The parcels show a similar zoning designation on the Coastal Zoning Map (RR-10/ RR-10 DL). The parcel is located in a designated “critical water resources” area with a “high fire hazard” ranking.

REASONS FOR APPEAL:

The approved development is inconsistent with the policies of the certified LCP, including but not limited to the policies contained in the “Habitats and Natural Resources” and “Transportation Utilities and Public Services” 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; 20.524; 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:

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):

² CDFG Biogeographic Branch (http://www.dfg.ca.gov/biogeodata/vegcamp/natural_communities.asp) ranks Bishop Pine forest as “G3S3,” highly imperiled, and of high priority for inventory in the CNDDDB.

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

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

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

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

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.

LUP Policy 3.1-32 states the following (emphasis added):

Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7.

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

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

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

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

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

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

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

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

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

any additional material eroded as a result of the proposed development should be provided.

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

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

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

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

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

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

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

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

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

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year

flood without increased damage to the coastal zone natural environment or human systems.

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

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

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

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

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

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

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

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

CZC Section 20.532.095 "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;

...

Discussion:

Northern Bishop Pine Forest is ESHA

The County staff report references a site visit on June 11, 2009 with CA Department of Fish and Game (CDFG) staff who identified Bishop Pine (*Pinus muricata*) forest on the site. The building site identified for Parcel 2 is located within the Bishop pine forest, south of an existing 12-foot-wide unpaved driveway. Bishop pine forest (also known as Northern Bishop Pine Forest), is recognized as a rare and endangered plant community, however the consulting botanist characterized the approximately one-acre stand as non-ESHA “because of the size.”

ESHA, as defined in Section 30107.5 of the Coastal Act, Section 3.1 of the certified Mendocino County LUP, and CZC Section 20.308.040(F) is “...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 be easily disturbed or degraded by human activities.” Thus, Coastal Act Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) set up a two part test for determining an ESHA. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F).

The first test for determining ESHA under Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) is whether an **area** including plants or animals or their habitats **is either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem**. The CA Department of Fish and Game recognizes special status natural communities as communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects³. These communities may or may not contain special status species or their habitat. The CA Department of Fish and Game *List of California Terrestrial Natural Communities*⁴ ranks Bishop Pine forest community type as “G3S3⁵,” highly imperiled, and of high priority for inventory in the CNDDDB. Because of its relative rarity at the state and global levels, Northern Bishop pine forest meets the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies.

The second test for determining ESHA under Coastal Act Section 30107.5 (Section 3.1 of the certified LUP) is whether the habitat could be easily disturbed or degraded by human activities and developments. As described in *A Manual of California Vegetation*, “Bishop pine is a closed-cone conifer that produces cones at 5-6 years of age; cones remain closed for several years and

³ Department of Fish and Game. November 24, 2009. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. Available online at http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols_for_Surveying_and_Evaluating_Impacts.pdf

⁴ <http://www.dfg.ca.gov/biogeodata/vegcamp/pdfs/natcomlist.pdf>. The rare natural communities are asterisked on this list.

⁵ In this case, the California Heritage (CNDDDB) ranking of G3/S3 describes the global rank (G rank) and the state rank (S rank) for Northern Bishop pine forest in California as vulnerable and at moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors making it vulnerable to extirpation.

open after fire or on hot days.”⁶ Northern Bishop pine forest has been extensively compromised in Mendocino County in recent years due to threats from Pitch pine canker (*Fusarium subglutinis* f. sp. *pini*) and needle blight caused by *Dothistromoa septospora*, in addition to threats from development. The concentrations of Bishop pine trees within the project foot print could be easily disturbed or degraded by human activities and developments such as those that would be necessary to develop the identified building site including grading, paving, building construction, foot trampling, etc. Additionally, the site is located in a designated high fire hazard area; California law (PRC 4291) requires property owners and/or occupants to create 100 feet of defensible space around homes and buildings, which would result in even greater clearance of Bishop pine forest around the building site that would result from the approved subdivision. Such activities would fragment or otherwise demolish the habitat, reduce habitat size, increase opportunities for establishment of nonnative and invasive species, and degrade and alter habitat quality and conditions that are integral to the “special nature” of the existing habitat area. Given these threats, the Northern Bishop pine forest meets the second test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The consulting botanist states in the June 2008 botanical report that “The bishop pine forest is approximately one acre and was not considered an ESHA” but offers no supporting documentation as to why a 1-acre stand would not be considered ESHA. In fact, the June 2008 botanical report describes a seemingly intact forest characterized by an assemblage of native understory plants that are often associated with Bishop Pine forest, including Manzanita (*Arctostaphylos glandulosa* ssp. *glandulosa*) and huckleberry (*Vaccinium ovatum*). It is also questionable whether the Bishop Pine forest community type is actually limited to the area delineated by the consulting biologist. The community type appears to extend beyond both the delineated area and beyond parcel boundaries. The consulting biologist describes the presence of approximately 15 individuals of the rare Mendocino pygmy cypress and approximately 3 acres of the rare Mendocino pygmy cypress forest community in the area, and describes vegetation on the site as “predominantly a forest of mixed conifers such as redwood (*Sequoia sempervirens*), Douglas-fir (*Pseudotsuga menziesii*), and bishop pine” but provides no characterization of percent cover of species. The Bishop Pine Forest Alliance⁷ includes several equally-rare plant associations, including Bishop pine-Mendocino pygmy cypress; Bishop pine-Douglas-Fir; and Bishop pine-Manzanita. Absent documentation, it is unclear whether the surrounding vegetation described by the botanist is in fact part of a greater assemblage of the Bishop Pine Forest Alliance. However, an April 1, 2010 floristic survey report prepared by another consulting biologist for the immediately adjacent parcel to the west (APN 141-100-34) identified several areas of Bishop pine forest. Given the relatively undeveloped surrounding landscape, and documented occurrences of Bishop pine forest on the adjacent parcel, it is possible that this forest community type extends beyond the artificial parcel boundaries at the site.

Regardless of whether the stand of Northern Bishop pine forest is 1 acre or larger, even 1 acre of Bishop pine forest may be contributing in a significant way to the forest ecosystem and the long-term sustainability of the habitat by providing such things as areas for regeneration of genetic

⁶ Cope 1993e, in Sawyer et al. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society, Sacramento. 1300 pp.

⁷ The vegetation classification system is based on the classification put forth in the second edition of “A Manual of California Vegetation,” (MCV) which is the California expression of the National Vegetation Classification System (NVCS) (Grossman et al. 1998) and includes alliances (a floristically defined vegetation unit identified by its dominant and/or characteristic species) and associations (the finer level of classification beneath alliances).

diversity, wildlife habitat, or protection of genetic diversity in existing trees. Given recent pathogenic threats, protection of genetic diversity and potentially resistant strains through retention of trees becomes increasingly important to the long-term health and viability of the Northern Bishop Pine forest community type.

Land divisions and Residential Development are Not Allowable Uses in ESHA

The approved subdivision includes an identified building site that would be located within Northern Bishop Pine Forest ESHA. Steep slopes preclude locating the building site on much of the rest of proposed Parcel 2. The LCP policies identify specific uses permitted in wetland ESHAs, but do not specifically identify what uses are allowed within rare plant community ESHA, and by extension, within the rare plant buffer. Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. Section 30240 of the Coastal Act is listed and referred to in the narrative for the section of the Land Use Plan containing the other LUP policies governing the protection of ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

Neither the approved subdivision nor the future residential development that the subdivision will facilitate are in any way dependent on the rare Northern Bishop Pine Forest ESHA habitat at the site, but would occur within a rare plant community ESHA and within buffer areas that are required to be established around rare plant ESHAs. LUP Policy 3.1-32 limits land divisions which are located within ESHAs and does not permit such land divisions if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7. In addition, CZC Section 20.496.020(A)(3) explicitly disallows new subdivisions that create or provide for new parcels entirely within a buffer area. Additionally, CZC Section 20.524.010(B)(g) requires that land divisions shall not have significant adverse effects, either individually or cumulatively, on ESHAs or on other coastal resources, and CZC Section 20.524.010(B)(m) requires that identified coastal resources within the proposed area to be divided are protected from significant adverse environmental impacts. The County's findings do not analyze alternatives, including the no-project alternative, to demonstrate options that would best avoid significant adverse effects on the ESHA.

Therefore, as neither the approved subdivision or the future residential use it will facilitate are listed in the LCP as allowable uses within rare plant ESHA and ESHA buffers, and the Coastal Act only allows resource dependent uses within an ESHA, the approved development is inconsistent with the use limitations of the certified LCP, including its references to 30240, and

including but not limited to LUP Policies 3.1-4, 3.1-7, and 3.1-32, and CZC Sections 20.496.020 and 20.524.010.

Land divisions and Residential Development are Not Allowable Uses in ESHA buffers

The County staff report indicates that according to the CA Natural Diversity Database (CNDDDB), pygmy cypress⁸ trees are located in the area, and makes reference to a June 2008 botanical report prepared by a consulting biologist, but does not address ESHA buffer setback distances from the rare Mendocino pygmy cypress trees, which the botanical report indicates occur on the site. Although not referenced in the County staff report, the June 2008 botanical report additionally identifies “several locations of rare plants and plant communities” present in the area. The botanical report further indicates that the rare plants known as thin-lobed horkelia (*Horkelia tenuiloba*⁹) and Mendocino cypress (*Hesperocyparis pygmaea*¹⁰) occur in the area in addition to the rare plant community known as Mendocino pygmy cypress forest¹¹, and several watch-list¹² species. The botanical report indicates that thin-lobed horkelia plants were observed “on the road bench edge or the inboard ditch and cut slope associated with Timberwood Way Road,” and that the Mendocino pygmy cypress forest occurs on the opposite side of the road from the subject parcel.

The County staff report includes excerpts from the botanical report that discuss development within ESHA buffer, but does not specify the distance between development and ESHA, except for 100-foot buffer setbacks from riparian ESHA that also occurs on the site. The June 2008 botanical report recommends reduced buffers from sensitive plant habitats but does not specify buffer setback distances for most rare plant ESHAs. A site plan included in the June 2008 botanical report shows the existing access road and driveway that will serve Parcel 2 are located within rare plant ESHA and ESHA buffers. Table 4 of the botanist’s report states in Item 4(k) that: “The greatest protection is given to the watercourse with a 100’ buffer. Mendocino cypress buffers are less than 50’ because the plants occur next to an existing entrance road and will likely not be impacted from use or maintenance of the road. The bishop pine forest is approximately one acre and was not considered an ESHA.”

The County staff report describes the existing driveway as 12 feet wide, and the tentative map included with the staff report shows the existing access road as 18 feet wide. The project as approved by the County includes Special Condition No. 16 which states the following:

⁸ The CA Rare Plant Rank designation for Mendocino pygmy cypress (*Hesperocyparis pygmaea*) is 1B.2, meaning the species is Rare, threatened, or endangered in California and elsewhere, and fairly endangered in California.

⁹ The CA Rare Plant Rank designation for thin-lobed horkelia (*Horkelia tenuiloba*) is 1B.2, meaning the species is Rare, threatened, or endangered in California and elsewhere, and fairly endangered in California. The global and state ranks for this species are G2/S2.2, respectively, indicating the species is imperiled and fairly threatened in California, with a moderate degree and immediacy of threat.

¹⁰ Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., http://ucjeps.berkeley.edu/about_ICPN.html). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

¹¹ CDFG Biogeographic Branch (*Ibid.* 2) ranks Mendocino pygmy cypress woodland as “G2S2,” highly imperiled, and of high priority for inventory in the CNDDDB.

¹² The California Rare Plant Rank (CRPR) system assigns a “watch list” designation to plants that are of limited distribution or infrequent throughout a broader area in California, and whose vulnerability or susceptibility to threat appears low at this time. While these plants are not considered “rare” from a statewide perspective, they are uncommon enough that their status should be monitored regularly.

An eighteen (18) foot wide road shall be constructed within the access easement including four (4) inch minimum rock base, one hundred sixty (160) foot minimum radius of horizontal curve, grade not to exceed fifteen (15) percent, drainage culverts where necessary. New or replaced culverts shall be a minimum of 18 inches in diameter. In areas where radius of horizontal curve is less than 125 feet, roadway shall be widened to 22 feet.

Additionally, Special Condition No. 17 states the following:

A standard private road approach shall be constructed to a minimum width of eighteen (18) feet, area to be improved twenty (20) feet from the edge of the County road, to be surfaced with surfacing comparable to that on the County road.

Therefore, the approved development requires road improvements that will expand beyond the footprint of existing development and will occur within the 50-foot buffers of several rare plant ESHAs, including Mendocino pygmy cypress, Mendocino pygmy forest, thin-leaved horkelia, and Northern Bishop pine forest. Based upon the site plan in the June 2008 botanical report, road widening and resurfacing requirements between the county road and the private driveway may additionally directly impact Mendocino pygmy cypress trees. According to Sawyer et al. (2009¹³), “residential development threatens many cypress stands. Lichens, especially *Cladina portentosa* ssp. *pacifica*, create cryptogamic crusts in older stands, which are easily destroyed by foot traffic, fire, and air pollution. Ditches change the local hydrology. Leach lines from homes add nutrients.”

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

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

Furthermore, CZC 20.496.020 (A)(1)(f) specifies that where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

¹³ *Ibid.* 6

The subject parcel occurs in a largely undeveloped area surrounded by parcels designated and zoned on the County general plan Coastal Plan Map and Coastal Zoning Map as Rural Residential (10 acre minimum) on all sides.

The County staff report includes excerpts from the botanical report that acknowledge both potential impacts to rare plants resulting from development and road improvements, and mitigation measures that may minimize impacts. The two mitigation measures included as Special Condition No. 11 are as follows:

Mitigation Measure 1a: Use permeable surfaces for parking area and road surfaces on Parcel 2. To reduce the potential for concentrated water runoff from leaving the proposed develop sites, a permeable surface such as permeable pavers or crushed rock will be used in place of concrete or asphalt for roads and parking areas.

Mitigation Measure 2a: Planting of invasive landscaping plants will not occur. Landscaping within the ESHA buffers will not include any of the invasive plants in Appendix C that are commonly used in landscaping. They include the following species:

- blue gum eucalyptus
- jubata grass or pampas grass
- ivies: English ivy, Algerian ivy. Or cape ivy
- periwinkle
- cotoneaster
- Brooms: Bridal broom, French broom, Portuguese broom, Scotch broom or Spanish broom

Providing mitigation for impacts to ESHA does not eliminate LCP requirements that minimum buffers be established between ESHA and development. CZC Section 20.496.020 and LUP Policy 3.1-7 require that a buffer shall not be less than 50 feet in width, after consultation and concurrence from DFG. Furthermore, LUP Policy 3.1-7 requires that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA. Approval of the subject development is inconsistent with the ESHA policies of the certified LCP including, but not limited to, LUP Policies 3.1-7 and 3.1-18, and CZC Section 20.496.020, because the County not only failed to acknowledge the proximity of rare plant ESHA both within: a) the newly-created parcel resulting from the approved subdivision; and b) along the roads that require improvements to access the new parcel, but further did not address how a buffer for rare plant ESHA that is less than the minimum of 100 feet is consistent with the requirements of LUP Policy 3.1-7 and CZC Sections 20.496.020(A)(1) and (3).

Thus, because (1) the County approval failed to identify Northern Bishop Pine forest ESHA and ESHA buffers associated with Northern Bishop Pine forest and other rare plant ESHAs; (2) the botanical report shows that the proposed building envelope and related development would occur within ESHA and ESHA buffers; and (3) the County approval does not adequately demonstrate that the land division will not have significant adverse effects, either individually or cumulatively, on ESHAs, the project, as approved by the County, is inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-7 and 3.1-18, 3.1-32, and CZC Sections 20.496.020 and 20.524.010.

B. Inconsistencies with LUP “Transportation, Utilities, and Public Services” Policies and Coastal Zoning Code Regulations Regarding Sewer and Water Services for Coastal Rural Land Divisions and Other Development

LCP Policies on Adequate Services:

Land Use Plan (LUP) Policy 3.8-1 states, in applicable part, as follows (Emphasis added):

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies.

...

Land Use Plan (LUP) Policy 3.8-7 states the following (Emphasis added):

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.

Land Use Plan (LUP) Policy 3.8-9 states the following (Emphasis added):

Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised. (Appendix 6)

Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use.

CZC Section 20.524.010, “Coastal Rural Land Divisions,” of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

*(A) **Applicability.** This section shall apply to lands located in the County's coastal zone outside of the urban/rural boundaries as designated on the land use/zoning maps.*

*(B) **Required Conditions for Approval of Rural Land Divisions.** Land division in rural areas may be permitted only if all of the following conditions are satisfied:*

...

(1)(b) ...a satisfactory site for an individual sewage system with one hundred (100) percent back-up area for an alternative leach field exists.

(1)(c) Proof is provided that adequate water and sewage service is available and an adequate water supply exists during dry months to accommodate proposed parcels without adversely affecting the groundwater table of contiguous or surrounding areas. For proof of water definition, see Section 20.308.095.

...

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

(B) 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(C) "Land Division Findings" states, in applicable part, the following (emphasis added):

(1) All Coastal Land Divisions. No coastal lands shall be divided unless the following findings are made:

- (a) The new lots have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them...*

Discussion:

The subject parcel is in a designated critical water resources area. The County staff report indicates that County Division of Environmental Health (DEH) "has reviewed the project with regard to on-site water and sewage disposal systems. The Environmental Health Divisions requirements to meet Conditions 4, 5, 6, 7, 8 and 9 are recommended to mitigate any potential environmental concerns that may arise from the placement of on site sewage disposal and replacement areas, or the placement of wells for potable water." As described above, the project as approved by the County includes special conditions that require, among other things, the following be completed prior to filing a Parcel Map: a submittal to DEH of an acceptable water quantity evaluation to demonstrate adequate water supply (Condition No. 7); and submittal to DEH evidence of an adequate septic site (Condition Nos. 4, 5, and 9).

