

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
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Th5.5a



MEMORANDUM

DATE: September 7, 2011

TO: Commissioners and Interested Parties

FROM: Charles Lester, Senior Deputy Director
 Ruby Pap, North Central Coast District Supervisor

SUBJECT: Staff Report Addendum to Item Th5.5a (Kelham)

[Click here to go to the original staff report.](#)

[Click here to read additional correspondence received.](#)

This addendum to the Staff Report, dated August 25, 2011, has been prepared to (1) provide clarification to the findings and conditions; and (2) respond to comments received from the Applicants and the public.

Recommended additions to the Staff are shown in **bold underline**. Recommended deletions are shown in bold ~~striketrough~~.

Page 5, Special Condition 1(B)(2):

- 1) Erosion and Drainage Runoff Control Plan
 - a. The final runoff control plans shall at a minimum include the following provisions:
 - i. ~~Soil grading activities shall be restricted to the dry season between April 15 and October 14;~~
No phase of the project may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm event, where that construction phase may result in the introduction of sediment or sediment-laden water into a watercourse. A seventy-two-hour weather forecast from the National Weather Service shall be consulted prior to start up of any phase of the project that may result in runoff.

Page 10, Special Condition 6:

- A. All final design and construction plans including foundations, grading, and drainage plans, shall be consistent with the recommendations contained in ~~the Geotechnical Investigation report submitted with the application~~ (1) PJC and Associates, 2009, "Report, Geologic hazard investigation, proposed residence, garage, second unit

and private driveway, 1835 Bay Flat Road, Bodega Bay, California"; and (2) PJC and Associates, 2009, "Design level geotechnical investigation, proposed residence, garage, second unit and private driveway, 1835 Bay Flat Road, Bodega Bay, California".

Page 31, first full paragraph, last sentence:

...In addition, he has agreed to move the garage closer to the main house, relocating the entire envelope further **north west** to avoid identified plants and, as discussed below, eliminating the second unit.

Page 31, paragraph 2:

2. Alternative placements of the house

According to the alternatives analysis, relocating the house, and/or reducing pathways to it has the potential to reduce project impacts on rare plants. If the house were relocated approximately 50 feet to the north or northwest, impacts on the rare plants could potentially be reduced by 33%. **However, based on updated habitat mapping on August 12, 2011 (exhibit 7) and staff's assessment of the habitat, there would be no added habitat benefit beyond the 10-15 feet to the west necessary to avoid the plant clusters to the east. Further, moving the house 50 feet to the north or northwest would require additional grading into the hillside, and there would be added visual impacts when viewed from Bay Flat Road. In addition,** the actual reduction in **habitat** impact would depend on the extent of grading limits and careful fencing/avoidance of plant populations during construction. The Commission's Staff Ecologist opined that moving the residence 50 feet to the west would be appropriate if there were no additional driveway impacts. The alternatives analysis did not specifically analyze whether this option would result in additional area required for the driveway and hence additional dune ESHA impacts. According to the site plans and habitat map, moving the residence 50-feet to the northwest, would not necessarily require a driveway extension, since the plans already show the driveway extending north and west of the residence to reach the garage; **however the Applicant maintains that such a driveway extension would be necessary to maintain consistency with the architect's design. Therefore, there would potentially be additional driveway impacts if the proposed residential envelope were relocated 50 feet to the northwest. Moreover,** the garage would have to be reconfigured and be attached to the residence or eliminated to minimize dune ESHA impacts. This may require a redesign of the residence to accommodate an attached garage or the garage could be eliminated if it does not work with the design of the residence.

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17 August 2011

GEOTECHNICAL REVIEW MEMORANDUM

To: Ruby Pap, Coastal Program Manager
From: Mark Johnsson, Staff Geologist
Re: Kelham Appeal (A-2-SON-10-023)

In connection with the above-referenced appeal, I have reviewed the following documents:

- (1) PJC and Associates, 2009, "Report, Geologic hazard investigation, proposed residence, garage, second unit and private driveway, 1835 Bay Flat Road, Bodega Bay, California", 17 p. geotechnical report dated 2 March 2009 and signed by S.M. Schurke (PG 8619) and P.J. Conway (CEG 2452).
- (2) PJC and Associates, 2009, "Design level geotechnical investigation, proposed residence, garage, second unit and private driveway, 1835 Bay Flat Road, Bodega Bay, California", 25 p. geotechnical report dated 7 August 2009 and signed by P.J. Conway (CEG 2452).
- (3) The Engineering Geologist, 2009, 1 p. letter to DeWayne Starnes dated 24 September 2009 and signed by R. Waldbaum (CEG 923).
- (4) The Engineering Geologist, 2009, "Peer review of Geologic Hazard Evaluation Report dated March 2, 2009 by PJC & Associates, Inc., 1835 Bay Flat Road, Bodega Bay, Sonoma County, California", 4 p. peer review letter dated 30 September 2009 and signed by R. Waldbaum (CEG 923).
- (5) The Engineering Geologist, 2009, "Peer review of Design Level Geotechnical Investigation, proposed residence, garage, second unit and private driveway, 1835 Bay Flat Road, Bodega Bay, California Report dated August 7, 2009 by PJC & Associates, Inc.", 4 p. peer review letter dated 22 October 2009 and signed by R. Waldbaum (CEG 923).
- (6) PJC and Associates, 2010, "Geotechnical plan review, proposed private driveway, GRD 09-0175, 1835 Bay Flat Road, Bodega Bay, California", 1 p. review letter dated 27 January 2010 and signed by P.J. Conway (CEG 2452).
- (7) The Engineering Geologist, 2010, "Summary of geologic feasibility issues, 1835 Bay Flat Road, Bodega Bay, California", 4 p. letter to Maggie Briare dated 8 February 2010 and signed by R. Waldbaum (CEG 923).

(8) Rowland, 2010, "1835 Bay Flat Road, Bodega Bay, California, Private driveway", 2 p. letter to County of Sonoma dated 10 February 2010 and signed by C. Rowland (CE 039886).

(9) Rowland, 2010, "1835 Bay Flat Road, Bodega Bay, California, Private driveway", 2 p. letter to County of Sonoma dated 10 March 2010 and signed by C. Rowland (CE 039886).

Although I have not visited the subject site, I am very familiar with the geologic conditions of the immediate vicinity, having visited it numerous times.

References (1) and (2) are preliminary and design-level (respectively) geotechnical reports evaluating the geologic hazards at the site. Given the proximity of the site to the San Andreas fault and the sandy nature of the soils, ground shaking, fault rupture hazard, and lateral spread are identified as the principal hazards. Despite the poorly graded sandy soils, liquefaction is not identified as a likely hazard due to the presumed depth to groundwater, which was not encountered in any of the borings, the deepest of which extended to a depth of 21 feet. Nevertheless, the reports recommend the structures be supported by "stiff" foundations that can accommodate differential settlement due to possible seismic densification of soils. Reference (1) recommends that the stability of the bluff at the southeastern side of the property be evaluate in order to ensure the stability of the proposed driveway. This was done only qualitatively in reference (2).

I concur with the conclusions of these reports that the site can be developed safely if the recommendations contained therein are adhered to. I note that surface fault rupture is a risk, but one that cannot be quantified easily because the young sand dunes deposit riaking up the upper 21 feet or more of the site are not likely to record offsets by historic earthquakes. The site lies some 2500 feet from the 1906 rupture of the San Andreas fault, and does not lie within an Alquist-Priolo fault zone.

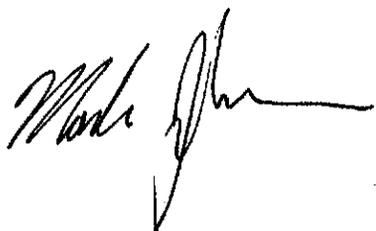
References (4), (5), and (7) are reviews of the references (1) and (2) and raise two major, and one minor, issue that the author feels are not adequately mitigated for by the proposed project and that the project's feasibility has accordingly not been demonstrated. First, these reviews state that the "absence of fault traces within proposed building footprints must be demonstrated" [emphasis in original] to establish project feasibility. The reason for this necessity is unclear, but appears to derive from a quotation from reference (1) in which the authors of that report conclude that "the likelihood of ground rupture at the site due to faulting is considered to be moderate to high." However, the site does not lie within an Alquist-Priolo Fault Zone and, as indicated above, trenching or shallow geophysical techniques are likely to yield equivocal results due to the recent sandy soils that exist at the site. The reviewer does not propose any means of conducting a fault hazard study that would yield unambiguous results. It is my opinion that a fault rupture hazard exists at the site, but that there is no evidence of a known active fault at the site, and the risk is no higher than at most other localities in and around Bodega Bay. Further investigation is unlikely to yield conclusive results regarding fault rupture hazard. The second issue raised in references (4), (5), and (7) is the stability of the dune bluff face at the southeastern edge of the property, which must be traversed by the driveway and utilities. Although reference (1) recommended further evaluation of this slope's stability, reference (2) only did so in a

qualitative way, as pointed out in references (5) and (7). Nevertheless, the driveway will traverse this slope in cuts supported by retaining walls. The design criteria for the retaining walls provided in reference (20), and further described in reference (8), are conservative and will mitigate any instability of the natural dune bluff. I note that this bluff lies landward of Bay Flat Road, several hundred feet from the water's edge, and is not subject to marine erosion in any but the most severe wave or tsunami events. Finally, references (4) and (5) make reference to poor drainage that exists at the base of this bluff, and opine that ponded waters at this location could reduce the overall stability of the bluff. I concur, and recommend that drainage plans be submitted for review by the Executive Director that demonstrate that such ponding will not be allowed to continue after the project is developed.

To summarize, I concur with the project consultants that the proposed development can be undertaken so as to assure stability, as required by the LCP, provided that the recommendations provided in references (1) and (2) are adhered to. I recommend a special condition be added to the permit requiring such adherence.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Johnsson", with a long horizontal flourish extending to the right.

Mark Johnsson, Ph.D., CEG, CHG
Staff Geologist

JUN 02 2010

CALIFORNIA
COASTAL COMMISSION

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The Engineering Geologist
Since 1969
RG 3142 CEG 923
7945 St. Helena Road Santa Rosa, CA 95404
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February 8, 2010

Ms. Maggie Briare
P.O. Box 998
Bodega Bay, CA 94923

**Subject: Summary of Geologic Feasibility Issues, 1835 Bay Flat Rd.
Bodega Bay, Sonoma County, California.**

Dear Ms. Briare:

INTRODUCTION

The purpose of this letter is to summarize the unresolved geologic safety and stability issues that affect proposed development of the subject site. These are fundamental feasibility issues that will be considered at a public meeting of the Sonoma County Board of Zoning Adjustments on February 11, 2010.

The two geologic feasibility issues are the potential presence of active fault traces underlying the proposed building sites and the stability of the slope along Bay Flat Road that will be traversed by the driveway. Until these issues are resolved using methods that conform to statewide standards of geologic and geotechnical engineering practice, these issues will remain unresolved. These unresolved issues are described in more detail below.