LUP 3.8-9 states that *approval* of the creation of any new parcels shall be *contingent* upon an adequate water supply. Moreover, LUP Policy 3.8-1 and CZC Section 20.532.095(A)(2) require, in applicable part, that the granting of any coastal development permit shall be supported by findings which establish that the proposed development will be provided with adequate utilities. Furthermore, both CZC Section 20.532.100(C)(1)(a) and CZC Section 20.524.010(B)(1)(c) specify that land division in rural areas *may be permitted only if proof is provided that adequate water and sewage service is available and an adequate water supply exists* during dry months to accommodate proposed parcels. The County acknowledged the area is a critical water resources

area but did not include any findings justifying approval of the development without any prior proof of adequate water supply. While the final findings from the Planning Commission hearing include a comment from the applicant's agent regarding a test well's output, the County findings lack information on whether testing occurred pursuant to the dry month requirements. Furthermore, no evidence of adequate septic was provided prior to project approval.

Because the subject development was approved prior to submittal of proof of adequate water supply and septic capacity and without any findings demonstrating adequate water supply or septic services, the project as approved is inconsistent with LCP policies regarding both coastal development projects in general and coastal land divisions in particular related to adequate water supply including, but not limited to LUP Policies 3.8-1 and 3.8-9, and CZC Sections 20.524.010, 20.532.095, and 20.532.100.

CONCLUSION:

The project as approved therefore is inconsistent with the certified LCP because (1) neither the approved subdivision nor the future residential use it will facilitate are listed in the LCP as allowable uses within rare plant ESHA and the identified building site occurs in Northern Bishop Pine forest ESHA; (2) the County approved a land division that does not provide for a minimum 50-foot buffer between the development and the Northern Bishop Pine Forest and other rare plant ESHA that exists on the site; (3) the land division as approved does not appear to retain the widest and most protective ESHA buffer zone feasible; (4) the County approval does not adequately demonstrate that the land division will not have significant adverse effects, either individually or cumulatively, on ESHAs; and (5) the County approval did not include any findings demonstrating adequate water supply or sewage disposal and replacement area exist to support a land division.

As a result, the project as approved is inconsistent with the policies of the certified LCP, including but not limited to LUP Policies 3.1-7, 3.1-18, 3.1-32, and 3.8; and Sections 20.496.020, 20.524, and 20.532 of the Mendocino County Coastal Zoning Code.



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

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

October 31, 2011

NOTICE OF FINAL ACTION

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

CASE#: CDMS 4-2006

DATE FILED: 2/9/2006

OWNER/ APPLICANT: LISA K. HANTZSCHE

AGENT: DAVID E. PAOLI

REQUEST: Coastal Development Minor Subdivision of a 23.16 acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres.

LOCATION: Within the Coastal Zone, approximately 4.5 miles east of State Highway 1 at Iversen Point, along Iversen Road (CR# 503), and west 0.25 mile on Hilltop Lane a.k.a. Timberwood (private), located at 30300 Hilltop Lane; AP# 141-100-35.

PROJECT COORDINATOR: FRED TARR

ACTION TAKEN:

The Planning Commission, on October 20, 2011, 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. 6
APPEAL NO. A-1-MEN-11-045 HANTZSCHE, NETH & BISHOP NOTICE OF FINAL LOCAL ACTION & FINDINGS FOR APPROVAL (1 of 55)

RECEIVED
NOV 07 2011
CALIFORNIA
COASTAL COMMISSION

FILING REQUESTED BY
County of Mendocino
Planning & Building Services Dept
501 Low Gap Road, Room 1440
Ukiah, CA 95482

AND WHEN FILED MAIL TO
County of Mendocino
Planning & Building Services Dept
501 Low Gap Road, Room 1440
Ukiah, CA 95482

NOTICE OF DETERMINATION

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Mendocino County Clerk
501 Low Gap Road, Room 1020
Ukiah, CA 95482

Subject: Filing of Notice of Determination in compliance with Section 21108 and 21152 of the Public Resources code.

Project Title:

CASE#: CDMS 4-2006
DATE FILED: 2/9/2006
OWNER/ APPLICANT: LISA K. HANTZSCHE
AGENT: DAVID E. PAOLI

State clearing House Number
(If Submitted to Clearing House)

Contact Person
FRED TARR

Area Code/Number/Extension
707-463-4281

Project Location:

Within the Coastal Zone, approximately 4.5 miles east of State Highway 1 at Iversen Point, along Iversen Road (CR# 503), and west 0.25 mile on Hilltop Lane a.k.a. Timberwood (private), located at 30300 Hilltop Lane; AP# 141-100-35.

Project Description:

Coastal Development Minor Subdivision of a 23.16 acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres.

This is to advise that the County of Mendocino has approved the above-described project on October 20, 2011 and has made the following determinations regarding the above described project:

1. The project will not have a significant effect on the environment.
2. A Negative Declaration was prepared pursuant to the provisions of CEQA.
3. Mitigation measures were a condition of the project approval.
4. A Statement of Overriding Considerations was not adopted.

This is to certify that the Negative Declaration and record of project approval is available to the general public at 501 Low Gap Road, Room 1440, Ukiah.

Date of Filing _____

Signature _____



October 31, 2011

**FINAL FINDINGS AND CONDITIONS OF APPROVAL
CASE # CDMS 4-2006 – HANTSCH
OCTOBER 20, 2011**

The Planning Commission approves Coastal Development Minor Subdivision # CDMS 4-2006 per the findings and conditions of approval contained in the staff report and as modified during the public hearing as follows;

Environmental Findings: The Planning Commission finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project therefore, a Mitigated Negative Declaration is adopted.

General Plan Findings: Pursuant to Section 66473.5 of the California Government Code, the Planning Commission finds the proposed subdivision, together with the provisions for its design and improvement is consistent with the applicable goals and policies of the General Plan and the Mendocino County Coastal Element.

Project Findings: The Planning Commission, making the environmental and General Plan findings above, approves #CDMS 4-2006 subject to the following conditions of approval as recommended within the staff report, further finding:

Pursuant to California Government Code Section 66445(e) the Planning Commission finds that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement.

The proposed minor subdivision complies generally with all requirements of the Subdivision Map Act and of the Mendocino County Code, specifically with respect to area, improvement and design, flood and water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability and environmental protection.

Coastal Land Division Findings: As required by Section 20.532.100(C), the Planning Commission further finds that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and

**COUNTY OF MENDOCINO
ENVIRONMENTAL REVIEW GUIDELINES
NEGATIVE DECLARATION**

I. DESCRIPTION OF PROJECT.

DATE: OCTOBER 26, 2011

CASE#: CDMS 4-2006

DATE FILED: 2/9/2006

OWNER/ APPLICANT: LISA K. HANTZSCHE

AGENT: DAVID E. PAOLI

REQUEST: Coastal Development Minor Subdivision of a 23.16 acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres.

LOCATION: Within the Coastal Zone, approximately 4.5 miles east of State Highway 1 at Iversen Point, along Iversen Road (CR# 503), and west 0.25 mile on Hilltop Lane a.k.a. Timberwood (private), located at 30300 Hilltop Lane; AP# 141-100-35.

PROJECT COORDINATOR: FRED TARR

II. DETERMINATION.

In accordance with Mendocino County's procedures for compliance with the California Environmental Quality Act (CEQA), the County has conducted an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, it has been determined that:

Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, a **NEGATIVE DECLARATION** is adopted.

The attached Initial Study and staff report incorporates all relevant information regarding the potential environmental effects of the project and confirms the determination that an EIR is not required for the project.

33. The 2 exiting abandoned wells in southwest corner of Parcel 1 shall be filled in and capped in accordance with any applicable Environmental Health requirement prior to the start of any improvements on the property.
34. A road maintenance agreement shall be prepared to the satisfaction of the Department of Transportation and recorded against each parcel.
35. The vehicular travel surface of the access road through Parcel 1 shall be surfaced with a permanent dust suppression treatment such as chip sealing or other similar treatment.
36. Each parcel shall be restricted to only one single family residence.

THIS DIVISION OF LAND IS DEEMED COMPLETE WHEN ALL CONDITIONS HAVE BEEN MET, AND THE APPROVED PARCEL MAP IS RECORDED BY THE COUNTY RECORDER.

AYES: Little, Calvert, Warner, Holtkamp, Hall, Ogle
NOES: None
ABSENT: Nelson

4c. CASE#: CDMS 4-2006

DATE FILED: 2/9/2006

OWNER/ APPLICANT: LISA K. HANTZSCHE

AGENT: DAVID E. PAOLI

REQUEST: Coastal Development Minor Subdivision of a 23.16 acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres.

LOCATION: Within the Coastal Zone, approximately 4.5 miles east of State Highway 1 at Iversen Point, along Iversen Road (CR# 503), and west 0.25 mile on Hilltop Lane a.k.a. Timberwood (private), located at 30300 Hilltop Lane, Gualala; AP# 141-100-35.

PROJECT COORDINATOR: FRED TARR

Mr. Fred Tarr, Project Coordinator, reviewed the staff report and discussed the properties compliance with zoning regulations and density limitations due to the buffer along the creeks and steep slopes that reduced the building area. He noted Parcel 1 was improved with an existing single family residence, well, and septic. He discussed possible drainage and erosion controls issues, noting Conditions #1 and 2. Mr. Tarr discussed the location of an ESHA on the property, containing a bishop pine forest, and the presence of a pygmy forest on the adjacent ownership, with appropriate mitigations contained in the conditions of approval. He noted the fire district had asked that water tanks be available for fire suppression on both properties and a turnout area be constructed on the existing driveway. Mr. Tarr concluded his presentation noting that staff had recommended approval of the project.

Lisa Hantzsche, owner, noted she was the treasurer of the road association and was available for questions.

David Paoli, agent, discussed the botanical results, which had caused changes to the division lines. He noted the well was recorded as producing over 7 gallons per minute during the 17 hour test and there were no nearby neighbors.

The public hearing was declared open, seeing no one come forward, the public hearing was declared closed.

Commissioner Warner asked if there was any reason to make the last two conditions "special conditions" of the application.

Mr. Tarr noted the conditions could be renumbered and included in the standard conditions.

Upon motion by Commissioner Hall, seconded by Commissioner Calvert and carried by the following roll call vote (6-0), IT IS ORDERED to approve CDMS 4-2006 per the findings and conditions of approval contained on pages PC-6 through PC-9, removing the special conditions and renumbering with the standard conditions of approval.

Environmental Findings: The Planning Commission finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project therefore, a Mitigated Negative Declaration is adopted.

General Plan Findings: Pursuant to Section 66473.5 of the California Government Code, the Planning Commission finds the proposed subdivision, together with the provisions for its design and improvement is consistent with the applicable goals and policies of the General Plan and the Mendocino County Coastal Element.

Project Findings: The Planning Commission, making the environmental and General Plan findings above, approves #CDMS 4-2006 subject to the following conditions of approval as recommended within the staff report, further finding:

Pursuant to California Government Code Section 66445(e) the Planning Commission finds that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement.

The proposed minor subdivision complies generally with all requirements of the Subdivision Map Act and of the Mendocino County Code, specifically with respect to area, improvement and design, flood and water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability and environmental protection.

Coastal Land Division Findings: As required by Section 20.532.100(C), the Planning Commission further finds that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and
4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and
5. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.

STANDARD CONDITIONS OF APPROVAL:

For a Minor Subdivision, which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing a Parcel Map.

ALL CONDITIONS OF APPROVAL MUST BE MET PRIOR TO EXPIRATION OF TWENTY-FOUR (24) MONTHS FROM DATE OF APPROVAL, UNLESS RENEWED PURSUANT TO THE MENDOCINO COUNTY CODE.

- *1. The subdivider shall acknowledge in writing to the Department of Planning and Buildings Services that all grading activities and site preparation, at a minimum, shall adhere to the following "Best Management

Practices". The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.

- a) That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - b) The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much is required to conduct the operation.
 - c) All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
 - d) Temporary erosion and sediment control measures shall be established and maintained until permanent protection is established.
 - e) Erosion control measures shall include, but are not limited to, seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
 - f) All earth-moving activities shall be conducted between May 15th and October 15th of any given calendar year unless wet weather grading protocols are approved by the Department of Planning and Building Services or other agencies having jurisdiction.
 - g) Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 - i. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1524 mm) in height and steeper than 1 unit vertical in 1½ units horizontal (66.7% slope).
 - ii. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage.
- *2. A notation shall be placed on the Parcel Map stating that "Future development of building site(s), access roads or driveways shall be subject to the grading requirements and drainage control measures" identified above.
- *3. A note shall appear on the Parcel Map that the access road, driveway and interior circulation routes shall be maintained in such a manner as to insure minimum dust generation subject to the Air Quality Management District Regulation 1 Rule 430. All grading must comply with Air Quality Management District Regulation Rule 430. Any rock material, including natural rock from the property, used for surfacing must comply with Air Quality Management District regulations regarding asbestos content.
- *4. The applicant shall provide the Division of Environmental Health adequate advance written notice (minimum of 15 days) of the date and time of any field soil testing procedures for any proposed on-site sewage systems to allow the Division of Environmental Health staff to be present for soil testing.
- *5. The applicant shall submit to the Division of Environmental Health an acceptable site evaluation report (DEH FORM # 42.04) for Parcel 2 completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's Basin Plan Policy for On-site Waste Treatment and Disposal and Mendocino County Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).
- *6. The applicant shall submit to the Division of Environmental Health an acceptable site evaluation report (DEH FORM # 42.04) for a replacement system for the existing structure(s) located on Parcel 1

completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's Basin Plan Policy for On-site Waste Treatment and Disposal and Mendocino County Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).

- *7. The applicant shall submit to the Division of Environmental Health an acceptable water quantity evaluation (DEH FORM # 26.05) completed by a qualified individual of a water source located on Parcel(s) 1 and 2 of the subdivision demonstrating an adequate water supply in compliance with the Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).
- *8. The applicant shall submit to the Division of Environmental Health an acceptable standard mineral analysis performed by a certified public health laboratory from a source of water on the sub-division.
- *9. The applicant shall submit to the Division of Environmental Health an acceptable site development plan at a scale of not more than 1 inch = 50 feet showing all adjacent parcels on one sheet completed by a qualified individual showing the location and dimensions of the initial sewage disposal system(s), 100% replacement area(s), acceptable setback distances to water wells and other pertinent setback distances which may impact project site development.
- *10. The sub-divider shall submit to the Department of Planning and Building Services an Exhibit Map defining building envelopes which will avoid rare plant communities in accordance with the **Botanical Survey and ESHA Assessment Study**, prepared by William Maslach, dated June 2008 and will avoid any areas having slopes of 30 % or greater. Well defined building envelopes shall appear on Parcels 1 and 2.

A note shall be placed on the **Parcel Map** stating that development will be confined to the building envelopes as described on the Exhibit Map on file in the Department of Planning and Building Services.

- *11. The following two recommended mitigation measures from the **Botanical Survey and ESHA Assessment** prepared by William Maslach must be met:

Mitigation Measure 1a: Use permeable surfaces for parking area and road surfaces on Parcel 2. To reduce the potential for concentrated water runoff from leaving the proposed develop sites, a permeable surface such as permeable pavers or crushed rock will be used in place of concrete or asphalt for roads and parking areas.

Mitigation Measure 2a: Planting of invasive landscaping plants will not occur. Landscaping within the ESHA buffers will not include any of the invasive plants in Appendix C that are commonly used in landscaping. They include the following species:

- blue gum eucalyptus
- jubata grass or pampas grass
- ivies: English ivy, Algerian ivy. Or cape ivy
- periwinkle
- cotoneaster
- Brooms: Bridal broom, French broom, Portuguese broom, Scotch broom or Spanish broom

- *12. 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 \$2094.00, or the amount of the most recently fee adopted, shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to November 4, 2011. 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 project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.

- *13. There shall be provided an access easement of 60 feet in width (as per tentative map) from Iversen Road to the west boundary of Parcel 1. Documentation of access easement(s) shall be provided to the Mendocino County Department of Transportation for their review prior to final approval.
- *14. If a Parcel Map is filed, all easements of record shall be shown on the Parcel Map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.
- *15. If approval of the tentative map is conditioned upon certain improvements being made by the sub-divider, the sub-divider shall notify the Mendocino County Department of Transportation when such improvements have been completed.
- *16. An eighteen (18) foot wide road shall be constructed within the access easement including four (4) inch minimum rock base, one hundred sixty (160) foot minimum radius of horizontal curve, grade not to exceed fifteen (15) percent, drainage culverts where necessary. New or replaced culverts shall be a minimum of 18 inches in diameter. In areas where radius of horizontal curve is less than 125 feet, roadway shall be widened to 22 feet.
- *17. A standard private road approach shall be constructed to a minimum width of eighteen (18) feet, area to be improved twenty (20) feet from the edge of the County road, to be surfaced with surfacing comparable to that on the County road.
- *18. The sub-divider shall comply with those recommendations in the **California Department of Forestry** (CalFire) letter of March 10, 2006 or other alternatives as acceptable to the **Department of Forestry** (CDF# 66-06). In addition, the sub-divider shall also contact the **South Coast Fire District** and written verification shall be submitted from the **Department of Forestry** and the **Fire District** to the Department of Planning and Building Services that this compliance with their requirements have been met to their satisfaction.
- 19. The applicant is hereby notified that this proposed division lies within the Coastal Zone Boundary and additional action may be necessary. For information you should contact the California Coastal Commission at 45 Fremont Street, Suite 2000, San Francisco, California, 94105-2219.
- *20. A note shall appear on the **Parcel Map** that "**No toxic, hazardous or contaminated materials or waste shall be stored in a designated buffer area or clearly identified flood plain or floodway**".
- 21. Pursuant to Government Code Section 66492 & 66493, prior to recordation of the **Parcel Map** the sub-divider must: (1) Obtain a Certificate from the Mendocino County Tax Collector stating that all current taxes and any delinquent taxes have been paid and; (2) Pay a security deposit (or bond) for taxes that are a lien, but not yet due and payable

SPECIAL CONDITIONS OF APPROVAL:

- ~~4-22.~~ All external lighting shall be shielded and downcast to prohibit light from being cast beyond the property boundaries. The number of exterior lighting fixtures shall be kept the minimum required for safety.
- ~~2-23.~~ A note shall appear on the **Parcel Map** that 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.

THIS DIVISION OF LAND IS DEEMED COMPLETE WHEN ALL CONDITIONS HAVE BEEN MET, AND THE APPROVED PARCEL MAP OR UNILATERAL AGREEMENT IS RECORDED BY THE COUNTY RECORDER.