ACTIVE FAULT HAZARDS

The Alquist-Priolo Earthquake Fault Zoning Act became law on December 22, 1972 and became effective March 7, 1973. The Act prohibits construction of structures for human occupancy over the traces of active faults. The PJC report dated March 2, 2009 (Reference 1) states "In the event of a large or major earthquake, particularly on the nearby San Andreas Fault System, the project is susceptible to ground rupture, ground shaking and seismic related ground failures". Also on page 8, the PJC report states "Consequently, we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high". In other words, it is the finding of PJC that active faults probably underlie the site.

Once this probability has been suggested, just as with a preliminary diagnosis of a

suspected life threatening disorder, the question must be answered by a totally through diagnosis.

The Mitigated Negative Declaration states "The site is located in the San Andreas Fault Zone..." There is contradictory information in the PJC report dated March 2, 2009 concerning whether or not the site is located in the San Andreas Fault Zone. On page 6 the report states "The site is located in the San Andreas Fault Zone". However, also on page 6 the report states "...the site is not located in the Alquist Priolo Earthquake Fault Studies Zone".

Additionally, on page 6 the report incorrectly states that the proposed project is exempt from the Act because it "...is not part of a development of four or more dwellings". This is a very serious error in understanding the requirements for geologic investigation of fault hazards in Sonoma County for two reasons.

First, in *Alquist-Priolo Earthquake Fault Zoning Act*, by DeWayne Starnes, Deputy director of PRMD, in *The PRMD Newsletter*, Spring 2009 (Reference 6), Starnes states "Although the State Alquist-Priolo Zone exempts single family homes from the requirement, the County Ordinance does not include the exemption for singly family homes". Thus, the requirements of the Act apply to this project regardless of the number of homes because of the site's location in the Fault Zone according to PJC and the Mitigated Negative Declaration

Second, and far more important from a scientific standpoint, PJC states on page 8 of their report dated March 2, 2009 (Reference 1) "Consequently, we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high". Placement of habitable structures over the traces of active faults is exactly what the Alquist-Priolo Earthquake Fault Zoning Act was enacted to prevent. Since, according to PJC, this hazard probably exists at the site, the site must be considered seismically unsafe under the requirements of the Act based upon present geologic information. Subsurface investigation of fault hazards is required in building area according to a personal communication from DeWayne Starnes to Ray Waldbaum that states "In order for an appropriate licensed professional to 'address' the proximity of structures to faults, this requires subsurface investigation, and not simply looking at a map and stamping a report or letter".

For both of the reasons described above, the absence of active faults in proposed building areas has not been demonstrated in accordance with either statewide standards of practice nor with the requirements of Sonoma County PRMD. A great deal more work needs to be done to resolve this basic feasibility issue.

SLOPE STABILITY

The proposed driveway providing access to the proposed structures traverses a steep

sand dune slope. Under the heading of "Slope Stability" the PJC report dated March 2, 2009 (Reference 1) states "This section of driveway should be evaluated for static and seismic instability during the geotechnical phase of the project", in other words "later". This deferred "geotechnical" work is presented in the PJC report dated August 7, 2009 (Reference 2). This report does not present stability analysis of the steep slope to be traversed by the driveway. Reference 2 states "... the slope could be prone to lurching or instability during seismic ground shaking". "Could" is not stability analysis. Stability analysis is an Engineering Geologic and Geotechnical Engineering calculation that results in determination of a numerical factor of safety that either does or does not conform to minimum criteria based on statewide standards of practice.

The subject of stability analysis is described in detail in various published forms including *Guidelines For Evaluating And Mitigating Seismic Hazards In California*, Chapter 5, *Analysis And Mitigation Of Earthquake-Induced Landslide Hazards*, and Chapter 7, *Guidelines For reviewing Site Investigation Reports*, California Division of Mines and Geology Special Publication 117, adopted March 13, 1997, (Reference 7)

In order for the project to be feasible this driveway must remain stable and functional to underground utilities and pedestrian, homeowner and emergency vehicle traffic even during and after an earthquake on the San Andreas Fault. The ability of the driveway slope to meet this requirement has not been demonstrated. In fact no effort to demonstrate that has even been attempted.

FALSE STATEMENTS IN MITIGATED NEGATIVE DECLARATION

Under the heading "GEOLOGY AND SOILS" the MND makes statements that can only be described as outrageous. For the potentials hazards of fault rupture, strong seismic ground shaking, seismic-related ground failure including liquefaction and landslides a hazard level of **Less than Significant Impact** is indicated. It is impossible to imagine these hazard designations for a site in the most well known and dangerous fault zone known to humankind where the project geologic consultant has indicated that active faults probably underlie the site! Even the most optimistic description of the the potentials hazards of fault rupture, strong seismic ground shaking, seismic-related ground failure including liquefaction and landslides would have to be **Potentially Significant Impact** considering the location of this site and the inevitability of "The Big One".

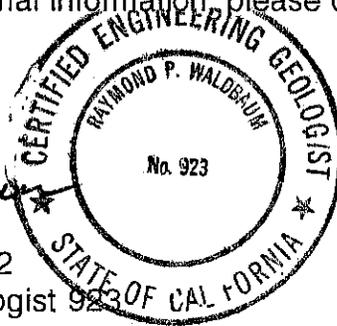
CONCLUSION

The present issue is whether or not geologic hazards exist at the site whose mitigation, for example construction of a buttress fill to support the driveway slope, would be 1. feasible from a construction standpoint, and 2. consistent with the laws, codes and criteria that govern development in this Coastal Area.

I trust that the forgoing information fulfills your present requirements. If you have any questions or require additional information, please do not hesitate to call.

Very truly yours,


Raymond Waldbaum
Professional Geologist 3142
Certified Engineering Geologist 923



REFERENCES

1. Report, Geologic Hazard Evaluation, Proposed Residence, Garage, Second Unit & Private Driveway, 1835 Bay Flat Road, Bodega Bay, California, dated March 2, 2009, by PJC & Associates, Inc. Job No. 4238.01.
2. Design Level Geotechnical Investigation, Proposed Residence, Garage, Second Unit & Private Driveway, 1835 Bay Flat Road, Bodega Bay, California, dated August 7, 2009, by PJC & Associates, Inc. Job No. 4238.02.
3. Peer Review of Geologic Hazard Evaluation Report dated March 2, 2009 by PJC & Associates, Inc, 1835 Bay Flat Road, Bodega bay, Sonoma county, California, by Raymond Waldbaum, dated September 30, 2009.
4. Peer review of *Design Level Geotechnical Investigation, Proposed Residence, Garage, Second Unit & Private Driveway, 1835 Bay Flat Road, Bodega Bay, California, dated August 7, 2009, by PJC & Associates, Inc.*, by Raymond Waldbaum, dated October 22, 2009.
5. *Fault-Ruprure Hazard Zones In California*, California Division of Mines and Geology Special Publication 42.
6. *Alquist-Priolo Earthquake Fault Zoning Act*, by DeWayne Starnes, Deputy director of PRMD, in *The PRMD Newsletter*, Spring 2009.
7. *Guidelines For Evaluating And Mitigating Seismic Hazards In California*, Chapter 5, *Analysis And Mitigation Of Earthquake-Induced Landslide Hazards*, and Chapter 7, *Guidelines For reviewing Site Investigation Reports*, California Division of Mines and Geology Special Publication 117, adopted March 13, 1997

Commission Appeal No. A-2-SON-10-023

RECEIVED

California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

JUN 11 2010

CALIFORNIA
COASTAL COMMISSION

ATTENTION: Charles Lester, Senior Deputy Director
Ruby Pap, District Supervisor
Grace Ma, Coastal Program Analyst

As promised in our initial appeal form, we are forwarding further information with regard to the following project:

Sonoma County Permit PLP08-0131
William Kelham; Kelham Investments LLC
1835 Bay Flat Rd., Bodega Bay, Sonoma County, CA

The necessary requirements for all environmental documents are that they must contain specific and mandatory findings on all elements of a project. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project level, indirect as well as direct, and construction as well as operational impacts. The plans and documents prepared for this project by County of Sonoma PRMD and the applicant do not come close to these standards.

The environment of Bodega Bay has always been one of the most fragile along the California coast. It has always been considered the single most important area for rare and endangered species and non-migrating and migrating birds found along the coast. The environment supporting these creatures must be protected to the fullest extent.

Environmental Issues:

The heron/egret rookery on this property is one of the last sanctuaries remaining in and around Bodega Bay. The environment necessary to house such sanctuaries has steadily disappeared over the years due to encroachment, the felling of trees, the destruction of vital and necessary wetlands and the degradation of the land in general.

NOTE: This area was chosen by Alfred Hitchcock for his film "The Birds" and it remains a popular tourist destination for people from all over the country, Europe and Asia. The historic farmhouse used in the film was moved adjacent to the rookery in 1869.

This refuge for herons, egrets, osprey, owls, bats and a myriad of protected animals and birds will be seriously affected by this project, especially due to the placement of the access/egress road as proposed.

The Conditions of Approval contained in the May 18, 2010 draft (copy enclosed) are ineffective for protection. Item 11, page 2 states; “To avoid potential disturbance to the active heronry, construction of the driveway and associated grading activities is prohibited between March 15 and August 15. The allowed construction period may be extended if a survey conducted by a qualified biologist determines that nesting activity has not yet occurred or is already complete for the season. **Work on the proposed single family house, garage, and second dwelling unit MAY proceed during the breeding season [emphasis added]** provided that construction noise is reduced to the maximum extent feasible.”

No grading or construction activities should be allowed to take place during any time of bird occupancy of the heronry. The March 15 and August 15 dates are not relevant to the arrival of the birds and the nesting season, which can be anytime between late January to late October. This year the birds began arriving in late January, with the greater number arriving on February 10th. The conditioned dates do not coincide with the actual nesting season and do not provide protection.

More importantly, Condition 11 allows for the construction of the residences and garage to take place **during** the nesting season regardless of the known consequences. Construction noise involving heavy equipment, trucks, etc. necessary for construction would have a devastating effect on the rookery during the nesting season, allowing this traffic to utilize the access/egress road under the canopy of the rookery in order to get to the construction site. No construction noise, even that reduced to the maximum extent feasible, can be mitigated to the extent necessary to protect the rookery.

Condition 12, page 2, states; “If active nests or behavior indicative of nesting birds are encountered while constructing the proposed structures or driveway, establish a 50 ft. buffer area for small songbirds and 200 feet for larger species (e.g., raptors, owls, etc.) to be avoided until the nests have been vacated. The applicant shall report any nests encountered during construction. PRMD staff shall inspect the site and verify that protection measures are in place.”

This condition completely overlooks the fact that **NO CONSTRUCTION CAN BE ALLOWED TO TAKE PLACE DURING THE NESTING SEASON AND NO LESSER BUFFER AREA SHOULD BE ESTABLISHED DURING NESTING SEASON.** Condition 12 is completely out of context with all protection measures that must be taken for preservation of this environmental resource.

With regard to Condition 13, page 2, it states: “All trees on the site shall be preserved and protected against damage during construction activities. If a licensed arborist determines that a tree needs to be removed during construction due to damage or disease, the tree shall (sic) surveyed by a qualified biologist for roosting bats or nesting birds prior to removal. Removal shall not occur until the roost or nest is unoccupied.”

This condition blatantly allows for trees to be removed from the rookery at the whim of the applicant and his arborist/biologist, even during the nesting season. Audubon Canyon Ranch again visited the site on Sunday, June 6th and once again will have a report on the number of birds, variety, nesting conditions, nesting sites, etc. and this report will be forwarded to you. Observation shows a great majority of the birds nesting in the forward portion of the rookery (the portion that will be greatly affected by the project’s access road) while a number of birds are also utilizing many of the adjacent trees. ANY REMOVAL OF ANY TREES will have a profound effect. All trees in the area of the rookery are utilized, including dead and dying trees. Dead wood is utilized in the building of the nests and fallen debris from the trees is used for stability in the nests. Many of the nests remain after the nesting season and are utilized season after season. In addition, the tree root systems rely on each other for stability against the weather and ground conditions. This is especially important in this area that is comprised mostly of sand dunes. To remove even one tree can and will weaken the grove and construction on and use of the access/egress road will have a serious effect.

Geological issues:

The strong geological issues associated with this project were absent from the Mitigated Negative Declaration and Conditions of Approval. The Summary of Geologic Feasibility Issues by Engineering Geologist Ray Walbaum dated February 8, 2010 clearly defines the serious nature of this project. This summary outlines the facts of the Alquist-Priolo Earthquake Fault Zoning Act which was enacted into law in 1972 and is the basis for all review regarding geological conditions. The applicant’s own geologist, PJC & Associates, in the report dated March 2, 2009 stated “In the event of a large or major earthquake, particularly on the nearby San Andreas Fault System, the project is susceptible to ground rupture, ground shaking and seismic related ground failures.” They further stated, “Consequently, we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high”. This information is not evident in the findings of the Mitigated Negative Declaration, which declares the issues to be “Less than Significant”. No required subsurface investigation was undertaken for the project site and the potential hazards of building at this site were not adequately addressed by the County of Sonoma. The law within the Alquist-Priolo Fault Zoning Act **prohibits placement of habitable structures over the trace of an active fault** with no exceptions.

The summary written by Ray Walbaum was enclosed with the original appeal document sent to you on May 28, 2010. Should you require additional copies of this or any other documents relevant to this appeal, please don't hesitate to contact us and they will be forwarded to you as soon as possible.

Public Safety:

The issue of public safety is also an important part of this appeal and one that was not significantly addressed in the documents prepared by the County of Sonoma for this project.

This project has, to some degree, already impacted public safety for the surrounding residents. The degradation of the sand dunes has already taken place at the site of the access road, and will further impact the businesses and residents on Westshore Road down slope from the site. The ability of the dunes to invade onto Bay Flat Road will seriously compromise accessibility to the entire dune area in the event of an emergency. Dune fires are not uncommon in this area and Bay Flat Road at this site is the closest possible road allowing access to the entire dune area to the north.

Drainage issues from the site have not been fully addressed, especially as to the placement of the access road. The County of Sonoma simply states that water will be allowed to filter through the sand dune. Unfortunately, that water will quickly drain under the dunes and onto the Bay Flat Road area below as it does now, as there is simply no other place for it to go. Drainage is already compromised on Bay Flat Road as shown in the photo sent with the appeal as there are no drainage facilities in place in the area to carry away the water generated on the site. Failure and slippage of this site during an earthquake will also have a serious effect on the entire area.

We urge you to take a serious look at the factors of this project and their effect on the environment of Bodega Bay and its citizens and visitors alike. The propriety of the actions of the County of Sonoma PRMD is being called into question at this time as to their willingness to overlook and change the provisions and laws of the State of California, the Coastal Act, and especially the Local Coastal Plan, over which they have control.

We ask that you accept our appeal on its merits and **deny a coastal permit** for the project at 1835 Bay Flat Road in Bodega Bay for its lack thereof.

Thank you.

BODEGA BAY CONCERNED CITIZENS, et al
P. O. Box 815
Bodega Bay, CA 94923

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**Th 5.5a**

Filed:	June 3, 2010
49th Day:	Waived
Staff:	Ruby Pap - SF
Staff Report:	August 25, 2011
Hearing Date:	September 8, 2011
Commission Action:	

**APPEAL STAFF REPORT
 SUBSTANTIAL ISSUE DETERMINATION AND DE NOVO REVIEW**

APPEAL NO.: A-2-SON-10-023

APPLICANT: William Kelham

LOCAL GOVERNMENT: Sonoma County

LOCAL DECISION: Approval with Conditions

PROJECT LOCATION: 1835 Bay Flat Road, Bodega Bay (APN 100-020-25)

PROJECT DESCRIPTION: Construction of a new 2,514 square foot single family residence, an 864 square foot garage, and an 840 square foot second dwelling unit on a 9.96 acre parcel.

APPELLANTS: (1) Bodega Bay Concerned Citizens, et al; (2) Commissioners Sara Wan and Steve Blank

STAFF RECOMMENDATION: Substantial Issue Exists; Approval with Conditions

Executive Summary

Sonoma County approved the construction of a new 2,514 square foot single family residence, an 864 square foot garage, and an 840 square foot second dwelling unit on a 9.96 acre parcel in Bodega Bay. Two Coastal Commissioners and the Bodega Bay Concerned Citizens, et al appealed the project, raising questions about consistency of the project with the County's LCP policies that address protection of sensitive dune habitat and heron rookeries, visual resources, and geological hazards. Commissioner appellants also allege that the County did not adequately consider how to minimize the impacts of the approved development, even if some of the development must be approved to avoid a taking of private property.

The approved project would occur on a parcel that is mapped as both sensitive habitat and geologically hazardous. The parcel consists entirely of coastal dune ESHA, and is also highly visually sensitive. Thus, staff recommends that appellants claim raise a substantial issue of conformance with the LCP. Upon de novo review, and based on updated habitat mapping, staff recommends that the Commission find that the project is fundamentally inconsistent with both the habitat and visual resource protection policies of the LCP. However, staff also recommends that the Commission find that to deny the project may result in a taking of property and thus, that the Commission approve the project because the applicant has a reasonable, investment-backed expectation to residential development on the parcel. But, special conditions are also required to minimize the inconsistencies of the project with the LCP while providing for some economic use. These include conditions that would require reduction and relocation of the authorized building envelope to maximize protection of sensitive dune habitat and species; elimination of the second unit to reduce habitat impacts; required habitat restoration proportional to the impact of the project; an open space deed restriction on the remainder of the habitat parcel; and other conditions to mitigate visual impacts, geological hazards, potential cultural resource impacts, and other environmental resource impacts, including those posed to the identified heron rookery on the parcel from the proposed driveway.

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9. Project Site Plan
10. Driveway Alternatives
11. Visuals
12. Alquist Priolo Special Study Zones
13. Recommended Development Envelope

I. Motions and Resolutions

PART 1 - SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeals have been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-2-SON-10-023 raises NO substantial issue as to conformity with the certified Local Coastal Program with respect to the grounds on which an appeal has been filed pursuant to Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion 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 Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-2-SON-10-023 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

PART 2 - DE NOVO REVIEW OF CDP APPLICATION

Unless the Commission finds that a locally approved coastal development permit raises No Substantial Issue with respect to the policies of the certified LCP, the Commission must consider the merits of the proposed project de novo. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. The staff recommends that the Commission approve Coastal Development Permit No. A-2-SON-10-023 subject to the conditions below.

MOTION:

I move that the Commission approve Coastal Development Permit No. A-2-SON-10-023 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the Sonoma County certified Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. CONDITIONS OF APPROVAL

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. Revised Plans

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised final plans to the Executive Director for review and approval. Plans shall substantially conform with the “alternate site area plan” dated 7/21/11 except as required to be modified by this permit and attached special conditions.
- B. The revised plans shall include a site plan, erosion and drainage runoff control plan, and landscaping plan, and shall address the following:

- 1) Site Plan Revisions
 - a) Final Building Envelope, excluding the access driveway, shall substantially conform to Exhibit 13.
 - b) Second Unit and associated development shall be eliminated.
 - c) Garage shall be relocated approximately 5 feet closer to main residence
 - d) Entire envelope shall be relocated as necessary to avoid mapped sensitive plants east of proposed residence (approx. 10-15 feet)
 - e) The site plan shall depict runoff and drainage conveyance systems that are consistent with the provisions of the erosion and runoff control plan required below.

- 2) Erosion and Drainage Runoff Control Plan
 - a. The final runoff control plans shall at a minimum include the following provisions:
 - i. Soil grading activities shall be restricted to the dry-season between April 15 and October 14;
 - ii. A physical barrier consisting of silt fencing and/or bales of straw placed end-to-end shall be installed downslope of any construction areas. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period;
 - iii. Native vegetation at the site shall be maintained to the maximum extent possible. Soil excavated or imported for the house, driveway, septic construction/installation, or for other purposes, shall not be stockpiled onsite, except within the footprint of the proposed house, garage, driveway, and adjacent areas to the west of the driveway. Any disturbed areas shall be replanted with low-growing herbaceous vegetation native to the site immediately following project completion, and covered by jute netting, coir logs, and/or rice straw;
 - iv. The washing-out of concrete delivery vehicles, disposal of solid waste, or release of any hazardous materials on the parcel shall be prohibited, and any accidental spill of such materials shall be promptly cleaned up and restored;
 - v. The erosion rate shall not exceed the natural or existing level before development; onsite ponding shall be avoided.
 - vi. Adjoining property shall be protected from excavation and filling operations and potential soil erosion;
 - vii. An on-site spill prevention and control response program, consisting of BMPs for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and

emergency services agencies in the event of a spill, shall be implemented at the project to capture and clean-up any accidental releases of oil, grease, fuels, lubricants, or other hazardous materials from entering any ESHA.