AYES: Little, Calvert, Warner, Holtkamp, Hall, Ogle
NOES: None
ABSENT: Nelson

There is an existing 900 square foot single family dwelling on proposed Parcel one (1) with a well and septic system and there is an existing driveway and well on proposed Parcel two (2) but no other improvements. It appears that the existing driveway and cleared area on proposed Parcel two (2) may have been associated with past logging in the area. The agent for the applicant has provided a map which shows a site where a single family dwelling could be constructed on a relatively flat portion of Parcel two (2) having 5 % slopes. A visit to the site verified that there is a relatively flat site on Parcel two (2) and an access driveway of less than 300 feet in length.

ENVIRONMENTAL REVIEW;

Earth (Items 1B, 1C, 1E, 1F and 1G): Approval of the proposed subdivision would allow for one (1) additional residential unit, accessory structures such as a garage and outbuildings, and other improvements including the development of access roads and driveways. Staff does not anticipate any significant impacts from the project with respect to ground or soil resources aside from minor disruptions or displacement of the soil commonly associated with grading, road development or eventual building.

Likewise, erosion of soils or other drainage pattern issues are not expected to be substantially impacted from development of the proposed parcels. The tentative map for the project provides a "likely house site" on the one proposed (unimproved) parcel which is over 150 feet away through vegetated terrain from Signal Port Creek and an intermittent stream along the southern and eastern boundaries of the property. *Conditions Number 1 and 2* are recommended to ensure that Best Management Practices (BMPs) are employed during the construction phases of the proposed site. Staff recommends that a notation be placed on the Parcel Map that grading permits including erosion control will be required. Overall, given the size of the parcels, the location of the Bishop Pine Forest and the location of the existing 12' wide driveway on Parcel # 2, it is recommended that minimal grading take place for the driveway so that there is minimal impact on the vegetation. Staff also recommends that the driveway and parking area for Parcel #2 be of a permeable surface such as crushed rock so that erosion is kept to a minimal. (See Condition Number 11)

Air Quality (Items 2A-C): A "No Comment" was received from the County Air Quality Management District (AQMD). General comments typically received for like projects relate to particulate matter generated from unpaved roads, woodstove installation, onsite combustion engines, and grading activities. According to the County GIS maps, the project area does not lie within a region which may contain Naturally Occurring Asbestos. Substantial air emissions or a deterioration of ambient air quality is not expected to rise to a level of significance as a result of the project. Staff will recommend that standard conditions regarding rocked roads, compliance with AQMD regulations for stationary onsite internal combustion engines and grading activity be required. *Condition Number 3* is recommended to ensure that impacts to air quality are held to a less than significant level.

Water (Items 3 A-I): The development has the potential to result in one additional dwelling unit, accessory buildings and uses, paved areas and landscaping features which may lead to a decrease in absorption rates or otherwise have an effect on drainage patterns or the rate and amount of surface runoff. Recommended mitigation measures from the above Earth section (*Conditions Numbers 1 and 2*), as well as mitigation measures from the Plant and Wildlife Section, (*Condition #11*) are offered as a means of protecting surface and ground water resources from development related activities.

In addition to water quality issues, the project also has the potential to impact existing groundwater flows and the available quantity of groundwater resources in the immediate area. The property is noted as lying within a region along the coast containing Critical Water Resources (CWR).

"Areas designated CWR (Critical Water Resources) shall have a minimum lot size of 5 ac. All lots less than 5 ac shall demonstrate "proof of water" and may require an environmental impact statement."

The proposed lots are greater than 10 acres in size.

Related Coastal Element and General Plan policies are also listed as follows:

Coastal Element Policy 3.8-9: Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater

Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised.

Policy DE-191: Land use plans and development shall minimize impacts to the quality or quantity of drinking water supplies.

The Division of Environmental Health has reviewed the project with regard to on-site water and sewage disposal systems. The Environmental Health Divisions requirements to meet *Conditions 4, 5, 6, 7, 8 and 9* are recommended to mitigate any potential environmental concerns that may arise from the placement of on site sewage disposal and replacement areas, or the placement of wells for potable water.

Plant and Wildlife (Items 4A-D and 5A-D): The Natural Diversity Data Base indicates that pygmy cypress trees are located in the area. William Maslach prepared a **Botanical Survey and ESHA Assessment** in June, 2008 and determined the following:

An analysis of the proposed projects utilizing the ESHA development criteria in the Mendocino LCP Ordinance 20.494.020(A) through (4)(k) is presented in Table 4. Reasons for development within the buffer are given in the table and conditions and mitigating measures for development within the buffer are given below.

The greatest ecological concern on the proposed new parcel is impacts to the watercourses. Potential impacts are avoided by maintaining a minimum 100' buffer from the watercourse. This distance is sufficient to protect the stream from activities such as clearing, grading, and development. Those ESHAs that occur on the other side of the road are on private property upslope of the proposed lot split. Any development on the subject parcel will not have any significant impact to those ESHAs.

Potential Impact 1: Any development of the driveway/entrance road within the buffer areas may cause further disturbance to those special-status plants growing in the area.

Mitigation Measure 1a: *Use permeable surfaces for parking area and road surfaces. To reduce the potential for concentrated water runoff from leaving the proposed develop sites, a permeable surface such as permeable pavers or crushed rock will be used in place of concrete or asphalt for roads and parking areas.*

Potential Impact 2: The proposed development within the buffer area may introduce levels of use not compatible with the long-term viability of the rare plants.

Mitigation Measure 2a: *Planting of invasive landscaping plants will not occur. Landscaping within the ESHA buffers will not include any of the invasive plants in Appendix C that are commonly used in landscaping. They include the following species (Botanical Survey and ESHA Assessment is attached):*

- blue gum eucalyptus
- jubata grass or pampas grass
- ivies: English ivy, Algerian ivy, or cape ivy
- periwinkle
- cotoneaster
- Brooms: Bridal broom, French broom, Portuguese broom, Scotch broom or Spanish broom

Mr. Richard Macedo, Staff Environmental Scientist with the California Department of Fish and Game, met with Planning Staff at the project site on June 11, 2009. After reviewing Mr. Maslach's survey and conducting a site view of the project site, he has provided the following findings:

Finding #1: *In my opinion, the forest in question is indeed a Bishop Pine forest. The forest is not in pristine condition. However, the dominate vegetation type and the overall size led me to classify it as a Bishop Pine forest.*

Finding #1: *I don't recall having issue with the proposed reduced buffer for the building site because the area has already been disturbed. Thus, I do not believe that the project, as proposed, would adversely affect this forest habitat. (Email dated 4/1/2011 from Rick Macedo-Staff Environmental Scientist, California Department of Fish and Game)*

Mr. Macedo went on to note that "I support the report's other measures. As I recall, "measures" in this case refer to proposed mitigation proposals in Mr. Maslach's report."

The project is subject to the filing fee required by Fish and Game Code Section 711.4 unless a waiver is granted by that agency. (*See Conditions 10, 11 and 12*)

Noise (Item 6A): Although an increase in noise levels will most likely result from the grading and housing construction phases of the development, overall, staff does not believe the project would cause significant impacts beyond the minor inconvenience during this period.

Light and Glare (Item 7A): With the increased development on site, outside lighting and glare may impact surrounding residences. *Special Condition Number 1* will address any concerns with regards to lighting and glare by requiring lighting to be downcast and internally directed.

Land Use (Item 8A): Coastal Build-out: The property is subject to the build-out criteria specified in Coastal Element Policy 3.9-2 requiring that at least 50 percent of the existing usable parcels within the market area be developed prior to approval of any divisions. The property lies within Market Area 5, which has a build-out of 65.17 percent according to the latest data available. Therefore, the proposed subdivision is consistent with Coastal Element Policy 3.9-2.

GMAC Recommendation: The Gualala Municipal Advisory Council voted unanimously (6-0) to recommend approval of CDMS # 4-2006.

Housing (Item 11A): The County has adopted an Inclusionary Housing Ordinance, wherein the County acknowledges that it must meet the demand to construct housing for all economic levels of society, not only to meet policies of the State of California but also to better serve the County itself. County Code Section 20.238.010 states that the ordinance shall apply at the "subdivision level" for projects entailing residential development of two or more units. A two lot minor subdivision is excluded from affordable housing in lieu fees.

Transportation (Items 12A-F): The Mendocino County Department of Transportation has reviewed the project request and offers the following comments and conditions:

1. The applicant proposes a minor subdivision to create two parcels of 10.16 and 13 acres, as shown on the Tentative Map by Paoli Engineering & Surveying, dated November 23, 2005, from an existing 23.16 acre parcel (AP# 141-100-35). The proposed subdivision is located within the Coastal Zone, about 2.6 miles north of Anchor Bay. The property lies 0.9 miles north of the intersection of Iversen Road (CR# 503) and Fishrock Road (CR# 122), at 30300 Hilltop Lane (private), also called Timberwood.
2. A 900 square-foot house and a 60 square-foot barn occupy the property. Within 200 feet of Hilltop Lane, the terrain slopes between 5 and 10 percent, and steepens to gulches beyond.
3. The following conditions of approval are recommended for the proposed minor subdivision, based on the Subdivision Committee Checklist:
 - a) **There shall be provided an access easement of 60 feet in width (as per tentative map) from Iversen Road to the west boundary of Parcel 1. Documentation of access easement shall be provided to the Mendocino County Department of Transportation for their review prior to final approval.**
 - b) **If a Parcel Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.**

- c) If approval of the tentative map is conditioned upon certain improvements being made by the subdivider, the subdivider shall notify the Mendocino County Department of Transportation when such improvements have been completed.
- d) An eighteen (18) foot wide road shall be constructed within the access easement including four (4) inch minimum rock base, one hundred sixty (160) foot minimum radius of horizontal curve, grade not to exceed fifteen (15) percent, drainage culverts where necessary. New or replaced culverts shall be a minimum of 18 inches in diameter. In areas where radius of horizontal curve is less than 125 feet, roadway shall be widened to 22 feet.
- e) A standard private road approach shall be constructed to a minimum width of eighteen (18) feet, area to be improved twenty (20) feet from the edge of the County road, to be surfaced with surfacing comparable to that on the County road.

The applicant should be aware that, prior to the filing of the parcel map, the road improvements must be inspected and approved by the Department of Transportation. Upon completion of the road improvements, applicant should request inspection. Currently, the fee for minor subdivision roadway inspection is \$200 for the first inspection and \$200 for each additional inspection (if necessary). Prior to performing any work in the County right-of-way, an encroachment permit will be required from the Department of Transportation. The encroachment permit fee for a private road approach is currently \$400. County Surveyor checking fees will be required at the time of parcel map submittal.

Condition Numbers, 13, 14, 15, 16 and 17 mitigate impacts upon traffic circulation and traffic safety from increased residential traffic generated by the project.

Public Services (Item 13A):

General Plan Fire Protection Policy DE-220

"Developments shall be approved only if sufficient fire fighting resources, such as fire stations, equipment, personnel, hydrants and water supplies, will be available to serve all phases of development."

The property is located within a responsibility area of the California Department of Forestry and Fire Protection (Cal-Fire) and is designated as an area of "High" Fire Hazard. CDF File Number 66-06, dated March 10, 2006, provides the CDF recommended Conditions of Approval for this Coastal Development Minor Subdivision. The property is also within the South Coast Protection Fire District. *Condition Number 18* is recommended to mitigate impacts relating to fire emergency services. Other types of public services are not expected to be significantly affected by the project.

Utilities (Item 15A): Current improvements on the property include an existing sanitary septic system and a well on proposed Parcel One (1). There is an existing well on proposed Parcel Two (2). The County Division of Environmental Health (DEH) has recommended conditions intended to assure adherence to standard water, septic and/or related policies required by the County. *Conditions Number 4, 5, 6, 7, 8 and 9* are offered to address these issues and are expected to hold impacts in this area to a less than significant level. No other utility-related mitigations are required.

Cultural Resources/Archaeological (Items 19A-D): The subject site was reviewed by the Northwest Information Center at Sonoma State University for potential impacts on archaeological and historical resources. Based upon their comments, the Mendocino County Archaeological Commission then reviewed the project and required a survey. Mr. Thad Van Bueren presented his Archaeological Survey to the Mendocino County Archaeological Commission on November 8, 2006. The Survey identified no sites of archaeological interest and the Commission accepted the survey by a 4-0 vote. However, should archaeological discoveries occur during development, compliance with the requirements established by the Mendocino County Archaeological Resources Discovery Clause, Mendocino County Code 22.12.090 Discoveries, would address any future cultural concerns. (See *Special Condition Number 2*)

GENERAL PLAN CONSISTENCY REVIEW: The proposed project is consistent with applicable goals and policies of the General Plan.

RECOMMENDED MOTION:

Environmental Findings: The Planning Commission finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project therefore, a Mitigated Negative Declaration is adopted.

General Plan Findings: Pursuant to Section 66473.5 of the California Government Code, the Planning Commission finds the proposed subdivision, together with the provisions for its design and improvement is consistent with the applicable goals and policies of the General Plan and the Mendocino County Coastal Element.

Project Findings: The Planning Commission, making the environmental and General Plan findings above, approves #CDMS 4-2006 subject to the following conditions of approval as recommended within the staff report, further finding:

Pursuant to California Government Code Section 66445(e) the Planning Commission finds that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement.

The proposed minor subdivision complies generally with all requirements of the Subdivision Map Act and of the Mendocino County Code, specifically with respect to area, improvement and design, flood and water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability and environmental protection.

Coastal Land Division Findings: As required by Section 20.532.100(C), the Planning Commission further finds that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and
4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and
5. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.

STANDARD CONDITIONS OF APPROVAL:

For a Minor Subdivision, which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing a Parcel Map.

ALL CONDITIONS OF APPROVAL MUST BE MET PRIOR TO EXPIRATION OF TWENTY-FOUR (24) MONTHS FROM DATE OF APPROVAL, UNLESS RENEWED PURSUANT TO THE MENDOCINO COUNTY CODE.

- *1. The subdivider shall acknowledge in writing to the Department of Planning and Buildings Services that all grading activities and site preparation, at a minimum, shall adhere to the following "Best Management Practices". The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.

- a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much is required to conduct the operation.
 - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
 - d. Temporary erosion and sediment control measures shall be established and maintained until permanent protection is established.
 - e. Erosion control measures shall include, but are not limited to, seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
 - f. All earth-moving activities shall be conducted between May 15th and October 15th of any given calendar year unless wet weather grading protocols are approved by the Department of Planning and Building Services or other agencies having jurisdiction.
 - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1524 mm) in height and steeper than 1 unit vertical in 1½ units horizontal (66.7% slope).
 2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage.
- *2. A notation shall be placed on the Parcel Map stating that "Future development of building site(s), access roads or driveways shall be subject to the grading requirements and drainage control measures" identified above.
- *3. A note shall appear on the Parcel Map that the access road, driveway and interior circulation routes shall be maintained in such a manner as to insure minimum dust generation subject to the Air Quality Management District Regulation 1 Rule 430. All grading must comply with Air Quality Management District Regulation Rule 430. Any rock material, including natural rock from the property, used for surfacing must comply with Air Quality Management District regulations regarding asbestos content.
- *4. The applicant shall provide the Division of Environmental Health adequate advance written notice (minimum of 15 days) of the date and time of any field soil testing procedures for any proposed on-site sewage systems to allow the Division of Environmental Health staff to be present for soil testing.
- *5. The applicant shall submit to the Division of Environmental Health an acceptable site evaluation report (DEH FORM # 42.04) for Parcel 2 completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's Basin Plan Policy for On-site Waste Treatment and Disposal and Mendocino County Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).
- *6. The applicant shall submit to the Division of Environmental Health an acceptable site evaluation report (DEH FORM # 42.04) for a replacement system for the existing structure(s) located on Parcel 1 completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's Basin Plan Policy for On-site Waste Treatment and Disposal and Mendocino County Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).

- *7. The applicant shall submit to the Division of Environmental Health an acceptable water quantity evaluation (DEH FORM # 26.05) completed by a qualified individual of a water source located on Parcel(s) 1 and 2 of the subdivision demonstrating an adequate water supply in compliance with the Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).
- *8. The applicant shall submit to the Division of Environmental Health an acceptable standard mineral analysis performed by a certified public health laboratory from a source of water on the sub-division.
- *9. The applicant shall submit to the Division of Environmental Health an acceptable site development plan at a scale of not more than 1 inch = 50 feet showing all adjacent parcels on one sheet completed by a qualified individual showing the location and dimensions of the initial sewage disposal system(s), 100% replacement area(s), acceptable setback distances to water wells and other pertinent setback distances which may impact project site development.
- *10. The sub-divider shall submit to the Department of Planning and Building Services an Exhibit Map defining building envelopes which will avoid rare plant communities in accordance with the **Botanical Survey and ESHA Assessment Study**, prepared by William Maslach, dated June 2008 and will avoid any areas having slopes of 30 % or greater. Well defined building envelopes shall appear on Parcels 1 and 2.

A note shall be placed on the **Parcel Map** stating that development will be confined to the building envelopes as described on the Exhibit Map on file in the Department of Planning and Building Services.

- *11. The following two recommended mitigation measures from the **Botanical Survey and ESHA Assessment** prepared by William Maslach must be met:

Mitigation Measure 1a: Use permeable surfaces for parking area and road surfaces on Parcel 2. To reduce the potential for concentrated water runoff from leaving the proposed develop sites, a permeable surface such as permeable pavers or crushed rock will be used in place of concrete or asphalt for roads and parking areas.

Mitigation Measure 2a: Planting of invasive landscaping plants will not occur. Landscaping within the ESHA buffers will not include any of the invasive plants in Appendix C that are commonly used in landscaping. They include the following species:

- blue gum eucalyptus
- jubata grass or pampas grass
- ivies: English ivy, Algerian ivy. Or cape ivy
- periwinkle
- cotoneaster
- Brooms: Bridal broom, French broom, Portuguese broom, Scotch broom or Spanish broom

- *12. 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 \$2094.00, or the amount of the most recently fee adopted, shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to November 4, 2011. 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 project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
- *13. There shall be provided an access easement of 60 feet in width (as per tentative map) from Iversen Road to the west boundary of Parcel 1. Documentation of access easement(s) shall be provided to the Mendocino County Department of Transportation for their review prior to final approval.
- *14. If a Parcel Map is filed, all easements of record shall be shown on the Parcel Map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.