3) Landscape Plan

a. The landscaping plan shall demonstrate that:

- i. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property;
- ii. Plants used for landscaping shall be locally native species naturally occurring in coastal habitats. All proposed plantings shall be obtained from local genetic stocks within Sonoma County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used;
- iii. No landscaping shall be installed outside of the building envelope generally shown in Exhibit 13 of the staff report except as required pursuant to an approved restoration plan; and
- iv. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

b. The plan shall include, at a minimum, the following components:

- i. A map showing the type, size, and location of all plant materials that will be retained or installed on the developed site, any proposed irrigation system, delineation of the approved building envelope for structures, driveways, and landscaped areas, topography of the developed site, and all other landscape features, and
- ii. Appropriately worded landscaping plan notes, declaring that:
 - (1) "No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. No plant species listed as a 'noxious weed' by

the State of California or the U.S. Federal Government shall be utilized within the property;” and

- (2) “All areas located outside of the approved building site envelope are considered rare plant habitat and shall not be planted except as required by this permit;” and
 - (3) “No herbicides shall be stored, mixed, or used on the subject parcel and no rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall be used”
- C. The permittees shall undertake development in accordance with the approved revised plans. Any proposed changes to the approved revised plan shall be reported to the Executive Director. No changes to the approved revised plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Habitat Protection Measures

The permittee shall comply with the following construction-related requirements:

- A. Prior to the commencement of any construction activities, the minimum construction zone necessary shall be delineated by a land surveyor and fenced with temporary cyclone fencing to protect dune habitat and clusters of Dark-eyed gilia and Woolly-headed spineflower occurring outside the construction area. The temporary/construction fencing shall be maintained in place until the authorized development is completed. No construction related activities, including but not limited to grading, staging or stockpiling of materials, or other ground disturbance shall be allowed to encroach into the areas outside of the authorized development envelope that are protected by the temporary exclusion/construction fencing;
- B. Prior to the commencement of any construction activities, all special status plants will be flagged by a qualified biologist;
- C. Contractors shall be informed of the presence of rare plants on the site and the importance of avoiding disturbance to areas outside of the authorized building envelope, especially with regard to erosion and runoff from the building site;
- D. On-site native vegetation shall be maintained to the maximum extent possible during construction activities;
- E. Any disturbed areas outside of the authorized development envelope shall be replanted or seeded immediately with low-growing herbaceous native species following completion of construction of the residential structure and driveway, in a manner that conforms to the restoration plan submitted pursuant to Special Condition 3.
- F. As necessary permanent exclusionary fencing shall be installed along the boundary of the open space conservation area and the approved development, including the house, garage, and the driveway. Fencing shall consist of low

(approximately 3 feet) post and cable, split-rail, or similar symbolic fencing that does not interfere with the visual surroundings. Only foot traffic shall be allowed within the conservation area beyond the fence, and should be limited to visits for restoration, monitoring, and maintenance by the property owner, monitoring biologist, or designated maintenance personnel;

- G. To avoid potential disturbance to the active heronry (heron rookery or rookery), construction of the driveway and associated grading activities is prohibited between March 15 and August 15. **Prior to commencement of construction**, a survey shall be conducted by a professional biologist to determine that nesting activity has not yet occurred or is already complete for the season. Such survey shall be submitted to the Executive Director for review and approval. The allowed construction period may be extended if an additional survey, conducted by a professional biologist, determines that nesting activity has not yet occurred or is already complete for the season. The heronry shall be monitored every ten days to determine whether the nesting season has begun, and reports shall be submitted to the executive director. All work must cease once nesting has commenced. Work on the single family residence and garage may proceed during the breeding season provided that construction noise is reduced to the maximum extent feasible.
- H. To avoid potential losses to breeding birds other than herons or egrets, construction activities shall occur outside the critical breeding period (March 15 to August 15) unless modified pursuant to subsection I. To prevent birds from establishing nests within the work area prior to construction, all nest structures and vegetation should be removed during the non-breeding season. If activities must occur during the normal breeding season, the project site shall be surveyed by a professional biologist to determine if active nests are present. If active nests or behavior indicative of nesting birds are encountered, those areas plus a 50-foot buffer area for small songbirds and a 200-foot buffer for larger species (e.g. raptors, owls, etc.), designed by the biologist, shall be avoided until the nests have been vacated.
- I. If work must occur within the nonnative forest during the winter roosting season for monarch butterfly (fall through spring), the work area shall be surveyed prior to construction to establish if butterflies are utilizing the area. If present, appropriate avoidance measures shall be implemented, as reviewed and approved by the Executive Director, including limitations on construction timing, traffic, lighting, etc.
- J. To avoid impacts to special-status and common bat species, construction shall be limited to the daylight hours (sunrise – sunset) to avoid interference with the foraging abilities of bats.
- K. All trees on the site shall be preserved and protected against damage during construction activities. If a licensed arborist determines that a tree needs to be removed during construction due to damage or disease, the tree shall be surveyed by a professional biologist for roosting bats or nesting birds prior to removal. Removal shall not occur until the roost or nest is unoccupied. No tree shall be removed without prior review and approval of the Executive Director. An

arborists and biological report shall be submitted with any request for tree removal.

3. **Dune Restoration Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for the Executive Director's review and approval, two sets of dune restoration plans that provide for dune and related habitat enhancement and restoration for contiguous area outside and immediately adjacent to the approved building envelope at a ratio of 3:1 based on the approved final plans and authorized development envelope. Plans shall include, as appropriate:
- (a) Final contours of the site, after project grading, necessary to support dune restoration in the proposed area.
 - (b) The Plan shall provide for assessment of baseline conditions, restoration success criteria, monitoring protocols, and other measures necessary to successful implementation. Success criteria shall include at least 35% cover by native species with at least 5 native dune species present and less than 10% cover of non-native species, unless modified by the Executive Director for good cause.
 - (c) All required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, except as this requirement may be modified through a future amendment to this permit based on restoration success monitoring.
 - (d) Installation of all plants shall be completed prior to occupancy of the new home. Within 30 days of completion of the landscaping installation, the Permittee shall submit a letter to the Executive Director from the project biologist indicating that plant installation has taken place in accordance with the approved restoration plans. Applicant shall submit a monitoring report prepared by a qualified biologist to the Commission two and five years after initial plan implementation. The reports shall identify and correct any restoration and maintenance issues.
 - (e) If the restoration monitoring report or biologist's inspections indicate the landscaping is not in conformance with or has failed to meet the performance standards specified in the Landscape Restoration Plan approved pursuant to this permit, the Permittee or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. These measures, and any subsequent measures necessary to carry out the approved landscape plan, shall be carried out in coordination with the Executive Director until the approved landscaping is established to the Executive Director's satisfaction.

The Permittee shall undertake development in accordance with the approved Dune Restoration Plan.

4. **Future Development**

This permit is only for the development described herein. Any future improvements or changes to the single-family residence or other approved structures shall require an amendment to the permit from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. **Open Space Restriction**

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area outside of the building envelope and driveway generally depicted on Exhibit No. 13 and approved pursuant to Special Condition 1, which includes all areas of the subject parcel outside of the approved building envelope and driveway, except for removal of non-native vegetation; installation of erosion control measures pursuant to this approval; erection of temporary protective fencing; the minimum necessary temporary construction staging and impacts the restoration of which to native habitat shall not be included in the proposed restoration area pursuant to Special Condition 3.
- B. **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT** the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and as reflected on exhibit 13 attached to this staff report.

6. **Conformance of the Design and Construction Plans to the Geotechnical Investigation Report**

- A. All final design and construction plans including foundations, grading, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical Investigation report submitted with the application. **PRIOR ISSUANCE OF COASTAL DEVELOPMENT PERMIT** the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, foundation, grading and drainage plans and has certified that each of those plans is consistent with the recommendations specified in the above-referenced geotechnical reports for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. Design Restrictions

- A. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-lumens, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the building envelope.
- B. All utilities shall be placed underground
- C. All exterior siding and roofing of the proposed residence and attached garage shall be earth-toned to blend with the dune environment. The current owner or any future owner shall not repaint or stain the house or other approved structures with products that will lighten the color of the house or other approved structures without an amendment to this permit. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare.

9. Area of Archaeological Significance

- A. If an area of cultural deposits, archaeological features, or human remains are discovered during the course of the project all construction shall cease and shall not recommence except as provided in subsection (D) hereof; and a qualified cultural resource specialist shall analyze the significance of the find.
- B. Cultural deposits and archaeological features include, but are not limited to pottery, arrowheads, midden or culturally modified soil deposits, humanly modified stone, shell, bone or other cultural materials such as charcoal, ash, burned rock indicative of food procurement or processing activities; prehistoric domestic features including hearths, firepits, or house floor depressions; or mortuary features, such as skeletal remains.
- C. If human remains are encountered, all work must stop in the immediate vicinity of the discovered remains and the Executive Director, County Coroner, and a qualified archaeologist must be notified immediately so an evaluation can be performed. If the remains are deemed to be Native American, the Native American Heritage Commission must be contacted by the Coroner so that a "Most Likely Descendant" can be designated and the appropriate provisions of the

California Government Code and California Public Resources Code will be followed.

- D. A permittee seeking to recommence construction following discovery of the cultural deposits, archaeological features, or human remains, shall submit a supplementary archaeological plan prepared by a qualified archaeologist in consultation with appropriate tribal representatives from tribes known to have interest in the area, for the review and approval of the Executive Director.
- 1) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
 - 2) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

10. Conditions Imposed By Local Government

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

11. **CEQA Mitigations.** All mitigation measures identified in the mitigated negative declaration shall be incorporated into the project except as they may conflict with these special conditions.

12. Deed Restriction

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-2-SON-10-023, the applicant shall submit for the review and approval of the Executive Director, documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. FINDINGS AND DECLARATIONS: SUBSTANTIAL ISSUE

On May 18, 2010, the Sonoma County Board of Supervisors approved a coastal development permit (PLP08-0131) for a new 2,514 square foot single family residence, a 1,216 square foot garage, and an 840 square foot second dwelling unit on a 9.16-acre parcel (Exhibit 3). The project also includes a 640-foot-long driveway, with retaining walls constructed of natural stone with a face slope no steeper than 1:1. Pursuant to Coastal Act Section 30603, this development is appealable because it is located between the first public road and the sea.

The project site is located on sloped dune hillside between Bodega Bay, off of Bay Flat Road, and the Pacific Ocean (Exhibits 1 and 2). The site rises steeply from Bay Flat Road and consists of sand dunes stabilized by a dense cover of European beachgrass, perennial lupine, and native coyote brush. A stand of Monterey cypress, eucalyptus, and Monterey pine on the southern edge of the property supports a well-established heron and egret colony. The site is zoned Rural Residential-5 (Rural Residential, 5-acre density).

The Commission received two appeals of the project. The first appeal, from Bodega Bay Concerned Citizens, et al, contends that the approved project would damage the environmental sensitive habitat area (ESHA) within the property by allowing the driveway to be built through a heron /egret/osprey rookery. Second, the appeal contends that the project is in conflict with LCP hazards policies, because the site contains known fault zones, the instability of sand dunes, drainage issues, and public safety issues (Exhibit 4).

The second appeal from Commissioners Sara Wan and Steve Blank notes the same issues with the driveway, and also contends that the County approved the single family residence, garage, detached second unit in dune ESHA, and would displace two special-status species plants. Although the entire property is comprised of either dune ESHA or heron rookery ESHA and the County approved the subject development with findings stating that a regulatory takings of private property would occur if the development were denied, the County did not fully consider how to minimize the impacts of the approved development, even if some of the development must be approved to avoid a taking (Exhibit 5).