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- *15. If approval of the tentative map is conditioned upon certain improvements being made by the sub-divider, the sub-divider shall notify the Mendocino County Department of Transportation when such improvements have been completed.
- *16. An eighteen (18) foot wide road shall be constructed within the access easement including four (4) inch minimum rock base, one hundred sixty (160) foot minimum radius of horizontal curve, grade not to exceed fifteen (15) percent, drainage culverts where necessary. New or replaced culverts shall be a minimum of 18 inches in diameter. In areas where radius of horizontal curve is less than 125 feet, roadway shall be widened to 22 feet.
- *17. A standard private road approach shall be constructed to a minimum width of eighteen (18) feet, area to be improved twenty (20) feet from the edge of the County road, to be surfaced with surfacing comparable to that on the County road.
- *18. The sub-divider shall comply with those recommendations in the **California Department of Forestry** (CalFire) letter of March 10, 2006 or other alternatives as acceptable to the **Department of Forestry** (CDF# 66-06). In addition, the sub-divider shall also contact the **South Coast Fire District** and written verification shall be submitted from the **Department of Forestry** and the **Fire District** to the Department of Planning and Building Services that this compliance with their requirements have been met to their satisfaction. *(South Coast Fire Protection District submitted letter on 9/28/11)*
- 19. The applicant is hereby notified that this proposed division lies within the Coastal Zone Boundary and additional action may be necessary. For information you should contact the California Coastal Commission at 45 Fremont Street, Suite 2000, San Francisco, California, 94105-2219.
- *20. A note shall appear on the **Parcel Map** that **"No toxic, hazardous or contaminated materials or waste shall be stored in a designated buffer area or clearly identified flood plain or floodway"**.
- 21. Pursuant to Government Code Section 66492 & 66493, prior to recordation of the **Parcel Map** the sub-divider must: (1) Obtain a Certificate from the Mendocino County Tax Collector stating that all current taxes and any delinquent taxes have been paid and; (2) Pay a security deposit (or bond) for taxes that are a lien, but not yet due and payable

SPECIAL CONDITIONS OF APPROVAL:

- 1. All external lighting shall be shielded and downcast to prohibit light from being cast beyond the property boundaries. The number of exterior lighting fixtures shall be kept the minimum required for safety.
- 2. A note shall appear on the **Parcel Map** that 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.

THIS DIVISION OF LAND IS DEEMED COMPLETE WHEN ALL CONDITIONS HAVE BEEN MET, AND THE APPROVED PARCEL MAP OR UNILATERAL AGREEMENT IS RECORDED BY THE COUNTY RECORDER.

9/28/11
DATE

Fred Tarr
FRED TARR
PLANNER II

** Indicates conditions relating to Environmental Considerations - deletion of these conditions may affect the issuance of a Negative Declaration.

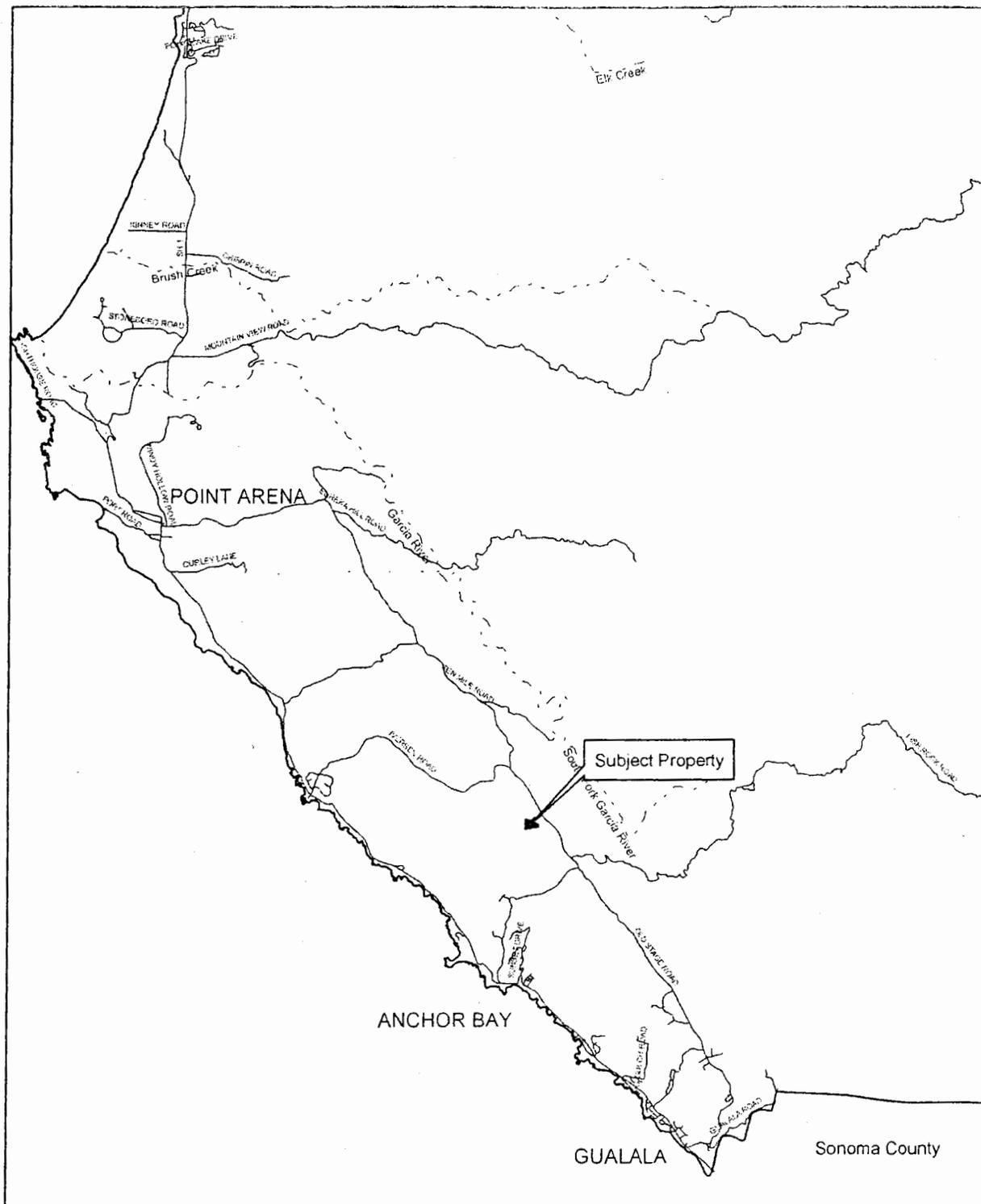
STAFF REPORT FOR MINOR SUBDIVISION

CDMS # 4-2006
PAGE PC-10

FT/at
September 13, 2011

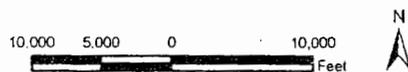
Mitigated Negative Declaration
Appeal Fee - \$1855.00
Appeal Period - 10 days

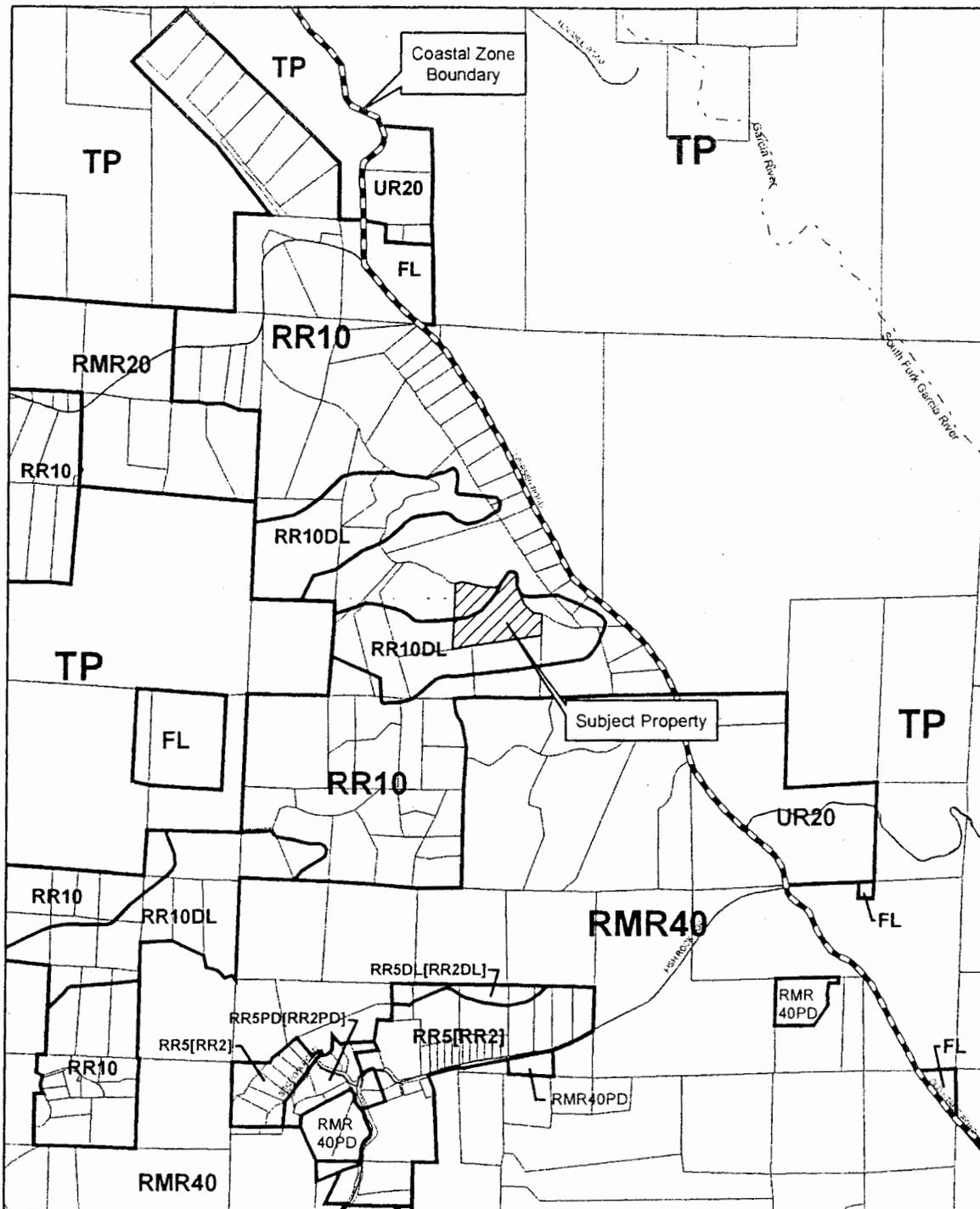
REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
Dept. of Transportation			X
Environmental Health			X
Building Inspection-FB		X	
Planning-FB			X
Assessor	X		
Air Quality Management		X	
Northwest Information Center (SSU)			X
Dept. of Forestry-Cal Fire			X
Dept. of Fish & Game			X
Coastal Commission	X		
GMAC			X
Arch. Commission			X
Arena Elem School Dist.	X		
Pt Arena H.S. Dist	X		



LOCATION MAP

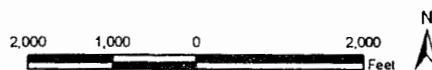
OWNER: HANTZSCHE, Lisa, NETH, Pat & BISHOP, Brian & Deborah
APPLICANT: HANTZSCHE, Lisa
AGENT: PAOLI, David
CASE #: CDMS 4-2006
APN: 141-100-35

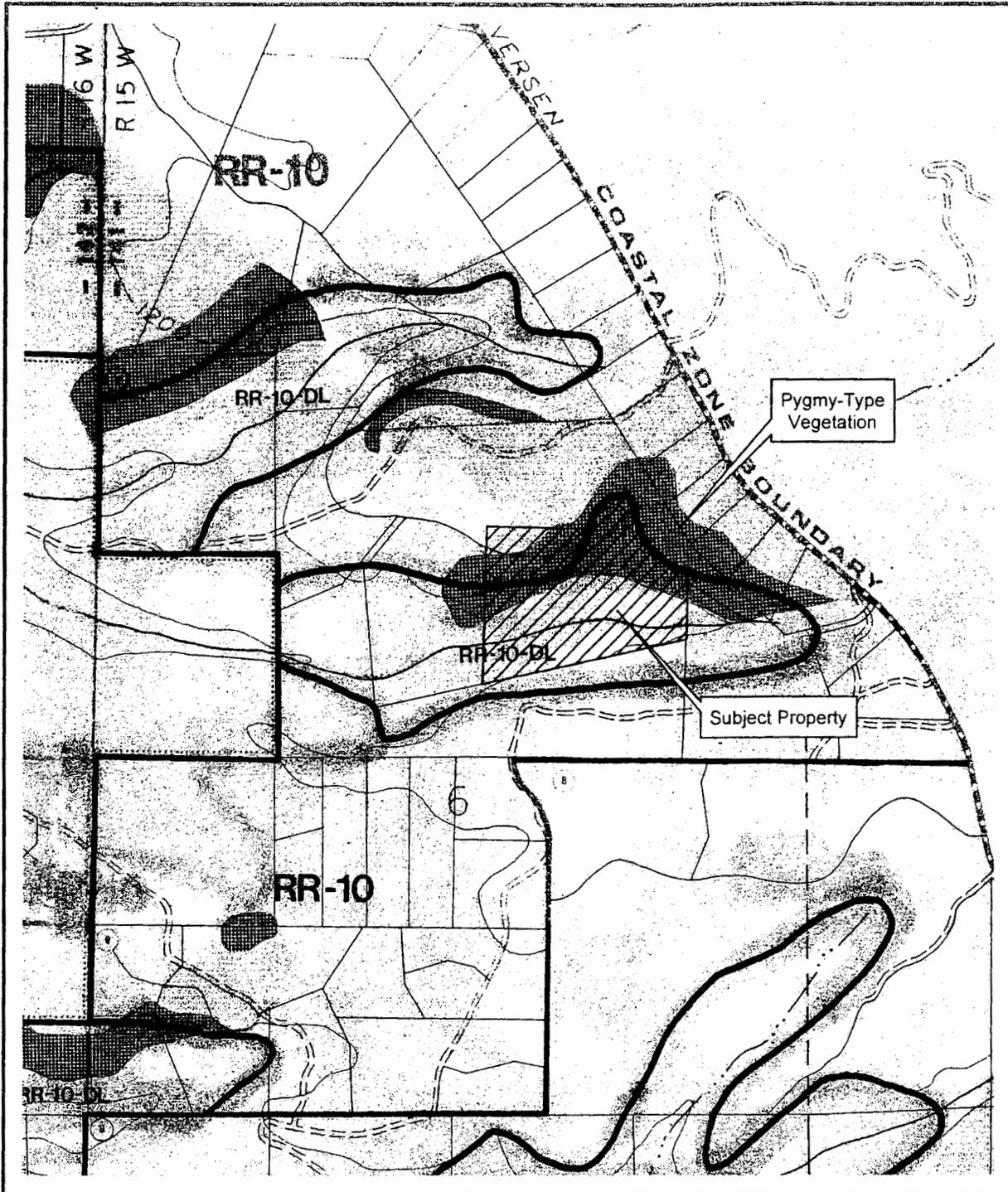




ZONING DISPLAY MAP

OWNER: HANTZSCHE, Lisa, NETH, Pat & BISHOP, Brian & Deborah
APPLICANT: HANTZSCHE, Lisa
AGENT: PAOLI, David
CASE #: CDMS 4-2006
APN: 141-100-35

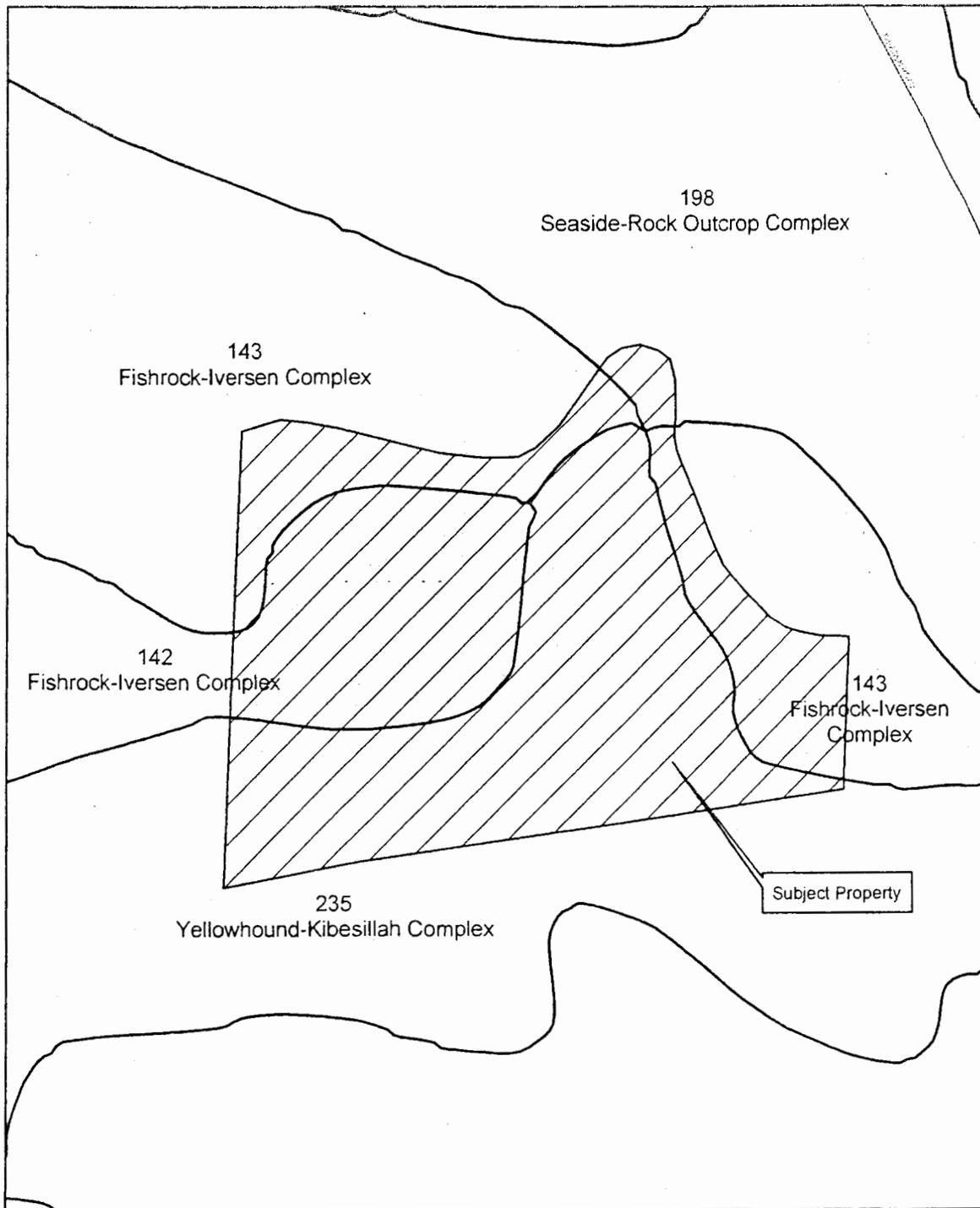




COASTAL PLAN LAND USE MAP No. 30

OWNER: HANTZSCHE, Lisa, NETH, Pat & BISHOP, Brian & Deborah
APPLICANT: HANTZSCHE, Lisa
AGENT: PAOLI, David
CASE #: CDMS 4-2006
APN: 141-100-35