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.¹ Commission staff has analyzed the County's Final Local Action Notice for the development (Exhibit 3), the local record, appellants' claims (Exhibits 4, 5), and the relevant requirements of the LCP (Exhibit 6). The appeals raise a substantial issue with respect to the LCP as follows.

ESHA Protection

According to County approval documents, the entire property is comprised of sand dunes and a heron rookery, both considered Sensitive Resource Areas (environmentally-sensitive) under

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

Local Coastal Plan, Part I, III-3, III-4, III-6, III-10 and III-17 (see Exhibit 6 and de novo findings below, incorporated herein by reference). The approved driveway would be located within 600-feet of a tree grove that is a heron rookery, raising a substantial issue of conformance with ESHA Policy LCP Part III-17, policy 66. The driveway and building envelopes for the structures would also alter a section of dune, raising a substantial issue of conformance with LUP Part III-12, policies 4 -7, which protect coastal dune ESHA.

Hazards

With respect to the hazards claims, the subject property is designated ‘Sensitive and Hazardous,’ on the Land Use Plan map (Exhibit 6). According to the LCP, this means the project site is an “[area] with major physical or biological constraints to development” and that “[d]evelopment is prohibited unless constraints can’t be mitigated.”² The LUP describes these specific lands as not suitable for development for several reasons, including severe geological stability. The site is located in the San Andreas Fault Zone, and based on the Alquist-Priolo Earthquake Fault Studies Zone Map, a surface rupture of the 1906 San Francisco earthquake exists approximately 5,000 feet northeast of the site and another fault trace exists approximately 2,000 feet southwest of the site. According to the County staff report, the large sand dune face along the eastern property boundary is at its angle of repose and could be prone to lurching or lateral spreading during seismic ground shaking, and the proposed driveway is susceptible to damage. The project includes a layer of 1-2 foot diameter rocks to prevent collapse of the driveway.

LUP geologic hazards policy 2 prohibits development designated unstable to marginally stable on the Hazards maps, unless a registered engineering geologist reviews and approves all construction plans and determines that there will be no significant impacts. The LUP Hazards Maps appear to classify this property as ‘unstable to marginally stable’. PJC and Associates conducted a Design Level Geotechnical report, which finds that a major earthquake would damage the home beyond repair, but with a steel-reinforced grid spread footing foundation, the structure would not collapse. Due to the seismic stability hazards described above, and the conclusions of the geotechnical report, it is apparent that significant impacts are a potential and hence that a substantial issue of conformance with LUP geologic hazards policy 2 is raised.

Takings Issues

The County approved the subject development with findings stating that a regulatory takings of private property would occur if the subject development were denied based on its impacts to designated Conservation Areas (also called Sensitive Resource Areas). However, the County did not fully consider how to minimize the impacts of the approved development, even if some of that development must be approved to avoid a taking. Though applicants are entitled under Coastal Act Section 30010 to an assurance that their property will not be taken, this section does not authorize the County to completely avoid application of any policies and standards of the certified LCP, including Local Coastal Plan, Part I, III-12 and III-17. Instead, the County may only deviate from those policies and standards to the extent necessary to avoid taking private property for public use. The County must otherwise enforce to the maximum extent feasible, all requirements of the LCP including the requirements of the Local Coastal Plan, Part I, III-12 and III-17 to protect and minimize adverse impacts on sand dunes, coastal bluffs and a heron

² Sonoma County Local Coastal Plan Part 1, page 183

rookery. This means considering all methods to mitigate and/or avoid significant adverse impacts to Conservation Areas.

Although Sonoma County PRMD staff conducted (1) a driveway analysis that looked at five alternatives and concluded that current driveway placement is the best option for the site and (2) a takings analysis that showed the property owner had a reasonable investment backed expectation to develop the property, the County decision raises a substantial issue of conformance with the LCP because the County did not assure that the approved development adheres to the applicable County of Sonoma Local Coastal Program Policies to the maximum extent feasible. Consequently, no approval should have occurred without considering: (1) a reduction in the size of the house; (2) alternative placement of the house; (3) the elimination of the detached second dwelling unit; and (4) a revised driveway alternatives analysis taking into account any feasible alternative placement of the house.

For the reasons stated above, the Commission finds that Appeal Number A-2-SON-10-023 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.

IV. FINDINGS AND DECLARATIONS: DE NOVO REVIEW OF CDP APPLICATION

1. Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP and/or the public access policies of the Coastal Act, the local government's approval no longer governs, and the Commission must consider the merits of the project. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Testimony may be taken from all interested persons during the *de novo* hearing.

2. Standard of Review

The Coastal Commission effectively certified the County of Sonoma's LCP. Pursuant to Section 30603(b) of the Coastal Act, after such certification the standard of review for all coastal permits and permit amendments for development located between the first public road and the sea is the standards of the certified LCP and the public access and recreation policies of the Coastal Act.

3. The Commission hereby finds and declares as follows:

The Commission hereby incorporates by reference the Substantial Issue Findings above as if set forth in full.

A. Project Location and Description (see SI findings above)

B. Sensitive Resource Areas/Conservation Areas

Applicant's entire property is covered by Sensitive Resource Areas or Conservation Areas, as defined by Local Coastal Plan Part I, III-3, III-4, and III-10. Applicable LCP policies are found in Exhibit 6.

Sand Dunes and Associated Rare Plants

The proposed home site is zoned as a 'Conservation Area,' within the Rural Residential District, and is designated 'Sensitive and Hazardous' in the LCP (see exhibit 6). A Conservation Area is considered a Sensitive Resource Area. The Sonoma County LCP has mapped sand dune and coastal strand habitat (ESHA) along the coast and provided environmental management policies to protect these habitats (Local Coastal Plan, Part I, III-3, III-4, III-6, III-10, III-12). Consistent with Coastal Act ESHA policies, the LCP protects dune habitat from disturbance and destruction with exceptions for resource dependent, scientific, educational, and passive recreational uses; restricts activities and development on dunes and coastal strand; prohibits the removal of sand from dunes except for dune management; limits foot traffic on vegetated dunes and recommends well-defined footpaths and raised boardwalks when necessary (Local Coastal Plan, Part I, III-12).

In February 2009 Prunuske Chatham, Inc. conducted a Biological Resources Assessment of the property. The report concluded the following in regards to dune habitat: (1) the project would involve working within coastal dune habitat; (2) the property supports native coastal dune plant species and is potential habitat for special status plants; (3) the project site has the potential to support Myrtle's silverspot butterfly.^{3,4}

Coastal dune communities provide habitat and foraging opportunities for a wide range of wildlife species. Grasses, shrubs, and associated invertebrates provide foraging opportunities for a wide variety of ground foraging birds, such as American robin, sparrows (e.g. white-crowned), dark-eyed junco, northern flicker, western bluebird, and numerous other resident and migratory birds. Predatory hawks, like the northern harrier, frequent these areas as well. Small vertebrates and invertebrates within the habitat are likely to serve as a food source for these birds and other predatory vertebrates. Existing shrubs and small trees provide nest structures for breeding birds. Flowering plants provide important food sources for pollinators.⁵

In May 2009, Prunuske Chatham, Inc. conducted follow up focused botanical surveys of the property. Two special-status species were found: dark eyed gilia (*Gilia millefoliata*) and woolly-headed spineflower (*Chorizanthe cuspidata* var. *villosa*). Both species are considered "fairly endangered" by the California Native Plant Society (CNPS) (List 1B.2). Both of the species occur primarily within the proposed building envelope, in the central part of the property. They were found in relatively level openings where European beach grass (*Ammophila arenaria*) does not occur. Approximately 84 dark-eyed gilia plants, and 236 woolly-headed spineflower plants,

³ Prunuske Chatham, Inc. March 2009. Biological Resources Assessment - Kelham Property -1835 Bay Flat Road, Bodega Bay, Sonoma County, CA

⁴ Sonoma County Permit and Resource Management Department Mitigated Negative Declaration. File No. PLP08-0131. Kelham Residence.

⁵ Prunuske Chatham, Inc. March 2009. Biological Resources Assessment - Kelham Property -1835 Bay Flat Road, Bodega Bay, Sonoma County, CA

were found. Subsequently the mapping was updated, showing that both plants occurred in and around the proposed development envelope (Exhibit 7).

As described above, the proposed development is located within sensitive dune habitat. Site-specific biological studies and evaluations have established that the applicant's entire parcel consists of dune habitat. Although degraded, particularly by prominent invasive European beach grass, the parcel nonetheless consists of dune ESHA. There are well documented occurrences of sensitive dune plant species on the site, including in the proposed development area. Coastal sand dunes, including those in Bodega Bay, constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply in tandem with wind energy and direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray, and support a unique suite of plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Coastal Commission has typically found this important and vulnerable habitat to be ESHA due to the rarity of the physical habitat and its important ecosystem functions, including that of supporting sensitive species.

Based on the evidence in the record, including well documented occurrences of sensitive dune species on site, the Commission finds that the entire parcel is ESHA as defined by the Sonoma County LCP and the Coastal Act.

LUP environmental resource management policy 4 prohibits sand removal except for dunes management, and policy 5 allows only resource dependent, scientific, educational, and passive recreational uses in dunes (see Exhibit 6). Therefore, because the proposed residential development is not such a resource dependent project, it is inconsistent with the LCP policies that require the protection of dune ESHA. Because there are no alternatives available that would avoid impacts to dune ESHA, the project cannot be found consistent with the Sonoma County LCP sensitive habitat protection policies.

Heron Rookery

The May 2009 Prunuske Chatham report also documented the presence of a well-established egret rookery (heronry) within nonnative forest, containing Monterey cypress (*Cupressus macrocarpa*), eucalyptus (*Eucalyptus globulus*), and Monterey pine (*Pinus radiata*) on the southern edge of the property. This habitat type is most commonly used by larger birds for breeding, roosting, and perching. The rookery is not reported in the California Natural Diversity Database (CNDDB), but it has been monitored by Audubon Canyon Ranch (Audubon) since the early 1990s.⁶ The heronry currently supports great blue heron, great egret, black-crowned night-heron, and snowy egret. In 2005, approximately 35 great blue heron, 15 great egret, 1 black-crowned night-heron, and 5 snowy egret nests were documented on the site. The rookery measures approximately 45 meters by 20 meters with an average nest height of 20 meters. Nests are built in both eucalyptus and Monterey cypress trees.

⁶ Prunuske Chatham, Inc. March 2009. Siting Kelly, J.P., et al. 2006. Annotated Atlas and Implications for the Conservation of Heron and Egret Nesting Colonies in the San Francisco Bay Area. Marshall, California.

Certified LUP Environmental Resource Management Policy 66 prohibits new development, including roads, within 600 feet of a heron rookery. The proposed driveway would pass directly through the heron rookery, inconsistent with the LCP. Access to the site is constrained by the large sand dune up to forty feet tall running along Bay Flat Road. The Applicant explored various alternatives to the current location, including contacting neighboring properties with regard to using their driveways, but was unsuccessful in this regard. According to the Applicant and the County, in order to meet road standards for emergency vehicle access and reduce grading impacts to dune resources, the proposed driveway is the most feasible, least environmentally damaging location (see detailed discussion below). However, because the selected driveway alternative would be within 600 feet of the rookery, it is inconsistent with Environmental Resource Management Policy 66 of the LCP.

C. Visual Resources

Sonoma County LCP View Protection Policy 1 (page VII-49) prevents development from obstructing views of the shoreline from coastal roads, vista points, recreation areas, and beaches. View Protection Policy 2 prohibits development that would significantly degrade the scenic qualities of major views. Policy 4 (Alterations of Landforms) prohibits development that would permanently alter or destroy the appearance of natural landforms. Other visual resources LCP policies require natural landscape compatibility, community compatibility, natural vegetation requirements, and design review procedures for all new development located within scenic view shed areas (see exhibit 6 for a complete list of policies). In addition to the land use plan (LCP Part 1) policies described above, the certified coastal zoning ordinance, Section 26C-292 contains required design review provisions for development in the coastal zone (Exhibit 6).

The proposed project would be visible from several locations along Highway 1, which is a designated scenic corridor in the LCP, as well as several other public viewpoints within the unincorporated community of Bodega Bay. While the proposed development would be concentrated on relatively level portion of the site below the natural ridge line and would not break the horizon silhouette as seen from Bodega Bay, because the structure would be visually prominent from several public locations, on an exposed hillside, it would be a significant degradation of a major view, inconsistent with View Protection Policy 2. In addition, portions of the proposed driveway would be cut through exposed steep slopes, and would permanently alter the appearance of the natural dune landform. The driveway would also utilize rip rap facing and retaining walls to stabilize it, which would further alter its appearance, especially when viewed from Bay Flat Road. This is inconsistent with the Alterations of Landforms Policy 4. Given the prohibitive nature of the LCP's visual resource protection policies, the project as proposed cannot be found consistent with them. Nor does it appear that there are any feasible alternatives that could be found consistent with the policies. In this case, as described above, the proposed project is inconsistent with View Protection Policy 2, Alterations of Landforms Policy 4, and must be denied unless to do so would result in an unconstitutional taking of property.

D. Need to Allow a Reasonable Residential Development to Avoid an Unconstitutional Taking of Property

As discussed above, the proposed development is inconsistent with LCP environmental resource management policy 4, 5, and 66 regarding development within dunes and heron rookeries. In addition, the proposed development is inconsistent with LCP View Protection Policy 2 and Alterations of Landforms Policy 4. And because there are no alternatives that would avoid these inconsistencies, the LCP requires that the project be denied. However, when the Commission considers denial of a project, a question may arise as to whether the denial results in an unconstitutional “taking” of the applicant’s property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

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

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Coastal Act imposes on the Commission the duty to assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project with the assurance that its actions are consistent with Section 30010. If the Commission determines that its action would constitute a taking, then application of Section 30010 would overcome the presumption of denial. In this latter situation, the Commission will propose modifications to the development to minimize its Coastal Act inconsistencies while still allowing some reasonable amount of development.⁷

In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, its denial of the project would constitute a taking. As discussed further below, the Commission finds that to avoid a takings in compliance with Section 30010, the Commission determines it will allow a reasonable residential development on the subject property.

General Takings Principles

The Fifth Amendment of the United States Constitution provides that private property shall not “be taken for public use, without just compensation.”⁸ Article 1, section 19 of the California Constitution provides that “[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner.”

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* [(1922) 260 U.S. 393]. Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories [see *Yee v. City of*

⁷ For example, in CDP A-1-MEN-03-029 (Claiborne and Schmitt), the Commission in 2004 approved residential development on a site that was entirely ESHA, even though it was not resource-dependent development and thus was inconsistent with the LCP (which was the standard of review in that case).

⁸ The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

Escondido (1992) 503 U.S. 519, 522-523]. First, there are the cases in which government authorizes a physical occupation of property [see, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419]. Second, there are the cases whereby government merely regulates the use of property (*Yee, supra*, 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation [e.g., *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18]. The Commission's actions here would be evaluated under the standards for a regulatory taking.

In its recent takings cases, the Court has identified two circumstances in which a regulatory taking might occur. The first is the "categorical" formulation identified in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a "case specific" inquiry into the public interest involved (*Id.* at p. 1014). The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless" [*Id.* at pp. 1016-1017 (emphasis in original)] (see *Riverside Bayview Homes, supra*, 474 U.S. at p. 126 (regulatory takings occur only under "extreme circumstances")).⁹

The second circumstance in which a regulatory taking might occur is under the three-part, *ad hoc* test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations [*Id.* at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005]. In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur [see *id.* (rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*)].

Before a Landowner May Establish a Taking, Government Must Have Made a Final Determination Concerning the Use to Which the Property May Be Put

Before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, however, it must demonstrate that the taking claim is "ripe" for review. This means that the takings claimant must show that government has made a "final and authoritative" decision about the use of the property [e.g., *Williamson County Regional Planning Com. v. Hamilton Bank* (1985) 473 U.S. 172; *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348]. Premature adjudication of a takings claim is highly disfavored, and the Supreme Court's cases "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it" (*Id.* at p. 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (e.g., *McDonald, supra*).

⁹ Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036).

In this case, and as discussed further below, although the LCP instructs the Commission to deny the proposed development that would be constructed within sensitive dune habitat and a heron rookery, and that would significantly degrade a major view and permanently alter the appearance of the natural dune landform, the Commission's denial would preclude the applicant from achieving an economic use on the site. As discussed further, the subject property is planned and zoned for residential use, and to deny the applicant residential use of the parcel would leave no other economic use of the property. In these circumstances, the applicant could successfully argue that the Commission has made a final and authoritative decision about the use of the subject property. Therefore, the applicant could successfully argue that the Commission's denial is a taking because a taking claim is "ripe."

Determination of Unit of Property Against Which Takings Claim Will be Measured

As a threshold matter, before a taking claim can be analyzed, it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be aggregated as a single parcel for takings purposes. In determining whether lots should be aggregated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition, and the extent to which the parcel has been treated as a single unit [*e.g.*, *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 (nine individual lots treated as single parcel for takings purposes); *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318].

In this case, the applicant owns the subject vacant parcel proposed to be developed with a single-family residence, a detached second unit, and a detached garage (APN 100-020-025). The subject parcel was created by court decree on July 25, 1973, although the judicial decision occurred prior to that. Creation of a parcel by court decree was permissible under the County Subdivision Ordinance in effect at the time and the applicant has received (on March 16, 2010) an administrative certificate of compliance from the County recognizing the parcel. The applicant purchased APN 100-020-025 for \$850,000 with a closing date of September 28, 2007. On the same day, a Grant Deed was recorded at the Sonoma County Records Office (document 2007105670), effectively transferring and vesting fee-simple ownership to the applicant. Based upon an examination of copies of this document and related entries within the current property tax rolls of the Sonoma County Assessor's Office, the adjoining parcels are owned by different property owners. The adjoining parcel to the north, APN100-020-022, is owned by MPM Investments. The adjoining parcels to the south are APN100-020-024 (owned by Beatrice Kee Trust) and APN 100-020-026 (owned by Jeffrey M. Do and Jodie L. Hoang). The adjoining parcel to the west, APN 100-020-014 is owned by the State of California, and is part of Sonoma Coast State Beach. To the east, the applicant's property adjoins Bay Flat Road. The parcels on the east side of Bay Flat Road across from the applicant's property are APN 100-040-020 (owned by the Shirley and Harold Ames Trust), APN 100-040-021 (owned by the Womack Trust), APN 100-040-022 (owned by Richard and Carol Anello), APN 100-040-023 (owned by the Gene and Clarie Nanney Trust), and APN 100-040-024 (owned by the Gene and Clarie Nanney Trust). The applicant does not own any of these parcels or have any interest in the

various trusts holding title. In addition, all of the other parcels that derived from the original court decree in 1973 are developed, except for one owned by the Bodega Bay Utility.¹⁰

Therefore, the evidence establishes that the Commission should treat APN 100-020-025 as a single parcel for the purpose of determining whether a taking occurred.

The Commission Will Allow a Reasonable Residential Development on the Subject Property to Avoid a Takings in Compliance with Section 30010 of the Coastal Act

(i) Categorical Taking

Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council* (1992).

In *Lucas*, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use, unless the proposed project would constitute a nuisance under State law.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if an applicant demonstrates that Commission denial of the project would deprive his or her property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act or LCP provision would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, unless the proposed project would constitute a public nuisance under state law, the applicable provisions of the certified LCP cannot be read to deny all economically beneficial or productive use of land because these sections of the certified LCP cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property owner of some economically viable use.

Section 26C-90 of the of the Somoma County Coastal Zoning Ordinance (CZC) sets forth the principal permitted use types in the Rural Residential (RR) district, which include (1) single-family residential, and (2) agricultural uses. Additionally, the section sets forth the other non-principally permitted uses types in the RR district, which include: (3) 1 guest house per lot, (4) occasional cultural events, (5) small family daycare, (6) large family daycare, (7) home occupations, (8) small residential community care facility, (9) craft sales and garage sales, (10) accessory buildings, (11) attached commercial telecommunication facilities, (12) minor free-standing commercial telecommunication facilities, (13) non-commercial telecommunication facilities, and (14) other non residential uses that are compatible, as determined by the County

¹⁰ Subsequent to the court decree that created the parcel, one of the other parcels created was divided into four more parcels with a coastal development authorization by the Commission; subsequent development on these parcels was authorized through coastal permits as well.

and Resource Management Department director. Lastly, the RR district allows other uses with a use permit, including: (15) additional single family detached dwelling units in accordance with the residential density requirements of the RR district, (16) planned developments and condominiums consistent with the density requirements, (17) one second dwelling unit per lot, (18) additional ‘agricultural’ uses, such as kennels and raising, breeding, and feeding of animals in excess of the allowances for principally permitted agricultural uses, and (19) a list of ‘other uses’ including recreational facilities, schools, arts facilities, visitor serving uses, and exploration of geothermal resources.

The Commission finds that in this particular case, none of the other specifically allowable principally-permitted, or other uses at the subject property would avoid development within environmentally sensitive sand dune habitat or the heron rookery, be feasible, and provide the property with an economically viable use. Making use of the subject property as a day care, bed and breakfast, or school or any of the other uses would still require building a home or other structure within sensitive dune habitat, would require an access road in or near the heron rookery (as described further in the alternatives analysis described below), and that would significantly degrade a major view and permanently alter the appearance of the natural dune landform inconsistent with LCP Policies (see above).