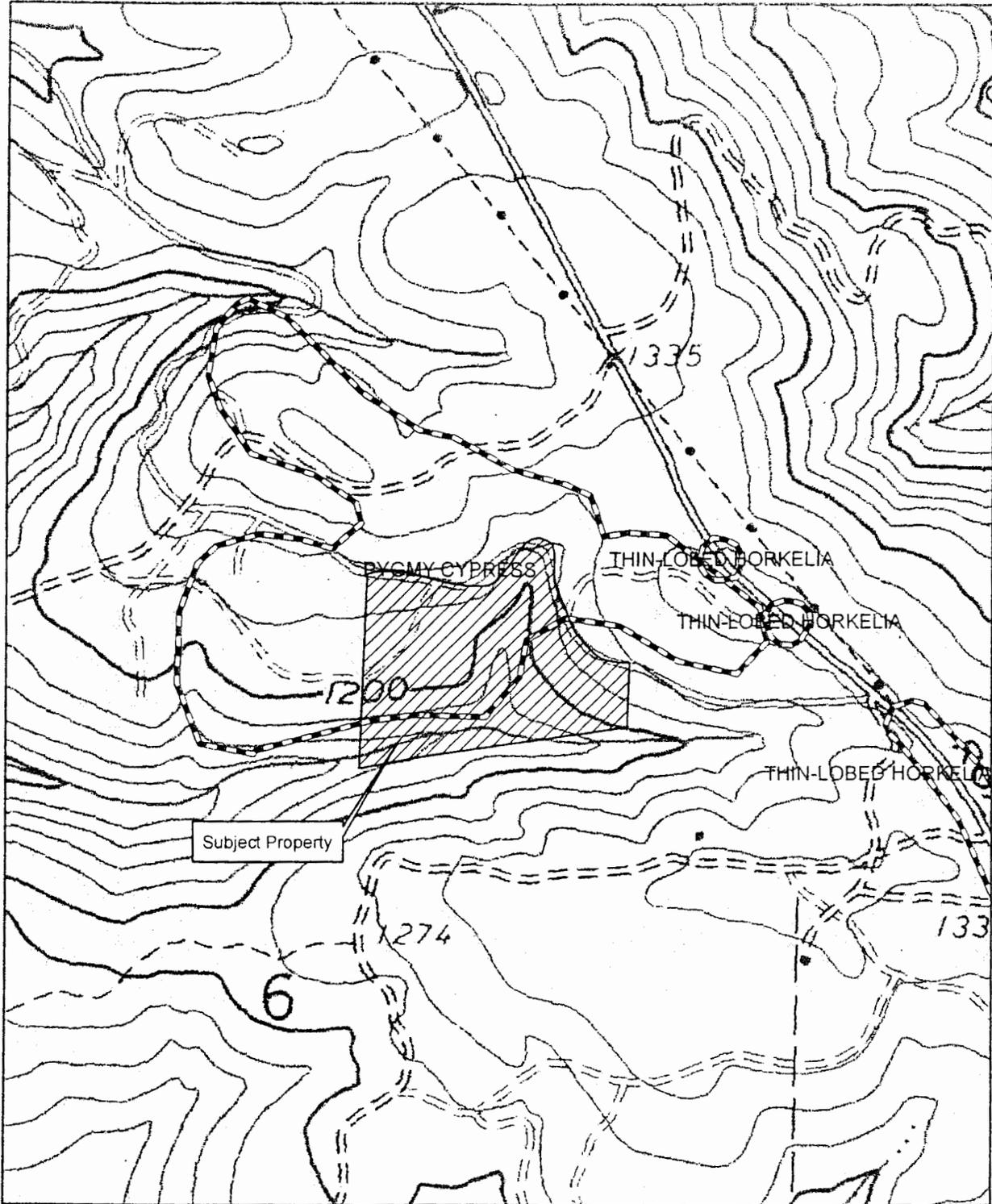
Not To Scale 



SOIL TYPES

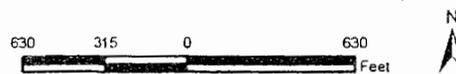
OWNER: HANTZSCHE, Lisa, NETH, Pat & BISHOP, Brian & Deborah
APPLICANT: HANTZSCHE, Lisa
AGENT: PAOLI, David
CASE #: CDMS 4-2006
APN: 141-100-35

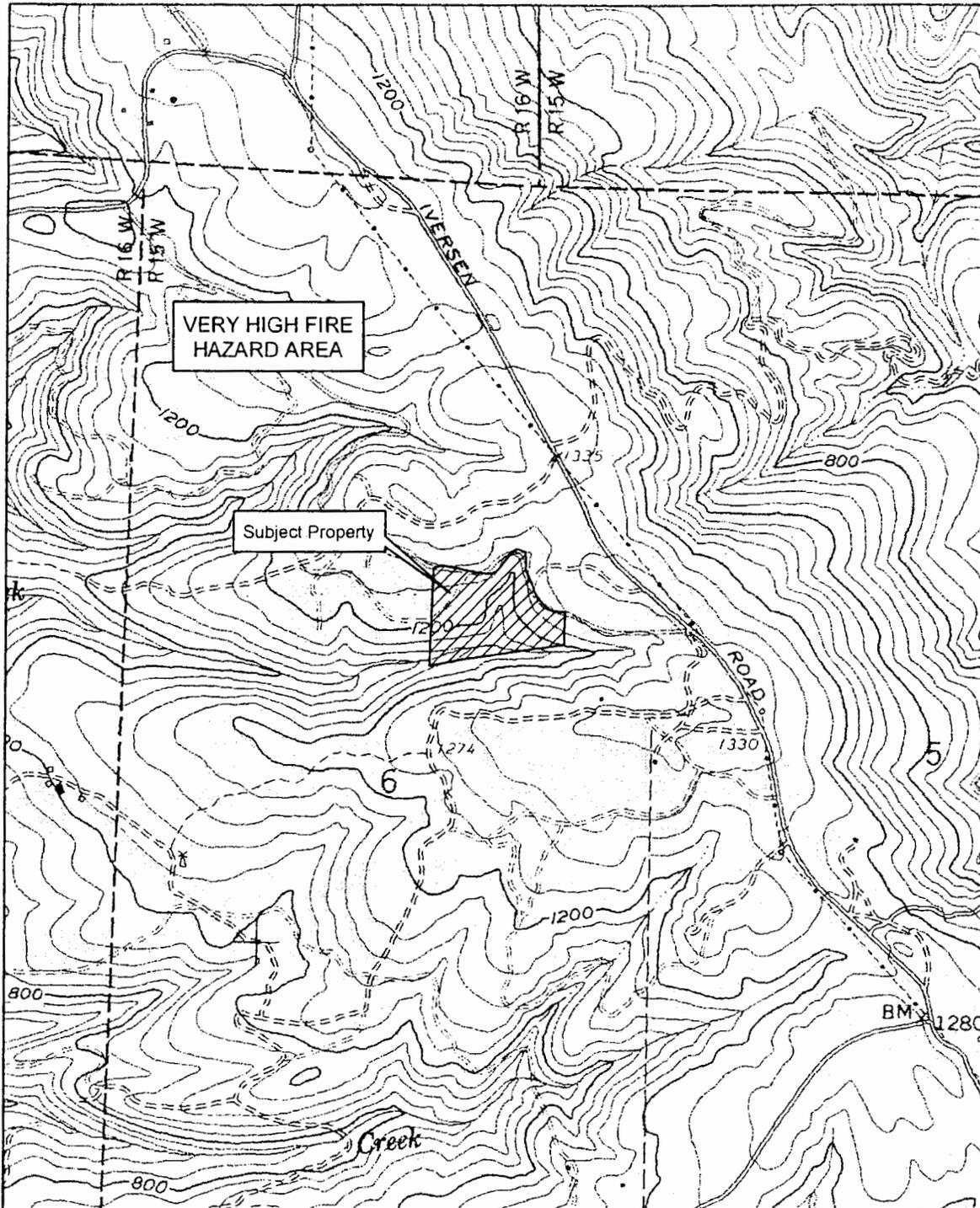




CALIFORNIA NATURAL DIVERSITY
DATABASE RAREFIND (January 2006)

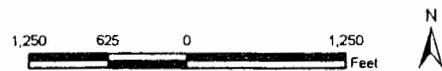
OWNER: HANTZSCHE, Lisa, NETH, Pat & BISHOP, Brian & Deborah
APPLICANT: HANTZSCHE, Lisa
AGENT: PAOLI, David
CASE #: CDMS 4-2006
APN: 141-100-35





FIRE HAZARD SEVERITY ZONES
SOUTH COAST FIRE PROTECTION DISTRICT

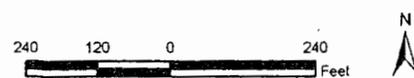
OWNER: HANTZSCHE, Lisa, NETH, Pat & BISHOP, Brian & Deborah
APPLICANT: HANTZSCHE, Lisa
AGENT: PAOLI, David
CASE #: CDMS 4-2006
APN: 141-100-35





ORTHOPHOTO - 2005

OWNER: HANTZSCHE, Lisa, NETH, Pat & BISHOP, Brian & Deborah
APPLICANT: HANTZSCHE, Lisa
AGENT: PAOLI, David
CASE #: CDMS 4-2006
APN: 141-100-35



**COUNTY OF MENDOCINO
ENVIRONMENTAL REVIEW GUIDELINES
DRAFT NEGATIVE DECLARATION**

I. DESCRIPTION OF PROJECT.

DATE: September 13, 2011

CASE#: CDMS 4-2006

DATE FILED: 2/9/2006

OWNER/ APPLICANT: LISA K. HANTZSCHE

AGENT: DAVID E. PAOLI

REQUEST: Coastal Development Minor Subdivision of a 23.16 acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres.

LOCATION: Within the Coastal Zone, approximately 4.5 miles east of State Highway 1 at Iversen Point, along Iversen Road (CR# 503), and west 0.25 mile on Hilltop Lane a.k.a. Timberwood (private), located at 30300 Hilltop Lane; AP# 141-100-35.

PROJECT COORDINATOR: FRED TARR

II. DETERMINATION.

In accordance with Mendocino County's procedures for compliance with the California Environmental Quality Act (CEQA), the County has conducted an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, it has been determined that:

Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, it is recommended that a NEGATIVE DECLARATION be adopted.

The attached Initial Study and staff report incorporates all relevant information regarding the potential environmental effects of the project and confirms the determination that an EIR is not required for the project.

**MENDOCINO COUNTY
ENVIRONMENTAL REVIEW GUIDELINES
INITIAL STUDY**

Section I Description Of Project.
<p>DATE: September 13, 2011</p> <p>CASE#: CDMS 4-2006 DATE FILED: 2/9/2006 OWNER/ APPLICANT: LISA K. HANTZSCHE AGENT: DAVID E. PAOLI REQUEST: Coastal Development Minor Subdivision of a 23.16 acre parcel to create two parcels, one containing 10.16 acres and one containing 13.0 acres. LOCATION: Within the Coastal Zone, approximately 4.5 miles east of State Highway 1 at Iversen Point, along Iversen Road (CR# 503), and west 0.25 mile on Hilltop Lane a.k.a. Timberwood (private), located at 30300 Hilltop Lane; AP# 141-100-35. PROJECT COORDINATOR: FRED TARR</p>
Section II Environmental Checklist.
<p>"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change, may be considered in determining whether the physical change is significant (CEQA Guidelines, Section 15382).</p> <p>Accompanying this form is a list of discussion statements for <u>all</u> questions, or categories of questions, on the Environmental Checklist (See Section III). This includes explanations of "no" responses.</p>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant -No Apparent Mitigation	Cumulative
1. EARTH:					
A. Unstable earth conditions or changes in geologic substructures?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Disruptions, displacements, compaction, or overcovering of the soil?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Change in topography or ground surface relief features?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Destruction, covering, or modification of any unique geologic or physical features?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Any increase in wind or water erosion of soils, either on or off the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Changes in deposition or erosion of beach sands, or changes in siltation, deposition, or erosion that may modify a river channel, stream, inlet, or bay?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Exposure of people or property to geologic hazards such as earthquakes, ground failure, or other hazards?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant-No Apparent Mitigation	Cumulative
2. AIR:					
A. Substantial air emissions or deterioration of ambient air quality?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Creation of objectionable odors?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. WATER:					
A. Changes in currents, or the course of water movements, in either fresh or marine waters?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alterations to the course of flow of flood waters?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Change in the amount of surface water in any water body?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Discharge into surface waters, or any alteration of surface water quality, such as temperature, dissolved oxygen or turbidity?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Alteration of the direction or rate of flow of ground water?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Change in the quantity of ground water, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Substantial reduction in the amount of water otherwise available for public water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Exposure of people or property to water related hazards such as flooding or tsunamis?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. PLANT LIFE:					
A. Change in the diversity of species, or number of any species of plants including trees, shrubs, grass, crops, and aquatic plants?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction of the numbers of any unique, rare, or endangered species of plants?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Introduction of a new plant species into an area, or creation of a barrier to the normal replenishment of existing species.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Reduction in acreage of any agricultural crop?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. ANIMAL LIFE:					
A. Change in the diversity of species, or number of any species of animals including birds, land animals, reptiles, fish, shellfish, insects, and benthic organisms?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction in the number of any unique, rare, or endangered species of animals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects?	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
C. Introduction of new species of animals into an area, or in a barrier to the migration or movement of animals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Deterioration of fish or wildlife habitat?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. NOISE:					
A. Increases in existing noise levels?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to severe noise levels?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. LIGHT AND GLARE:					
A. Production of new light or glare?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. LAND USE:					
A. Substantial alteration of the present or planned land use of the area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. NATURAL RESOURCES:					
A. Increased rate of use of any natural resources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. POPULATION:					
A. Alterations to the location, distribution, density, or growth rate of human populations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. HOUSING:					
A. Will the proposal affect existing housing or create a demand for new housing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. TRANSPORTATION/ CIRCULATION:					
A. Generation of substantial additional vehicular movement?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Effects on existing parking facilities, or demand for new parking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Substantial impact upon existing transportation systems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Alterations to present patterns of circulation or movement of people and/or goods?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Alterations to waterborne, rail, or air traffic?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. PUBLIC SERVICES:					
A. Will the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:					
Fire protection?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Parks and other recreational facilities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant -No Apparent Mitigation	Cumulative
Maintenance of public facilities, and roads?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other governmental services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. ENERGY:					
A. Use of substantial amounts of fuel or energy?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Substantial increase in demand upon existing sources of energy, or require development of new energy sources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. UTILITIES:					
A. Will the project result in a need for new systems or substantial alterations to the following:					
Potable water?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewerage?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Energy or information transmission lines?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. HUMAN HEALTH:					
A. Creation of any health hazard or potential health hazard?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to any existing health hazards?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Risk of explosion or release of hazardous substances (i.e. pesticides, chemicals, oil, radiation) in the event of an accident or unusual conditions?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Possible interference with emergency response plan or evacuation plan?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. AESTHETICS:					
A. Obstruction of any scenic vista or view open to the public, or create an aesthetically offensive site open to public view?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. RECREATION:					
A. Impact upon the quality or quantity of existing recreational opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. CULTURAL RESOURCES:					
A. Alteration or destruction of a prehistoric or historic archaeological site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Adverse physical or aesthetic effects to a prehistoric or historic building or structure?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Cause a physical change that would affect the unique ethnic cultural values?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Restrict existing religious or sacred uses within the potential impact area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section III Responses to Environmental Checklist.

For a discussion of each of the environmental effects listed in the Environmental Checklist along with related goals and policies of the General Plan, see the Environmental Review section of the attached staff report.

Section IV Mandatory Findings of Significance.

- A. As discussed in the preceding sections, the project does ~~does not~~ have the potential to significantly degrade the quality of the environment, including effects on animals or plants, or to eliminate historic or prehistoric sites.
- B. As discussed in the preceding sections, both short-term and long-term environmental effects associated with the project will be ~~less than significant~~ significant.
- C. When impacts associated with the project are considered alone or in combination with other impacts, the project-related impacts are ~~insignificant~~ significant.
- D. The above discussions do not identify any substantial adverse impacts to people as a result of the project.

Section V Determination.

On the basis of this initial evaluation, it has been determined that:

- The proposed project will not have a significant effect on the environment, and it is recommended that a NEGATIVE DECLARATION be adopted.
- Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, it is recommended that a NEGATIVE DECLARATION be adopted.
- The proposed project may have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

9-20-11

DATE

FRED TARR
PLANNER II

**BOTANICAL SURVEY AND
ESHA ASSESSMENT**

**FOR
3555 TIMBERWOOD WAY
(A.P.N. 141-100-35)
POINT ARENA, CALIFORNIA
MENDOCINO COUNTY**

This property is also listed in some locations as 30300 Hilltop Lane.

prepared by:
William Masiach
32915 Nameless Lane
Fort Bragg, California 95437
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June 2008

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SUMMARY

A survey on an approximately 20-acre parcel zoned rural-residential was conducted to locate special-status plant communities, plants, wetlands, and watercourses in the project area. The proposed project is to divide the existing 20-acre parcel into two 10-acre parcels. An unpaved road and well exist on the proposed new parcel, and a residence with associated facilities occurs on the existing parcel. A watercourse and several locations of rare plants and plant communities occur on the remainder parcel or in the area. A stand (~1 acre) of northern bishop pine forest occurs on the proposed new parcel, however it was not considered an ESHA because of the size. The entrance road (as well as the subdivision access road, Timberwood Way) go through ESHA buffers, but as there will not be new disturbance to the ESHA, the ESHA is avoided. All watercourses have 100' ESHA buffers, and will not be impacted by the building envelope. Final ESHA determinations are subject to concurrence by the California Department of Fish and Game.

BACKGROUND/PROJECT DESCRIPTION

The botanical/ESHA survey was conducted as a condition of the permit necessary for a minor subdivision within the Coastal Zone in Mendocino County.

The purpose of the study was to describe the existing vegetation communities, survey the parcel for special-status plant species, vegetation communities, stream, and wetlands, and recommend appropriate mitigation measures that help to reduce the impacts to wetland-, riparian-, and rare plant-buffers, which are considered Environmentally Sensitive Habitat Areas (ESHA's) under the Mendocino County Local Coastal Plan (Mendocino County, 1991).

PROJECT SITE DESCRIPTION

The Project Site is a 20-acre parcel zoned rural-residential, east of Highway 1 and within the California Coastal Zone. It is located at 3555 Timberwood Way (A.P.N. 141-100-35) Gualala, California. This property is also listed in some locations as 30300 Hilltop Lane. It occurs on the NE ¼ of Section 06, Township 11 N, Range 15 W of the Mount Diablo Base Meridian.

Soils are mapped as the Yellowhound/Kibesillah complex with 50 to 75% slopes and Fish Rock/Iversen complex with 2 to 15% slopes and 15 to 30% slopes (Natural Resource Conservation Service, 2001). Most of the buildable area is on the Fish Rock/Iversen complex soils. Topography on the Yellowhound/Kibesillah soils is very steep and is located mostly along the creek.

Improvements to the Project Site include a well and an existing unpaved road on the proposed parcel.

Vegetation on the site is predominantly a forest of mixed conifers such as redwood (*Sequoia sempervirens*), Douglas-fir (*Pseudotsuga menziesii*), and bishop pine (*Pinus muricata*). A perennial creek and tributary occur on the southern and eastern portions of the project area.

METHODS

A field survey for botanical and wetland resources was conducted on the Project Site on March 17, May 15, and June 23, 2007. The survey protocol was based on Guidelines for Assessing the Effects of Proposed Developments on Rare, Threatened, and Endangered Plants and Plant Communities developed by James Nelson

(CDFG 2000). The rare plants and plant communities considered in the survey are the native plants of limited abundance in California with known occurrence or distribution in Mendocino County, and were derived from the following lists:

- species listed or proposed for listing as threatened or endangered under the federal Endangered Species Act;
- species that are candidates for possible future listing as threatened or endangered under the federal Endangered Species Act;
- species listed or proposed for listing by the State of California as threatened or endangered under the California Endangered Species Act;
- plants listed by the California Native Plant Society (CNPS) as “presumed extinct” in California (List 1A);
- plants considered by CNPS to be “rare, threatened, or endangered in California” (Lists 1B and 2);
- plants listed by CNPS as plants about which more information is needed to determine their status and plants of limited distribution (Lists 3 and 4), which may be included as special-status species on the basis of local significance or recent biological information;
- plant communities listed in the California Natural Diversity Database
- plants of regional or specific interest not on any list above.

These special-status plants were further segregated regionally based on known occurrence on the project area USGS 7.5' quadrangle (Gualala) and the adjacent quadrangles (Zeni Ridge, McGuire Ridge, Stewarts Point, Eureka Hill, Point Arena, Saunders Reef). The regional assessment utilized the California Native Plant Society's (CNPS) electronic inventory (CNPS 2007) and the California Department of Fish and Game's (CDFG), Natural Diversity Data Base Rare Find (CDFG 2007). These special-status species and all other species derived from the aforementioned lists, their associated habitats, and their potential for occurrence in the project area are listed in Table 1. Vegetation descriptions are based on Sawyer and Keeler-Wolf (1995), Holland (1986), and California Department of Fish and Game (2003).

BLOOMING PERIOD

A floristic and seasonally appropriate survey was conducted in the field at the time of year when rare, threatened, or endangered species are both evident and identifiable for all species expected to occur in the Study Area.

Table 1. Special-Status Plants of Potential Occurrence on the Project Site. This table is derived from federal, state, and CNPS-listed plant species, including plants of regional significance. Explanation of column headings:

FED: federal status includes federally rare (FR), threatened (FT), or endangered (FE)

STATE: California state status includes rare (CR), threatened (CT), or endangered (CE)

CNPS: California Native Plant Society ranked inventory of native California plants thought to be at risk,

List 1A (1A) Presumed extinct in California

List 1B (1B) Rare, threatened, or endangered in California and elsewhere.

List 2 (2) Rare, threatened or endangered in California but more common elsewhere.

List 3 (3) More information needed, a review list.

List 4 (4) Species of limited distribution, a watch list.

CNDDDB ELEMENT RANK

GRANK: Global Ranking - The global rank (G-rank) is a reflection of the overall condition

of an element throughout its global range.

SPECIES OR NATURAL COMMUNITY LEVEL

G1 = Less than 6 viable element occurrences (Eos) OR less than 1,000 individuals

OR less than 2,000 acres.

G2 = 6-20 Eos OR 1,000-3,000 individuals OR 2,000-10,000 acres.

G3 = 21-80 Eos OR 3,000-10,000 individuals OR 10,000-50,000 acres.

G4 = Apparently secure, this rank is clearly lower than G3 but factors exist to

cause some concern, i.e., there is some threat, or somewhat narrow habitat.

G5 = Population or stand demonstrably secure to ineradicable due to being

commonly found in the world.

SUBSPECIES LEVEL

Subspecies receive a T-rank attached to the G-rank. With the subspecies, the G-rank

reflects the condition of the entire species, whereas the T-rank reflects the global situation

of just the subspecies or variety. For example, *Chorizanthe robusta* var. *hartwegii*. This

plant is ranked G2T1. The G-rank refers to the whole species range i.e., *Chorizanthe*

robusta. The T-rank refers only to the global condition of var. *hartwegii*.

Notes:

1. Other considerations used when ranking a species or natural community include the pattern of distribution of the element on the landscape, fragmentation of the population/stands, and historical

extent as compared to its modern range. It is important to take a bird's eye or aerial view when ranking sensitive elements rather than simply counting Eos.

2. Uncertainty about the rank of an element is expressed in two major ways:

By expressing the rank as a range of values: e.g., S2S3 means the rank is somewhere between S2 and S3.

By adding a ? to the rank: e.g., S2? This represents more certainty than S2S3, but less than S2.

3. Other symbols

GH - All sites are historical, the element has not been seen for at least 20 years, but suitable habitat still exists (SH = All California sites are historical)

GX - All sites are extirpated, this element is extinct in the wild (SX = All California sites are extirpated).

GXC - Extinct in the wild; exists in cultivation.

GIQ - The element is very rare, but there are taxonomic questions associated with it.

T - Rank applies to a subspecies or variety.

A Threat Code extension has been added following the CNPS List (e.g. 1B.1, 2.2 etc.)

Threat Code extensions and their meanings:

1 - Seriously endangered in California

2 - Fairly endangered in California

3 - Not very endangered in California

SRANK: STATE RANKING - The state rank (S-rank) is assigned much the same way as the global rank, except state ranks in California often also contain a threat designation attached to the S-rank.

S1 = Less than 6 viable Eos OR less than 1,000 individuals OR less than 2,000 acres

S1.1 = very threatened

S1.2 = threatened

S1.3 = not very threatened OR no current threats known

S2 = 6-20 Eos OR 1,000-3,000 individuals OR 2,000-10,000 acres

S2.1 = very threatened

S2.2 = threatened

S2.3 = not very threatened OR no current threats known

S3 = 21-80 Eos or 3,000-10,000 individuals OR 10,000-50,000 acres

S3.1 = very threatened

S3.2 = threatened

S3.3 = not very threatened OR no current threats known

S4 = Apparently secure within California; this rank is clearly lower than S3 but factors

exist to cause some concern; i.e. there is some threat, or somewhat narrow habitat.

S5 = Demonstrably secure to ineradicable in California. NO THREAT RANK.

TAXON	COMMON NAME	CNPS	FED	STATE	CNDDDB ELEMENT RANK		HABITAT REQUIREMENTS	HABITAT IN PROJECT SITE
					GRANK	SRANK		
<i>Abronia umbellata</i> ssp. <i>breviflora</i>	pink sand-verbena	1B.1	-	-	G4G5T2	S2.1	coastal dunes	No
<i>Agrostis blasdalei</i>	Blasdale's bent grass	1B.2	-	-	G2	S2.2	coastal bluff scrub, coastal dunes, coastal prairie	No
<i>Agrostis clivicola</i> var. <i>punta-reyesensis</i>	Point Reyes bent grass	NL			G3P1TQ	S1.2	coastal bluff. Endemic to Point Reyes Peninsula but known from two locations on near Stewart's Point	No
<i>Angelica lucida</i>	Sea-watch	4.2	-	-	G5	S2S3	coastal bluffs, beaches	No
<i>Arctostaphylos canescens</i> ssp. <i>sonomensis</i>	Sonoma manzanita	1B.2			G3G4T2	S2.1	chaparral, lower montane coniferous forests/sometimes serpentine. Inland from the coast.	Marginal
<i>Arctostaphylos mendocinoensis</i>	pygmy manzanita	1B.2	-	-	G1	S1P	closed cone coniferous forest (acidic sandy clay)	No
<i>Arctostaphylos stanfordiana</i> ssp. <i>raichei</i>	Raiche's manzanita	1B.1			G3T2P	S2P	chaparral, lower montane coniferous forest (openings)/rocky, often serpentine. Inland from the coast.	No
<i>Astragalus agnicidus</i>	Humboldt milk-vetch	1B.1	-	-	G1	S1.1	broadleaf upland forests, North Coast coniferous forests / disturbed areas	No
<i>Astragalus pycnostachyus</i> var. <i>pycnostachyus</i>	coastal marsh milk-vetch	1B.2	-	-	G3P2T2	S2.2	coastal dunes (mesic), marshes and swamps, (coastal salt, and stream-sides)	No
<i>Blennosperma nanum</i> var. <i>robustum</i>	Point Reyes blennosperma	1B.2	-	CR	G4T1	S1.2	coastal prairie, coastal scrub. Known only from Glass Beach, Fort Bragg on the Mendocino coast.	No
<i>Boschniakia hookeri</i>	small groundcone	2.3	-	-	G5	S1S2	North Coast coniferous forest	Marginal
<i>Calamagrostis bolanderi</i>	Bolander's reed grass	4.2	-	-	G3	S3.2	bogs & fens, broadleaf upland forests, closed cone coniferous forest, coastal scrub, meadows (mesic), marshes & swamps (freshwater), North Coast coniferous forests / mesic	Yes
<i>Calamagrostis crassiglutinis</i>	Thurber's reed grass	2.1	-	-	G3Q	S1.2	coastal scrub (mesic), freshwater marshes & swamps	No
<i>Calamagrostis foliosa</i>	leafy reed grass	4.2	-	CR	G3	S3.2	coastal bluff scrub, North Coast coniferous forest / rocky. Most occurrences from the King Range	No
<i>Calystegia purpurata</i> ssp. <i>saxicola</i>	coastal bluff morning-glory	1B.2	-	-	G4T2	S2.2	coastal dunes, coastal scrub	No
<i>Campanula californica</i>	swamp harebell	1B.2	-	-	G3	S3.2	bogs & fens, closed cone coniferous forest, coastal prairie, meadows, marshes & swamps (freshwater), North Coast coniferous forests / mesic	Yes
<i>Cardamine pachystigma</i> var. <i>dissectifolia</i>	dissected-leaved toothwort	3	-	-	G7T3P	S2S3	chaparral, lower montane coniferous forest / usually serpentine, rocky. Above 700'	No
<i>Carex arctica</i>		2.2			G5	S1S2	bogs and fens, North Coast coniferous forest (mesic)	No

TAXON	COMMON NAME	CNPS	FED	STATE	CNDDDB ELEMENT RANK		HABITAT REQUIREMENTS	HABITAT IN PROJECT SITE
					GRANK	SRANK		
<i>Carex californica</i>	California sedge	2.3	-	-	G5	S2?	bogs & fens, closed cone coniferous forest, coastal prairie, meadows, marshes & swamps (margins)	Yes
<i>Carex lenticularis</i> var. <i>limnophila</i>	lakeshore sedge	2.2	-	-	G5T5	S1S2.2	coastal swamps and bogs, North Coast coniferous forests (mesic)	No
<i>Carex livida</i>	livid sedge	1A	-	-	G5	SH	bogs & fens	No
<i>Carex lyngbyei</i>	Lyngbye's sedge	2.2	-	-	G5	S2.2	marshes & swamps (brackish or freshwater)	No
<i>Carex saliniformis</i>	deceiving sedge	1B.2	-	-	G2	S2.2	coastal prairie, coastal scrub, meadows, marshes & swamps (coastal salt) / mesic	No
<i>Carex viridula</i> var. <i>viridula</i>	green sedge	2.3	-	-	G5T5	S1.3	bogs & fens, marshes & swamps (freshwater), North Coast coniferous forests (mesic)	No
<i>Castilleja affinis</i> ssp. <i>litoralis</i>	Oregon coast paintbrush	2.2	-	-	G4G5T4	S2.2	coastal bluff scrub, coastal dunes, coastal scrub/sandy	No
<i>Castilleja ambigua</i> ssp. <i>humboldtensis</i>	Humboldt Bay owl's clover	1B.2	-	-	G4T2	S2.2	marshes & swamps (coastal salt)	No
<i>Castilleja mendocinensis</i>	Mendocino coast paintbrush	1B.2	-	-	G2	S2.2	coastal bluff scrub, closed cone coniferous forest, coastal dunes, coastal prairie, coastal scrub	No
<i>Ceanothus gloriosus</i> var. <i>exaltatus</i>	glory bush	4.3	-	-	G4T3	S3.3	chaparral	Yes
<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>	Point Reyes ceanothus	4.3	-	-	G5T3	S3.3	coastal bluff scrub, closed cone coniferous forest, coastal dunes, coastal scrub / sandy	No
<i>Chorizanthe howellii</i>	Howell's spineflower	1B.2	FE	CT	G1	S1.2	coastal dunes, coastal prairie, coastal scrub / sandy	No
<i>Clarkia amoena</i> ssp. <i>whitneyi</i>	Whitney's farewell-to-spring	1B.1	-	-	G5T2	S2.1	coastal bluff scrub, coastal scrub	No
<i>Collinsia corymbosa</i>	round-headed Chinese houses	1B.2	-	-	G1	S1.2	coastal dunes	No
<i>Coptis laciniata</i>	Oregon goldenthread	2.2	-	-	G4G5	S3.2	meadows and seeps, North Coast coniferous forest streambanks/mesic	No
<i>Cupressus goveniana</i> ssp. <i>pigmaza</i>	pygmy cypress	1B.2	-	-	G2T2	S2.2	closed cone coniferous forest (podzol-like soil)	Yes
<i>Erigeron supplex</i>	supple daisy	1B.2	-	-	G1	S1.1	coastal bluff scrub, coastal prairie	No
<i>Eriogonum kelloggii</i>	Kellogg's buckwheat	1B.2	-	-	G1	S1.2	Inland from the coast. Most collections on Red Mountain where it is possibly endemic.	No
<i>Erysimum menziesii</i> ssp. <i>menziesii</i>	Menzies's wallflower	1B.1	FE	CE	G3T2	S2.1	coastal dunes	No
<i>Erythronium revolutum</i>	coast fawn lily	2.2	-	-	G4	S2.2	margins of swamps, bogs, or wooded streams, broadleaved upland forest, North Coast coniferous forest / mesic, streambanks	No
<i>Fritillaria roderickii</i>	Roderick's fritillary	1B.1	-	CE	G1Q	S1.1	coastal bluff scrub, coastal prairie, valley & foothill grasslands	No
<i>Gilia capitata</i> ssp. <i>chamissonis</i>	dune gilia	1B.1	-	-	G5T2	S2.1	coastal dunes, coastal scrub	No
<i>Gilia capitata</i> ssp. <i>pacifica</i>	Pacific gilia	1B.2	-	-	G5T3T4	S2.2?	coastal bluff scrub, coastal prairie	No