The property also is located within an established residentially developed area surrounded by approximately 1,700 acres of protected open space that is part of Sonoma Coast State Beach and the University of California at Davis Bodega Bay Marine Laboratory. While the project site is immediately adjacent to a portion of Sonoma Coast State Beach, and thus does have connectivity to adjacent dune habitat, it is on the edge of the habitat area, zoned residential, and adjacent to another single family residence, making it less desirable for inclusion in the park. More important, it is unlikely that either the California Department of Parks and Recreation or the University of California would be interested in purchasing the project site to add to their existing holdings due to the economic realities facing the state. Commission Staff spoke with Brendan O’Neil of the California Department of Parks and Recreation, and stated that the property is not on the “top ten” acquisition list and is a low priority. Moreover, the state is not accepting new acquisitions right now. Commission Staff also spoke with representatives at the UC Davis Bodega Bay Marine Lab, who stated that they are not interested in the property. Thus, it appears that certain allowable uses that would be facilitated by such a purchase, such as a passive recreational park or a nature preserve, are not feasible and thus would not provide the owners a reasonable return on their investment.

(ii) Taking Under *Penn Central*

A court may also consider whether the permit decision would constitute a taking under the *ad hoc* inquiry stated in *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This *ad hoc* inquiry generally requires an examination into factors such as the sufficiency of the applicant’s property interest, the regulation’s economic impact, and the regulation’s interference with reasonable, investment-backed expectations.

Sufficiency of Interest. In the subject case, the applicant purchased APN 100-020-025 for \$850,000 with a closing date of September 28, 2007. On the same day, a Grant Deed was recorded at the Sonoma County Recorders Office (document 2007105670), effectively transferring and vesting fee-simple ownership to the applicant. Upon review of these documents,

the Commission concludes that the applicant has demonstrated that they have sufficient real property interest in the subject parcel to allow pursuit of the proposed project.

Reasonable Investment-Backed Expectations. In this case, the applicant may have had an investment-backed expectation and a reasonable expectation that the subject property could be developed with a residence; however it could be argued that a reasonable person would not have had a reasonable expectation to build a house, second unit and garage of the size and scale as that proposed, given the average and largest sizes of surrounding homes in the area.

To determine whether the applicant had an investment-backed expectation to construct a house on APN 100-020-025, it is necessary to assess what the applicants invested when they purchased that lot. To determine whether an expectation to develop a property as proposed is reasonable, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed for the applicant's proposed use, taking into account all the legal, regulatory, economic, physical, and other restraints that existed when the property was acquired.

The applicant purchased APN 100-020-025, an approximately 9.96-acre parcel, for a single purchase price of \$850,000. Clearly the applicant did not acquire the parcel at a discounted or artificially low purchase price. The property was also purchased prior to recent significant drops in the real property market. In addition, when the applicant purchased the property in 2007, other than the general conservation mapping and applicable habitat and visual resource protection policies of the LCP (exhibit 6), there was no specific indication that development of a single-family residence on the parcel would not be possible due to biological and visual constraints. At the time that the applicant was attempting to purchase the property, the property was zoned for residential use and there was another parcel on the sand dunes next door developed with a single family residence to the north. There are also several other residences built to the north and south along Bay Flat Road. The Sonoma County Local Coastal Plan designates the subject parcel as well as lands to the north and south along Bay Flat Road for residential development. The preliminary title report and disclosure documents provided to the applicant did not mention the possibility that all residential development could be denied because of the presence of endangered, threatened, or rare plant or animal species on the site. In 2000, a CDP (CPH00-0001) was approved by the County for a residential development on the adjacent parcel. As is the case for the subject parcel, this adjoining parcel is completely within the Coastal Dune Conservation Area designated in the LCP. The parcel is only one-quarter the size of the subject parcel, and a biotic study was not required by the County in order to approve the construction of a house that is 1,000 square feet larger than the proposed project. Consequently, the applicants may have had a reasonable *investment-backed* expectation that they had purchased a lot that could be developed consistent with the ESHA policies of the certified LCP, and their investment reflected that the future development of a residential use could be accommodated on APN 100-020-025. Overall, given that: (1) numerous homes were in existence along Bay Flat Road the time of the property purchase, including homes on the adjacent lots to the north of the subject parcel; (2) the property was planned and zoned for residential use; and (3) there was no specific indication at the time of purchase that development of a single family residence on the parcel would not be possible due to biological constraints, it is reasonable to conclude that a reasonable person would thus have had a reasonable expectation that APN 145-020-025 could be developed as a residential parcel.

The Commission must also assess whether the applicant had a reasonable expectation to build the proposed single-story house and other related development at the size and scale proposed. The applicant’s proposed house has a building footprint size of approximately 2514 square feet, (2514 square feet of total living space). In addition, the applicant proposes an 864-square-foot attached garage and a second unit with approximately 840 square feet ground coverage/living space. The project also proposes approximately 2,829 square feet of decks and porchs. Finally, the project includes approximately 3,702 square feet total of combined driveway, parking area, and emergency vehicle turnaround and walkways. The driveway would cover approximately 7,200 square feet (720 lineal feet, 10 feet wide).

To address what a reasonable expectation for development size might be in this case the Commission reviewed the total house and second unit ground cover square footage and garage ground cover square footage of other developed residential lots within the immediate area surrounding the subject parcel as shown in the table below. Commission staff collected data from the Sonoma County Assessor’s Office on the developed parcels in the area, and after compiling the information, narrowed this list of parcels by eliminating those (1) non-residentially-zoned parcels; (2) those parcels that were developed after the applicant purchased the subject parcel, since developments after the time of purchase would not have affected the applicant’s investment-backed expectations; (3) those parcels developed prior to implementation of the California Coastal Act; and (4) those parcels for which permit information could not be located. The latter two categories were excluded as developments that could not be reasonably expected to be replicated because they occurred without evidence of an approved permit issued by the Commission or by the County as part of a certified local coastal program.

As shown in the table, most of the parcels are significantly smaller than the applicants (Average: 35,501 sf vs. 433,444 sf). In terms of the primary dwelling unit of each parcel, the average house size is approximately 1800 square feet, as compared to the 2514 square feet proposed by the applicant, though it must be recognized that some of the surrounding houses are smaller in the context of their much smaller relative lot size. This is illustrated in the relatively higher Floor Area Ratio as compared to the applicant’s proposal (0.23 vs 0.009). In terms of expectations for ground cover development expectations, the approximate total ground cover of surrounding residential structure development is 2768 square feet versus 4218 as proposed by the applicant.

Parcel	Year Built	Lot Size (sq ft)	Units/Bldgs	SFD Size (sf)	Approximate total Ground coverage (all structures)	Floor Area Ratio	Permit Number
1	2004	8276	1 building, 1 dwelling unit	1592	3,383	0.4	PLP03-0023/CPH03-0004
2	1998	11761	1 building, 1 dwelling unit + attached garage	2208	3,845	0.33	1-95-025
3	1990	5662	1 building, 1 dwelling unit	2604	2,964	0.52	PLP97-008; CLP 38.8
4	1989	7405		3814	2,998	0.4	CP/UP 86.337; CP 86-746; ADR

							97-0009
5	n/a	4356	2 buildings, 1 dwelling unit, 1 garage	1542	2,660	0.61	2-03-021-W; CP 91-233, LLA 90-838; PLP 02-0079
6	n/a	4792	2 buildings, 1 dwelling unit	892	1,849	0.4	2-01-031-W
7	1986	29,620	1 building, 1 dwelling unit	2780	3,013	0.1	48-81E / 2-SON-06-117 / 2-85-015
8	1996	41382	1 building, 1 dwelling unit	1258	2,359	0.05	CPH95-1005
9	n/a	61855	2 buildings, 1 dwelling unit	1560	2,336	0.04	1-SON-96-174
10	1977	70131	1 building, 1 dwelling unit	1364	1,826	0.03	188-77
11	2001	116,740	1 building, 1 dwelling unit	3450	6,020	0.05	2-SON-00-130
12	1979	95,832	1 building, 1 dwelling unit	508	725	0.007	58-79
13	1987	43995	1 building, 1 dwelling unit	833	2,094	0.04	CP86-482/B.074578
14	1989	50965	house and garage	1695	3,181	0.06	CP88-167
15	1993	7840	1 building, 1 dwelling unit	1648	2,617	0.33	CPH93-066
16	2000	7405	1 building, 2 dwelling units	1395	2,414	0.32	CPH98-0011/PLP98-0080
Average		35501		1821	2,768	0.23	
Kelham		433,444	SFD, garage, second unit	2514	4218	0.009	

Based on the evaluation of the surrounding area, it is clear that the applicant may have had an investment-backed expectation and a reasonable expectation that the subject property could be developed with a residence. Given that the average combined ground cover footprint of residential developments in the area is 2768 square feet, it could be argued that a reasonable person would have had a reasonable expectation to build a house and garage of the size and scale as that proposed (approximately 3378 square feet combined ground cover footprint for house and garage), particularly when the relative lot sizes and Floor Area Ratios are compared.¹¹ In addition, on the immediately adjacent parcel, also in dune habitat, there is a 3450 square foot single family home built in 2001 with approximately 6020 square feet of total building coverage.

Economic Impact. In this case, the evidence demonstrates that the Commission’s action were it to deny the project as required by the LCP would have substantial impact on the value of the subject property.

¹¹ When the outlier 725 sq ft house is removed, the surrounding average increases to over 2900 sq ft.

As noted previously, the subject property is planned and zoned for Rural Residential (RR) use in the County's LCP. According to the LCP, the RR district is intended to preserve rural character and amenities of those lands best utilized for low density residential development. Section 26C-90 of the Coastal Zoning Ordinance (CZC) sets forth the principal permitted use types in the Rural Residential (RR) district, which include (1) single-family residential, and (2) agricultural uses. Additionally, the section sets forth the other non-principally permitted uses types in the RR district, which include: (3) 1 guest house per lot, (4) occasional cultural events, (5) small family daycare, (6) large family daycare, (7) home occupations, (8) small residential community care facility, (9) craft sales and garage sales, (10) accessory buildings, (11) attached commercial telecommunication facilities, (12) minor free-standing commercial telecommunication facilities, (13) non-commercial telecommunication facilities, and (14) other non residential uses that are compatible, as determined by the County and Resource Management Department director. Lastly, the RR district allows other uses with a use permit, including: (15) additional single family detached dwelling units in accordance with the residential density requirements of the RR district, (16) planned developments and condominiums consistent with the density requirements, (17) one second dwelling unit per lot, (18) additional 'agricultural' uses, such as kennels and raising, breeding, and feeding of animals in excess of the allowances for principally permitted agricultural uses, and (19) a list of 'other uses' including recreational facilities, schools, arts facilities, visitor serving uses, and exploration of geothermal resources.

The Commission finds that in this particular case, none of the other allowable principally permitted or conditionally permitted uses at the subject property would avoid development within environmentally sensitive dune habitat or the heron rookery. Nor are there feasible alternatives other than the proposed residence that would provide the property with an economically viable use. As discussed previously, making use of the subject property as a day care, bed and breakfast, or school or any of the other uses would still require building a home or other structure within sensitive dune habitat, and would require an access road in or near the heron rookery (as described further in the alternatives analysis described below) inconsistent with LUP habitat protection policies. In addition, no public or other entity such as State Parks has expressed an interest in or is in a position to acquire the property for purposes of habitat protection and open space.