TAXON	COMMON NAME	CNPS	FED	STATE	CNDDB ELEMENT RANK		HABITAT REQUIREMENTS	HABITAT IN PROJECT SITE
					GRANK	SRANK		
<i>Gilia capitata</i> ssp. <i>omentosa</i>	wolly-headed gilia	1B.1	-	-	G5T1	S1.1	Known from only three occurrences near Tomates and Salt Pt. SP.	No
<i>Gilia millefoliata</i>	dark-eyed gilia	1B.2	-	-	G2	S2.2	coastal dunes	No
<i>Glyceria grandis</i>	American mana grass	2.3	-	-	G5	S1.37	bogs and fens, meadows and seeps, marshes and swamps (streambanks and lake margins)	No
<i>Hemizonia congesta</i> ssp. <i>leucocephala</i>	Hayfield tarplant	3	-	-	G5T2T3	S2S3	coastal scrub, valley and foothill grassland	No
<i>Hespererax sparsiflora</i> ssp. <i>brevifolia</i>	short-leaved evax	2.2	-	-	G4T3	S2.2	coastal bluff scrub (sandy)	No
<i>Horkelia marinensis</i>	Point Reyes horkelia	1B.2	-	-	G2	S2.2	coastal dunes, coastal prairie, coastal scrub / sandy	No
<i>Horkelia tenuiloba</i>	thin-lobed horkelia	1B.2	-	-	G2	S2.2	broadleafed upland forest, chaparral/mesic openings, sandy	Yes
<i>Juncus supiniformis</i>	hair-leaved rush	2.2	-	-	G5	S2.27	bogs & fens, marshes & swamps (freshwater) / near coast	No
<i>Lasthenia conjugens</i>	Contra Costa goldfields	1B.1	FE	-	G1	S1.1	cismontane woodland, playas (alkaline), valley and foothill grassland, vernal pools/mesic	No
<i>Lasthenia macrantha</i> ssp. <i>bakeri</i>	Baker's goldfields	1B.2	-	-	G3TH	SH	closed cone coniferous forest (openings), coastal scrub, meadows and seeps, marshes and swamps	No
<i>Lasthenia macrantha</i> ssp. <i>macrantha</i>	perennial goldfields	1B.2	-	-	G3T2	S2.2	coastal bluff scrub, coastal dunes, coastal scrub	No
<i>Lilium maritimum</i>	coast lily	1B.1	-	-	G2	S2.1	broadleaf upland forests, closed cone coniferous forest, coastal prairie, coastal scrub, marshes & swamps (freshwater), North Coast coniferous forests	Yes
<i>Lotus formosissimus</i>	coastal lotus	4.2	-	-	G4	S3.2	broadleafed upland forest, coastal bluff scrub, closed-cone coniferous forest, cismontane woodland, coastal prairie, coastal scrub, meadows and seeps, marshes and swamps, North Coast coniferous forest, valley and foothill	Marginal
<i>Lycopodium clavatum</i>	running-pine	2.3	-	-	G5	S2S3	grassland/wetlands, roadsides	Marginal
<i>Microseris borealis</i>	northern microseris	2.1	-	-	G47	S1.1	marshes & swamps, North Coast coniferous forests (mesic)	Marginal
<i>Microseris paludosa</i>	microseris	1B.2	-	-	G2	S2.2	bogs and fens, lower montane coniferous forest, meadows and seeps/mesic, 3000-6000' elevation	No
<i>Mitella caulescens</i>	leafy-stemmed mitrewort	4.2	-	-	G5	S4.2	closed-cone coniferous forest, cismontane woodland, coastal scrub, valley and foothill grassland. No specific locations for Mendocino County based on CNPS website. Mendocino County not suspected habitat based on range.	No
							broadleaf upland forests, lower montane coniferous forests, meadows, North Coast coniferous forests / mesic	Yes

TAXON	COMMON NAME	CNPS	FED	STATE	CNDDB ELEMENT RANK		HABITAT REQUIREMENTS	HABITAT IN PROJECT SITE
					GRANK	SRANK		
<i>Monotropa uniflora</i>	Indian pipe	2.2	-	-	G5	S2S3	broadleafed upland forest, north Coast coniferous forest. Not known from Mendocino County.	No
<i>Phacelia insularis</i> var. <i>continentis</i>	North Coast phacelia	1B.2	-	-	G2T1	S1.2	coastal bluff scrub, coastal dunes / sandy	No
<i>Pinus contorta</i> ssp. <i>bolanderi</i>	Bolander's beach pine	1B.2	-	-	G5T3	S3.2	closed cone coniferous forest (podzol-like soil). Not found south of Cameron Ridge.	No
<i>Pleuropogon hooverianus</i>	North Coast semaphore grass	1B.1	-	CT	G1	S1.1	broadleafed upland forest, meadows and seeps, North Coast coniferous forest/open areas, mesic	No
<i>Pleuropogon refractus</i>	nodding semaphore grass	4.2	-	-	G4	S3.27	lower montane coniferous forests, meadows, North Coast coniferous forests, riparian forests / mesic	No
<i>Potentilla hickmanii</i>	Hickman's cinquefoil	1B.1	-	-	G1	S1.1	coastal bluff scrub, closed-cone coniferous forest, meadows and seeps (vermally mesic), marshes and swamps (freshwater)	No
<i>Puccinellia pumila</i>	dwarf alkali grass	2.2	-	-	G4?	S1.17	marshes & swamps (coastal salt)	No
<i>Rhynchospora alba</i>	white-beaked rush	2.2	-	-	G5	S3.2	bogs & fens, meadows, marshes & swamps (freshwater)	No
<i>Sanguisorba officinalis</i>	great burnet	2.2	-	-	G5?	S2.2	bogs & fens, broadleaf upland forests, meadows, marshes & swamps, North Coast coniferous forests, riparian forests / often serpentine	No
<i>Senecio bolanderi</i> var. <i>bolanderi</i>	seacoast ragwort	2.2	-	-	G4T4	S1.2	coastal scrub, North Coast coniferous forests	No
<i>Sidalcea calycosa</i> ssp. <i>rhizomata</i>	Point Reyes checkerbloom	1B.2	-	-	G5T2	S2.2	marshes & swamps (freshwater, near coast)	No
<i>Sidalcea malachroides</i>	maple-leaved checkerbloom	4.2	-	-	G3	S3.2	broadleaf upland forests, coastal prairie, coastal scrub, North Coast coniferous forests / often disturbed areas	Marginal
<i>Sidalcea malviflora</i> ssp. <i>patula</i>	Siskiyou checkerbloom	1B.2	-	-	G5T1	S1.1	coastal bluff scrub, coastal prairie, North Coast coniferous forest / often roadcuts. One collection 2 miles south of Albion in roadside ditch.	No
<i>Sidalcea malviflora</i> ssp. <i>purpurea</i>	purple-stemmed checkerbloom	1B.2	-	-	G5T2	S2.2	broadleaf upland forests, coastal prairie	No
<i>Triglochin californica</i>	coastal triquetrella	1B.2	-	-	G1	S1.2	coastal bluff scrub, coastal scrub/soil	No
<i>Usnea longissima</i>	long-beard lichen	-	-	-	G1	S1.1	semi-open canopy forests, old-growth forests	Yes
<i>Veratrum fimbriatum</i>	fringed false-hellebore	4.3	-	-	G3	S3.3	bogs & fens, coastal scrub, meadows, North Coast coniferous forests (mesic)	Yes
<i>Viburnum ellipticum</i>	oval-leaved viburnum	2.3	-	-	G5	S2.3	chaparral, cismontane woodland, lower montane coniferous forest. Inland from the coast.	No
<i>Viola adunca</i>	dog violet	-	-	-	-	-	coastal prairie, meadows	No
<i>Viola patustris</i>	marsh violet	2.2	-	-	G5	S1S2	coastal scrub (mesic), bogs & fens (coastal)	No

Table 2. Special-Status Plant Communities of Potential Occurrence on the Project Site. Plant communities with a Global or State Ranking of 2 or less are considered ESHAs by the Mendocino County Department of Building and Planning.

Special-Status Plant Community	Ranking		Present on Site
	Global	State	
Grand Fir Forest	G1	S1.1	No
North Coast Black Cottonwood Riparian Forest	G1	S1.1	No
North Seagrass Bed	G1	S1.1	No
Northern Claypan Vernal Pool	G1	S1.1	No
Northern Foredune Grassland	G1	S1.1	No
Sitka Spruce Forest	G1	S1.1	No
North Embayment	G1	S1.2	No
North Eusaline Lagoon	G1	S1.2	No
North Mixosaline Lagoon	G1	S1.2	No
Fen	G2	S1.2	No
Northern Dune Scrub	G2	S1.2	No
Coastal Brackish Marsh	G2	S2.1	No
Coastal Chinook Salmon Stream	G2	S2.1	No
Coastal Coho Salmon Stream	G2	S2.1	No
Coastal Terrace Prairie	G2	S2.1	No
Ledum Swamp	G2	S2.1	No
Mendocino Pygmy Cypress Forest	G2	S2.1	No
North Mesosaline Estuary	G2	S2.1	No
North Mixosaline Estuary	G2	S2.1	No
North Oligosaline Estuary	G2	S2.1	No
Northern Foredunes	G2	S2.1	No
Freshwater Swamp	G2	S2.2	No
North Coast Alluvial Redwood Forest	G2	S2.2	No
North Cobble Intertidal	G2	S2.2	No
North Cobble Shore	G2	S2.2	No
North Rock Intertidal	G2	S2.2	No
* Northern Bishop Pine Forest	G2	S2.2	Yes
Northern Coastal Bluff Scrub	G2	S2.2	No
Wildflower Field	G2	S2.2	No
Sphagnum Bog	G3	S1.2	No
Active Coastal Dunes	G3	S2.2	No
Red Alder Riparian Forest	G3	S2.2	No
Northern Silk Tassel Scrub	G3	S2.3	No
Sitka Spruce Grand Fir Forest	G4	S1.1	No
Beach Pine Forest	G4	S2.1	No
Coastal Douglas Fir Western Hemlock Forest	G4	S2.1	No
Native Grassland	G3	S3.1	No
Northern Hardpan Vernal Pool	G3	S3.1	No
Upland Redwood Forest	G3	S2.3	No
California Bay Forest	G3	S3.2	No

	Ranking		
Coastal Steelhead Trout Stream	G3	S3.2	No
North Coast Riparian Scrub	G3	S3.2	No
North/Central Dune Lake	G3	S3.2	No
Northern Coastal Salt Marsh	G3	S3.2	No
Silk Tassel Forest	G3	S3.2	No
Woodwardia Thicket	G3	S3.2	No
Bush Chinquapin Chaparral	G3	S3.3	No
North Mud Intertidal	G3	S3.3	No
North Sand Intertidal	G3	S3.3	No
Poison Oak Chaparral	G3	S3.3	No
Upland Douglas-fir Forest	G4	S3.1	No
Freshwater Seep	G4	S3.2	No
Northern Salal Scrub	G4	S3.2	No
Red Alder Forest	G4	S3.2	No
Blue Brush Chaparral	G4	S4	No
Mixed North Slope Forest	G4	S4	No
Non Native Grassland	G4	S4	No
Northern Coyote Bush Scrub	G4	S4	No
Tan Oak Forest	G4	S4	No
North Rock Shore	G4	S4.3	No
North Sand Shore	G4	S4.3	No
Artificial Habitat	G?	S?	No
N. Central Coast Calif. Roach/Stickleback/Steelhead Stream	G?	S?	No
Northern Claypan Vernal Pool	G?	S?	No

SURVEY RESULTS

DOCUMENTED SPECIES PRESENCE

The special-status plants and plant communities, wetlands, and watercourses with regional known occurrence having potential habitat in the project site were surveyed for presence (Tables 1-2). Species without potential habitat in the Project Site were considered, but surveys were focused on those with potential habitat. The survey results of detected special-status species were recorded (Table 3) and drawn on a map of the Project Site (Figure 1). Species that are listed in Tables 1-2 but not below in Table 3 were not detected.

Table 3. Special-Status Plants and Plants Communities and Watercourses Occurring on the Project Site Area.

SCIENTIFIC NAME	COMMON NAME	CNPS RANK	POPULATION SIZE	ESHA
<i>Calamagrostis bolanderi</i>	Bolander's reed grass	CNPS List 4.2	Approx. 75 individuals	No
<i>Ceanothus gloriosus</i> ssp. <i>exaltatus</i>	glory bush	CNPS List 4.3	Approx. 5 individuals	No
<i>Cordylanthus tenuis</i> ssp. <i>brunneus</i>	serpentine bird's beak	CNPS List 4.3	Approx. 50 individuals	No
<i>Cupressus goveniana</i> ssp. <i>pigmaea</i>	Mendocino cypress	CNPS List 1B.2	Approx. 15 individuals	Yes
<i>Horkelia tenuiloba</i>	thin-leaved horkelia	CNPS List 1B.2	Approx. 50 individuals	Yes
-	northern bishop pine forest	G2 / S2.2	Approx. 1 acre	No
-	Mendocino pygmy cypress forest	G2 / S2.1	Approx. 3 acres	Yes
-	watercourse	-	-	Yes

Calamagrostis bolanderi – or Bolander's reed grass – is a perennial grass that often grows in disturbed forest edges and relatively undisturbed moist scrubby areas. On the parcel, the plants were growing in a recently cleared area with Mendocino cypress. Fifty foot setbacks are not recommended for this plant occurrence. However, avoidance, if feasible is recommended.

Cordylanthus tenuis ssp. *brunneus* – or serpentine bird's beak, is ranked as List 4 (lowest priority) by the California Native Plant Society. Avoidance is recommended, but buffers are not drawn around the occurrence. The plants are growing at the edge of the road, and although they are not considered ESHAs, they were growing at the edge of a pygmy forest. They occurred on the other side of the road from the Project Site.

Ceanothus gloriosus ssp. *exaltatus* – or glory bush is a perennial shrub ranked as List 4. It was growing on the side of the road on the project site. Fifty foot setbacks are not recommended for this plant occurrence. However, avoidance, if feasible is recommended.

Cupressus goveniana ssp. *pigmaea* – or Mendocino cypress is the largest cypress in the Americas, but can be the smallest when it occurs on the impoverished soils of the pygmy forest. It is the dominant tree of the pygmy forest, and may also grow in clearings and forest openings, especially where there has been some level of disturbance, such as grading on the side of the road. On the parcel it occurs along the entrance road. Because it occurs in an area of such disturbance, reduced buffers are suggested.

Horkelia tenuiloba – or thin-leaved horkelia is a perennial herb that grows in sandy soils and in open chaparral areas, sometimes with an affinity for mesic locations. It can also grow in wet soils of relatively undisturbed Bishop pine/Douglas fir forests that are fairly open.

On the Project Site, all occurrences of horkelia were associated with previous ground-disturbing activities (Figure 1). Specifically, they were located on the road bench edge or the inboard ditch and cut slope associated with Timberwood Way Road.

Northern Bishop Pine Forest – Bishop pine (*Pinus muricata*) is the dominant tree species comprising the canopy. Manzanita (*Arctostaphylos glandulosa* ssp. *glandulosa*) and huckleberry (*Vaccinium ovatum*) are dominant understory plants with occasional giant chinquapin (*Chrysolepis chrysophylla* var. *chrysophylla*). Growing along some of the open edges of the bishop pine stand is chaparral pea (*Pickeringia montana*).

Mendocino Pygmy Cypress Forest – This forest occurs on the opposite side of the road from the subject parcel. Soils on the north side of the road are a different type than the type in bishop pine forest on the parcel, which is likely a gradation from the poor soils of the pygmy forest to soils with more organic material in the redwood/Douglas fir forest beyond the bishop pine forest and closer to the watercourses.

Watercourses – Signal Port Creek and an unnamed perennial tributary occur on the parcel. The tributary is a Class II watercourse with subsurface flow in some areas. This is likely due to timber harvest that moved large quantities of sediment downslope into timber slash. There is no developed riparian vegetation, instead redwoods are the dominant tree in the drainage. Some small pools occur along the creek, which provide good habitat for insects and wildlife.

FLORISTIC SURVEY

A floristic survey was completed for the surveyed area; all plants encountered were documented (Appendix B). Taxonomy follows *The Jepson Manual* (Hickman 1993).

DISCUSSION

An analysis of the proposed projects utilizing the ESHA development criteria in the Mendocino LCP Ordinance 20.496.020(A) through (4)(k) is presented in Table 4. Reasons for development within the buffer are given in the table and conditions and mitigating measures for development within the buffer are given below.

The greatest ecological concern on the proposed new parcel is impacts to the watercourses. Potential impacts are avoided by maintaining a minimum 100' buffer from the watercourse. This distance is sufficient to protect the stream from activities such as clearing, grading, and development. Those ESHAs that occur on the other side of the road are on private property upslope of the proposed lot split. Any development on the subject parcel will not have any significant impact to those ESHAs.

Potential Impact 1: Any development of the driveway/entrance road within the buffer areas may cause disturbance further disturbance to those special-status plants growing in the area.

***Mitigation Measure 1a:* Use permeable surfaces for parking area and road surfaces.**

To reduce the potential for concentrated water runoff from leaving the proposed develop sites, a permeable surface such as permeable pavers or crushed rock will be used in place of concrete or asphalt for roads and parking areas.

Potential Impact 2: The proposed development within the buffer area may introduce levels of use not compatible with the long-term viability of the rare plants.

Mitigation Measure 2a: Planting of invasive landscaping plants will not occur.

Landscaping within the ESHA buffers will not include any of the invasive plants in Appendix C that are commonly used in landscaping. They include the following species.

blue gum eucalyptus (*Eucalyptus globulus*)

jubatagrass or pampasgrass (*Cortaderia jubata* or *Cortaderia selloana*)

ivies: English ivy, Algerian ivy, or cape ivy (*Hedera canariensis*, *Delairea odorata* or *Hedera helix*)

periwinkle (*Vinca major*)

cotoneaster (*Cotoneaster lacteus* or *Cotoneaster pannosus*)

Brooms: Bridal broom, French broom, Portuguese broom, Scotch broom or Spanish broom (*Retama monosperma*, *Genista monspessulana*, *Cytisus striatus*, *Cytisus scoparius* or *Spartium junceum*)

Table 3. Sec. 20.496.020 ESHA – Development Criteria.

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

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

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

(1a) 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.

The streams on the parcel are the headwaters of Signal Port Creek and are small, deep drainages with minimal or no overstory riparian vegetation. A minimum 100' buffer sufficiently protects the water quality and vegetative cover around the watercourses. By protecting the 100' stream buffer, the stream itself is protected.

The Mendocino cypress ESHA is growing on the opposite side of the road from a northern bishop pine forest, however no cypress trees are found in this forest. This may be due, in part, to the soil requirements of Mendocino cypress. Where it is found, it is not growing with species typical of a bishop pine forest, and it may likely be more associated with the edges of the pygmy forest across the main subdivision road. Mendocino cypress does well in poor, shallow soils such as those soils found in the Mendocino pygmy forest and areas that have been cleared or scraped.

Buffers were measured from the outer edge of the occurrences of Mendocino cypress on the parcel because they are adjacent to pygmy forest across the street. However, there is an existing road immediately adjacent to these trees and the pygmy forest, and if this vegetation is protected, there would not likely be damage to the ESHA from a building envelope on the proposed parcel.

Table 2. Sec. 20.496.020 ESHA – Development Criteria.

(1b) 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.

(1b-i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;

(1b-ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;

(1b-iii) An assessment of the impact and activity levels of the proposed development on the resource.

The site has several watercourses, but they do not support fish species. Wildlife species that may use the riparian habitat for nesting or foraging include forest song birds and small mammals. Small or large mammals may pass through the creek and buffer areas but there were no visible cavities or dens. The greatest habitat for wildlife species occurs along the creeks and their buffer areas.

Short-term and long-term adaptability of species to human disturbance should not be significant. The Mendocino cypress is suitably adapted to disturbance immediately adjacent to it. The pygmy forest, however, is not suited to disturbance as clearings and road scars usually remain long after the initial disturbance.

Pygmy forest is mapped within 100' of the parcel, but Timberwood Way skirts the outer edge of it on the adjacent parcel. If impacts associated with development are confined to areas away from the riparian areas and the buffer, there should be no impact to the integrity of the watercourse and the habitat it provides. The Mendocino cypress along the driveway should remain free of additional landscaping or open clearing. Brush can be removed from the area but the ESHA should remain free of introduced plant species.

(1c) 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.

The proposed building envelope is situated behind a buffer to the stream so that development on the slope does not create any significant potential for erosion. A minimum 100' buffer from development to the creek maintains a substantial strip of vegetation cover to provide protection for the creek.

(1d) 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.

The parcel has steep slopes to Signal Port Creek, which lies below a flat bench off Timberwood Way. The portion of the parcel proposed for a new parcel is undeveloped except for a dirt road/driveway. The proposed building envelope is on the flatter portion of the parcel, away from the steeper slopes of the creek.

(1e) 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.

The only existing cultural features on the proposed parcel are the roads. The main road, Timberwood Way, is situated immediately adjacent to the pygmy forest on the parcel to the north. The entrance road acts as a buffer to the Mendocino cypress growing on the side of the entrance road on the parcel.

Table 3. Sec. 20.496.020 ESHA – Development Criteria.

<p><i>(1f) 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.</i></p> <p>Adjacent parcels are approximately 15-30 acres with a number of 3-5 acre parcels nearby and along the main road. Residences and roads are built immediately adjacent to or within pygmy forest ESHA areas. Specifically, Mendocino cypress grows along disturbed areas adjacent to many driveways and roads, including the subject parcel. The most sensitive areas in the Project Site are the areas adjacent to creeks, which have 100' buffers where development will not be proposed.</p>	<p><i>(1g) 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.</i></p> <p>Adjacent parcels are within 14-30 acres, and nearby there are 10 parcels that range from 2.5 to 6 acres. A 100' stream buffer adequately protects the creek and reduced buffers around the Mendocino cypress are warranted given the species' ability to thrive in these areas. The California Department of Fish and Game may determine if the northern bishop pine forest is an ESHA.</p>	<p><i>(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).</i></p> <p>Buffers were measured from the edge of the vegetation associated with the creek, or the edge of the creekbed because little riparian vegetation occurs along the creeks. Buffers were drawn around the isolated patches of special-status plants, but a reduction in buffer is recommended due to the plants' persistence along the disturbed areas along the entrance road.</p>	<p><i>(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.</i></p> <p>The proposed subdivision allows for a building envelope that is outside of the 100' ESHA buffer. Special-status plants occur along the exiting entrance road, but their habitat requirements are due, in part, to the previous disturbance on the Project Site. Reduced buffers for these isolated plant locations are recommended.</p>	<p><i>(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:</i></p> <p><i>(4a) 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></p> <p>The proposed lot split maintains the functional capacity of the most ecologically significant ESHA on the parcel – the creek. By maintaining a minimum 100' buffer around the creek, the threat of sediment entering the creek is reduced and natural ecological processes can continue undisturbed. Development on the west side of the proposed new parcel is within the 100' ESHA buffer, however the health and longevity of the Mendocino cypress are not compromised by the existing road. Many Mendocino cypress in the area grow along roads and in shallow disturbed soils.</p>
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Table 3. Sec. 20.496.020 ESHA – Development Criteria.

(4b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

Figure 1 illustrates the configuration of ESHA in relation to the parcel boundary and the road. If the Department of Fish and Game concurs with the designation of the northern bishop pine forest occurrence as it not being an ESHA, a building site on the proposed parcel occurs outside of the 100' ESHA buffer. However, there is Mendocino cypress along the entrance road that is within the 100' ESHA buffer, and using the existing road is the best use of the existing conditions. Additionally, the Mendocino cypress grow along the road currently, and they would likely not be disturbed by continued use of the road.

(4c) 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.

Although the occurrence of bishop pine forest is not considered an ESHA, it should be avoided to the greatest extent feasible. Given that there may be some encroachment into the bishop pine forest, the greatest protection is given to the watercourses, around which are 100' buffers. Given the proposed location of the structures, it is determined that there will be no impact on the maintenance of the biological and physical integrity of the buffer strip.

(4d) 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.

The proposed building envelope provides protection for the stream, the most sensitive resource on the parcel. This location allows for the continuation of the habitat away from the stream, therefore providing sufficient protection for it. A minimum 100' buffer from the stream does not create a clearing in the forest adjacent to the creek that would introduce light and change riparian temperatures and ultimately species diversity. The proposed building envelope does not adversely affect the habitat where Mendocino cypress (ESHA) are growing. These trees are growing in their existing location in part because the areas was previously disturbed. A residence and use of the road is not likely to have a significant effect on the trees.

(4e) 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.

No riparian vegetation or rare plants will be lost due to the encroachment of the development in the buffer. As discussed, the buffer around the Mendocino cypress offers little to no protective value as it is currently growing in areas along the road. If the California Department of Fish and Game concurs that northern bishop pine forest is not an ESHA under the Mendocino County Local Coastal Plan, a building site can be situated outside of a 100' ESHA buffer.

(4f) 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.

Impervious surfaces may be minimized by proposing crushed rock driveways instead of an impervious surface such as asphalt or concrete, however no building plans are submitted. Vegetation removal is minimized by using the existing entrance road. Nutrient runoff is minimized by proposing development sufficiently away from the watercourse. Artificial light would be addressed in the building plans when they are submitted.

Table 4. Sec. 20.496.020 ESHA – Development Criteria.

(4g) 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.

No riparian or wetland vegetation will be lost during construction.

(4h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

No proposed development is adjacent to any watercourse.

(4i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

By observing a 100' buffer around the watercourses, the aquatic biological process, hydraulic capacity, and subsurface flow patterns are protected from any encroaching building envelope. To the greatest extent feasible, terrestrial biological processes are protected by keeping the building envelope outside of area where Mendocino cypress grow, which is an area where the house would not be situated due to space restrictions.

(4j) 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.

The proposed building envelope is not in any location to interrupt the flow of groundwater. Natural runoff would be directed downslope.

(4k) 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)

The greatest protection is given to the watercourse with a 100' buffer. Mendocino cypress buffers are less than 50' because the plants occur next to an existing entrance road and will likely not be impacted from use or maintenance of the road. The bishop pine forest is approximately one acre and was not considered an ESHA. The California Department of Fish and Game may make further determinations on the status of plant communities on the parcel with respect to their ESHA status.

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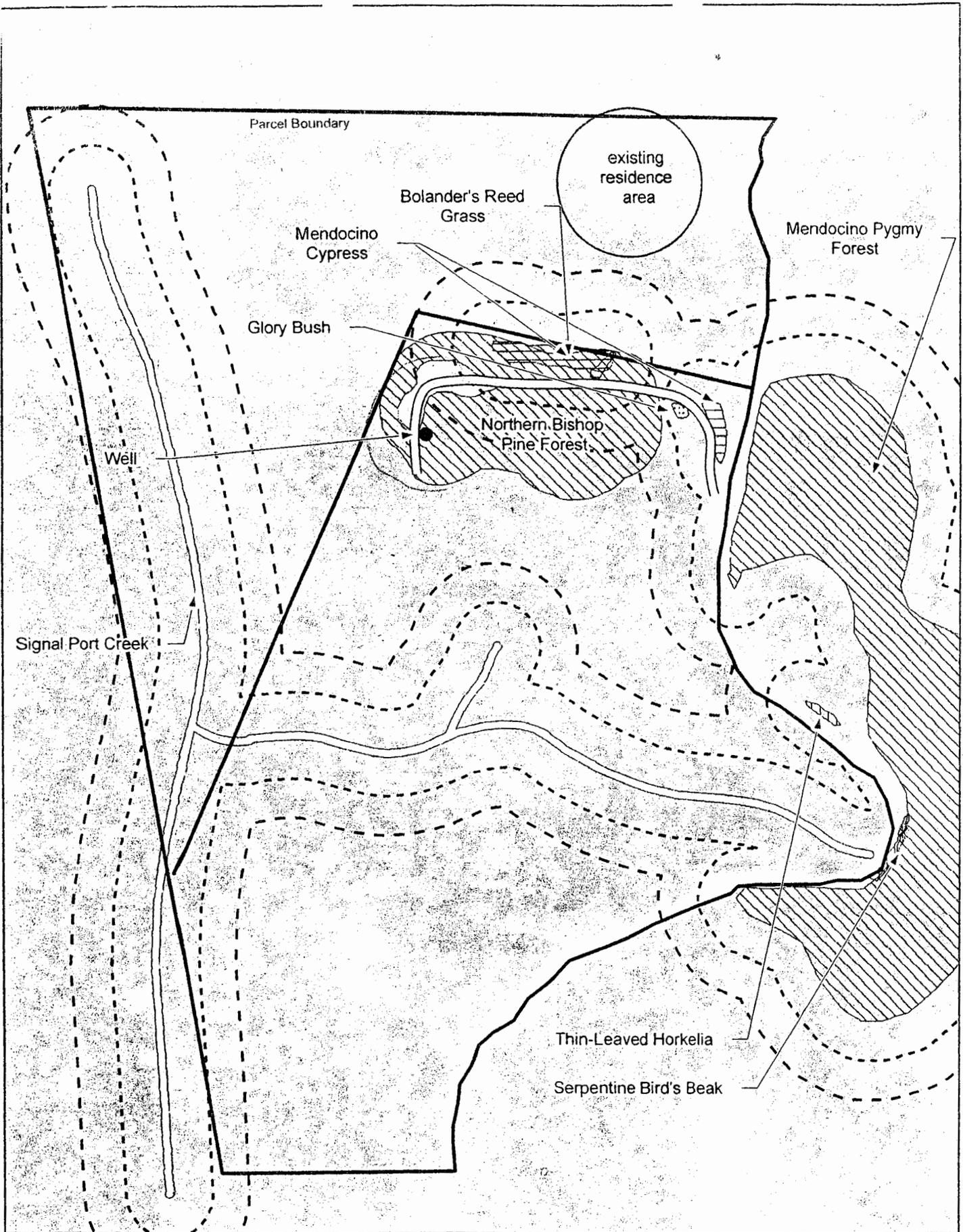
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APPENDICES

Appendix A. Study Area Site Plan.

Appendix B. List of Plant Species Documented in the Study Area.

Appendix C. List of Invasive Landscaping Plants to Avoid Using



0 25 50 100 Feet
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Site Plan for 3555 Timberwood Way (ANP 141-100-35), Point Arena, California.
 Proposed lot split is shown. All locations are approximate.

Appendix B. List of Plant Species Documented in the Study Area.

GROUP	FAMILY	SCIENTIFIC NAME	COMMON NAME	NATIVE
FERNS AND ALLIES				
	Dennstaedtiaceae	<i>Pteridium aquilinum</i> var. <i>pubescens</i>	bracken	Y
	Dryopteridaceae	<i>Polystichum munitum</i>	western sword fern	Y
GYMNOSPERMS				
	Cupressaceae	<i>Cupressus goveniana</i> ssp. <i>pigmaea</i>	Mendocino cypress	Y
	Pinaceae	<i>Pinus muricata</i>	bishop pine	Y
		<i>Pseudotsuga menziesii</i> var. <i>menziesii</i>	Douglas-fir	Y
	Taxodiaceae	<i>Sequoia sempervirens</i>	coast redwood	Y
DICOTS				
	Asteraceae	<i>Baccharis pilularis</i>	coyote brush	Y
		<i>Cirsium vulgare</i>	bull thistle	N
		<i>Conyza canadensis</i>	horseweed	Y
		<i>Erechtites minima</i>	Australian fireweed	N
		<i>Eriophyllum lanatum</i> var. <i>arachnoideum</i>	spiderweb sunflower	Y
		<i>Gnaphalium canescens</i>		N
		<i>Gnaphalium purpureum</i>	purple everlasting	Y
		<i>Hypochaeris glabra</i>	smooth cat's ear	N
		<i>Hypochaeris radicata</i>	hairy cat's ear	N
	Berberidaceae	<i>Vancouveria planipetala</i>	redwood ivy	Y
	Caprifoliaceae	<i>Lonicera hispidula</i> var. <i>vacillans</i>	hairy honeysuckle	Y
	Cistaceae	<i>Helianthemum scoparium</i>	broom rose	Y
	Ericaceae	<i>Arbutus menziesii</i>	madrone	Y
		<i>Arctostaphylos glandulosa</i> ssp. <i>glandulosa</i>		Y
		<i>Arctostaphylos nummularia</i>	Fort Bragg manzanita	Y
		<i>Gaultheria shallon</i>	salal	Y
		<i>Rhododendron occidentale</i>	western azalea	Y
		<i>Vaccinium ovatum</i>	California huckleberry	Y
		<i>Vaccinium parvifolium</i>	red huckleberry	Y
	Fabaceae	<i>Genista monspessulana</i>	French broom	N
		<i>Medicago polymorpha</i>	California burclover	N
		<i>Pickeringia montana</i>	chaparral pea	Y
		<i>Vicia sativa</i> ssp. <i>sativa</i>	spring vetch	N
	Fagaceae	<i>Chrysolepis chrysophylla</i> var. <i>chrysophylla</i>	giant chinquapin	Y
		<i>Lithocarpus densiflorus</i> var. <i>densiflorus</i>	tanoak	Y
		<i>Quercus wislizeni</i>	interior live oak	Y
	Hydrophyllaceae	<i>Eriodictyon californicum</i>	yerba santa	Y
	Hypericaceae			

Lamiaceae	<i>Mentha pulegium</i>	pennyroyal	N
	<i>Lepechinia calycina</i>		Y
	<i>Stachys ajugoides</i> var. <i>rigida</i>	rigid hedge-nettle	Y
Oxalidaceae	<i>Oxalis oregana</i>	redwood sorrel	Y
Philadelphaceae	<i>Whipplea modesta</i>	yerba de selva	Y
Plantaginaceae	<i>Plantago lanceolata</i>	English plantain	N
Polemoniaceae	<i>Collomia heterophylla</i>		Y
Polygalaceae	<i>Polygala californica</i>		Y
Rhamnaceae	<i>Ceanothus foliosus</i>	indigo bush	Y
	<i>Ceanothus gloriosus</i> var. <i>exaltatus</i>		Y
	<i>Rhamnus californica</i>	California coffeeberry	Y
Rosaceae	<i>Horkelia tenuiloba</i>	thin-leaved horkelia	Y
	<i>Rubus ursinus</i>	California blackberry	Y
Scrophulariaceae	<i>Cordylanthus tenuis</i> ssp. <i>brunneus</i>	serpentine bird's-beak	Y
	<i>Mimulus aurantiacus</i>	sticky monkeyflower	Y
	<i>Scutellaria californica</i>	California skullcap	Y
Violaceae	<i>Viola sempervirens</i>	redwood violet	Y
MONOCOTS			
Cyperaceae	<i>Carex obnupta</i>	slough sedge	Y
Juncaceae	<i>Juncus effusus</i> var. <i>pacificus</i>	Pacific common rush	Y
	<i>Juncus patens</i>	common rush	Y
	<i>Juncus phaeocephalus</i> var. <i>phaeocephalus</i>	brown-headed rush	Y
Liliaceae	<i>Zigadenus micranthus</i> var. <i>fontanus</i>	death camas	Y
Poaceae	<i>Aira caryophyllea</i>	silver European hairgrass	N
	<i>Aira praecox</i>	little hairgrass	N
	<i>Calamagrostis bolanderi</i>	Bolander's reed grass	Y
	<i>Danthonia pilosa</i>	hairy oatgrass	N
	<i>Festuca subuliflora</i>	crinkle-awn fescue	Y
	<i>Hierochloa occidentalis</i>	vanilla grass	Y
	<i>Holcus lanatus</i>	common velvetgrass	N
	<i>Paspalum dilatatum</i>	dallis grass	N

Appendix C

List of Invasive Landscaping Plants to Avoid Using

Excerpts from California Invasive Plant Council (Cal-IPC), Responsible Landscaping, www.cal-ipc.org

brooms: Bridal broom, French broom, Portuguese broom, Scotch broom or Spanish broom (*Retama monosperma*, *Genista monspessulana*, *Cytisus striatus*, *Cytisus scoparius* or *Spartium junceum*)

Brooms have invaded over one million acres in California. The flowers produce thousands of seeds that build up in the soil over time, creating dense thickets that obliterate entire plant and animal communities. Grows quickly, creating a fire hazard in residential landscapes. "Sterile" varieties haven't been independently verified or tested and are not recommended as substitutes.

cotoneaster (*Cotoneaster lacteus* or *Cotoneaster pannosus*)

Birds have spread the berries and seeds of these shrubs to many different habitat types. With their rapid growth and competitive roots, cotoneasters displace native plants and animals.

periwinkle (*Vinca major*)

This aggressive grower has trailing stems that root wherever they touch the soil. Their ability to resprout from stem fragments enables periwinkle to spread rapidly in shady creeks and drainages, smothering the native plant community.

ivies: English ivy, Algerian ivy, or cape ivy (*Hedera canariensis*, *Delairea odorata* or *Hedera helix*)

Some ivy species in the *Hedera* genus are a problem in California. They can smother understory vegetation, kill trees, and harbor non-native rats and snails. It's difficult to distinguish problem species from less invasive ones. Do not plant ivy near natural areas, never dispose of ivy cuttings in natural areas, and maintain ivy so it never goes to fruit. Researchers hope to determine which ivies can be planted safely. Although cape ivy is not a "true" ivy, it causes many of the same problems as *Hedera* species.

jubatagrass or pampasgrass (*Cortaderia jubata* or *Cortaderia selloana*)

Wind can carry the tiny seeds of these plants up to 20 miles. The massive size of each pampas grass plant with its accumulated litter reduces wildlife habitat, limits recreational opportunities in conservation areas, and creates a fire hazard.

blue gum eucalyptus (*Eucalyptus globulus*)

Found along the coast from Humboldt to San Diego and in the Central Valley. Most invasive in coastal locations. Easily invades native plant communities, causing declines in native plant and animal populations. Fire departments throughout Southern California recommend against using eucalyptus trees for landscaping because they are extremely flammable.