As noted above, the ad hoc test identified in Penn Central for determining whether a regulatory taking might occur requires examination of three factors. These three factors include (a) an examination into the character of the government action, (b) its economic impact, (c) and its interference with reasonable, investment backed expectations. Whether or not a Commission denial would substantially diminish the value of the property, the Commission still has to consider the other two factors under the ad hoc test identified in Penn Central. As discussed above, the available evidence indicates that the applicant had an investment-backed expectation and a reasonable expectation that the subject property could be developed with a house and garage of the size and scale as that proposed given the established nature of neighborhood, and the average and largest sizes of surrounding homes in the neighborhood, and the fact that there was no specific indication at the time of purchase that development of a single family residence would not be possible due to biological constraints. Therefore, given that the reasonable investment backed expectation factor of Penn Central strongly weighs in favor of a finding that denial of this project constitutes a taking and as discussed below, the proposed project would not constitute a public nuisance under State law, the Commission finds that it is necessary to approve

some residential use of the property to avoid a taking under the ad hoc inquiry required by Penn Central.

To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows for the construction of a residential development, though not necessarily the exact residence proposed by the applicants, to provide a reasonable economic use of the subject property commensurate with the investment-backed expectations for the property.

(E) A Taking Cannot Be Avoided Because the Project Could Not Be Prohibited Under Background Principles of State Property Law

Finally, *Lucas* provides that a regulatory action does not constitute a taking if the restrictions inhere in the title of the affected property; that is, “background principles” of state real property law would have permitted government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036). These background principles include a State’s traditional public nuisance doctrine or real property interests that preclude the proposed use, such as restrictive easements. Here, the proposed project would not constitute a public nuisance, so as to preclude a finding that the Commission’s denial of the project would constitute a taking.

California Civil Code Section 3479 defines a nuisance as follows:

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

California Civil Code Section 3480 defines a public nuisance as follows:

A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

There is no evidence that construction of a residence on the subject property would create a nuisance under California law. The site is located in a rural residential area where the proposed single-family residential development would be compatible with surrounding land uses. Additionally, water and sewer service will be provided to the single family residential development by the Bodega Bay Public Utility District. The provision of these services ensures that the proposed new residence would not create public health problems in the area. Furthermore, the proposed use is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance.

Therefore, the Commission finds the proposed project would not constitute a public nuisance that would preclude a finding that the regulatory action constitutes the taking of private property without just compensation.

Conclusion

To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit approval allows for the construction of a residential development to provide a reasonable economic use of the subject property. In view of the evidence that: (1) permanently restricting use of the property to resource dependent uses could potentially eliminate the economic value of the property; (2) residential use of a small portion of the property would provide an economic use; and (3) an applicant would have had a reasonable investment-backed expectation that a fully mitigated residential use would be allowed on the property, there is a reasonable possibility that a court might determine that the final denial of a residential use, based on the inconsistency of this use with LCP Policies and LCP Zoning would constitute a taking. Therefore, the Commission determines that the County LCP in this case does not preclude non resource-dependent development within a Sensitive Resource Area/Conservation Area, and does not preclude visually prominent development in this significant viewshed that would alter natural landforms.

Having reached this conclusion, however, the Commission also finds that the LCP only instructs the Commission to construe the resource protection policies of the Sonoma County LCP in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on this appeal. Thus, the Commission must still comply with the requirements of the LCP by avoiding, to the maximum extent feasible, the significant disruption of habitat values at the site, while minimizing visual impacts. To achieve consistency with the LCP's Environmental Resource and Visual Resource policies in light of constitutional takings issues, the project must be the most feasible, least environmentally and visually damaging alternative, and must adopt all feasible mitigation measures capable of reducing or eliminating project impacts to best avoid the significant disruption to sensitive habitat and view sheds that would accompany any development of this property.

Maximizing LCP Conformity while Avoiding Takings

Though applicants are entitled under Coastal Act Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to completely avoid application of the policies and standards of the certified LCP, including LUP environmental resource management policy 4, 5, and 66 and view protection policy 2, alteration of landform policy 4, and landform guidelines policy 5. Instead, the Commission is only directed to avoid construing these applicable policies in a way that would take private property for public use. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the LCP. Therefore, in this situation, the Commission must still comply with LCP environmental resource management policy 4, 5, and 66 by requiring measures to mitigate adverse environmental effects on environmentally sensitive dune and rookery habitat. And, the Commission must still comply with LCP view protection policy 2, alteration of landform policy 4, and landform guidelines policy 5 by requiring measures to minimize adverse visual impacts to the maximum extent feasible.

Mitigation Measures to Minimize Adverse Environmental Effects on ESHA

LUP environmental resource management policy 5 states in applicable part that “...*Disturbance or destruction of any dune vegetation should be prohibited unless as required for public park facilities, and then only if re-vegetation is a condition of project approval.*” To minimize and

mitigate the adverse environmental effects and avoid significant degradation of the dune habitat, including the rare plant clusters of Dark-eyed gilia and Woolly-headed spineflower, the Commission attaches Special Conditions to require revised final plans consistent with other conditions and these findings, including reduction and relocation of the development footprint and site restoration following construction.

The project as currently proposed includes a total 4218 structural development footprint. But as shown on Exhibit 7, the project includes encroachment into sensitive dune habitat as well as clusters of Dark-eyed gilia and Woolly-headed spineflower. To ensure development within this dune habitat is the least environmentally damaging feasible alternative consistent with LUP environmental resource management policies 4 and 5, the Commission considered the condition of habitat throughout the project area. Prunuske-Chatham, the applicants consulting biologists reported on the potential impacts of design alternatives on October 11, 2010, which was based on a March 2009 biological resources assessment of the site.

The proposed project includes a main 2,514 square foot residence and deck, an 840 square foot second unit with deck and porch, and an 864-square foot garage, and a 3,702 square foot motorcourt and drive. Some this driveway area is a hammerhead turn-around required by the fire department. In total this building footprint would displace approximately 10,749 square feet of dune ESHA. An additional 7,200 square feet of displacement would be required by the driveway leading up to the home site. As described in the Prunuske Chatham Biological Resources Assessment (PCI 2009), coastal dune habitat on the site supports a mixture of native and nonnative plant species. The majority of the dune habitat on the property is densely vegetated with nonnative European beachgrass (*Ammophila arenaria*) and native coyote brush (*Baccharis pilularis*) and lupine (*Lupinus* spp.). Occasional openings in this cover support two rare plant species, dark-eyed gilia (*Gilia millefoliata*) and woolly-headed spineflower (*Chorizanthe cuspidata* var. *villosa*) as well as a variety of other small-stature native dune species (e.g. goldenbush [*Ericameria ericoides*], sand mat [*Cardionema ramosissimum*], and beach evening primrose [*Camissonia cheiranthifolia*]).

Prunuske Chatham revisited the site on September 13, 2010 and analyzed alternatives to reduce dune impacts. The following alternatives were considered in regards to the residential footprint (driveway alternatives are discussed below): (1) reduction in the size of the house to reduce the footprint of the structure, (2) alternative placement of the house, (3) elimination of the detached second dwelling unit, and (4) elimination of the garage.

1. Reduction of house footprint

The residential development footprint (including the house, garage, second dwelling unit, driveway turnaround, pathways, grading for drainage, and deck) is located on a sand dune ESHA, and several clusters of rare plants (Dark-eyed gilia and Woolly-headed spineflower) are located within the proposed footprint of the entire residential development. According to the 2009 Biological Resources Assessment, and the updated habitat mapping, the plants occur in and around the development footprint (including under the southern side of the main residence), and on the western side (under the second dwelling unit). In addition, there is a cluster of Woolly-headed spineflowers approximately 20 feet north of the proposed garage, outside of the development envelope. (exhibit 7). The alternatives analysis states that while shortening the two wings of the house, reducing the deck size, and eliminating the southern walkway to the house would avoid building directly on areas populated with rare plants, reducing the house footprint

would not avoid impacts because grading and construction impacts would still likely extend within 20 feet of the rare plant populations, and the plant populations would not likely survive the disturbance. Reducing the house footprint, of course, would reduce the extent of coastal dune habitat that is disturbed.

In an effort to reduce the overall building and grading footprint of the main house, the Applicant has submitted a revised project that removes the rear steps, the walkway to the garage from the house, and a planting mound. In addition, he has agreed to move the garage closer to the main house, relocating the entire envelope further north to avoid identified plants and, as discussed below, eliminating the second unit.

2. Alternative placements of the house

According to the alternatives analysis, relocating the house, and/or reducing pathways to it has the potential to reduce project impacts on rare plants. If the house were relocated approximately 50 feet to the north or northwest, impacts on the rare plants could potentially be reduced by 33%. The actual reduction in impact would depend on the extent of grading limits and careful fencing/avoidance of plant populations during construction. The Commission's Staff Ecologist opined that moving the residence 50 feet to the west would be appropriate if there were no additional driveway impacts. The alternatives analysis did not specifically analyze whether this option would result in additional area required for the driveway and hence additional dune ESHA impacts. According to the site plans and habitat map, moving the residence 50-feet to the northwest, would not necessarily require a driveway extension, since the plans already show the driveway extending north and west of the residence to reach the garage. The garage would have to be reconfigured and be attached to the residence or eliminated to minimize dune ESHA impacts. This may require a redesign of the residence to accommodate an attached garage or the garage could be eliminated if it does not work with the design of the residence.

3. Reduction of the detached second dwelling unit

The Commission requested that the Applicant analyze the alternative of eliminating the detached second dwelling unit from the project. The Applicant instead submitted an analysis of a reduced footprint, conducted by Prunuske-Chatham. There are several clusters of rare plants located within the proposed footprint of the second dwelling and the associated development (pathways, drainage structures, and deck). In addition, the second dwelling unit would be located on sand dune ESHA. The project impacts on the rare plants would be reduced would be decreased by reducing pathways, pavement, and decking associated with the second unit. Relocating the unit to the west or northwest, where no rare plants have been found, would also reduce impacts, according to the Applicant's consultant. However, this option would not eliminate its impact on the dune ESHA itself, because the overall development footprint would be made wider by spreading things out and paved areas may need to be increased to bring the driveway to the new location. According to Prunuske Chatham, careful protection of rare plants during construction would have to be employed, and pathways ways would have to be strategically located to avoid rare plant occurrences. The use of elevated walkways may reduce impacts on native plants by guiding foot traffic and allowing some natural movement of sand and plant propagules. With these measures, Prunuske Chatham estimates that the impacts on rare plants could be reduced by up to 25%. In addition, reducing pathways, parking, and patios associated with the second dwelling would reduce the extent of the project impact on coastal dune habitat by up to 800 square feet.

The Applicant responded to this analysis by submitting a revised project description for the second dwelling unit which removed the parking space and stepping stones entry walkway, as well as the front door. He also proposes to improve the entry walkway from the driveway to the front porch, which would become a new elevated walkway, allowing dune plants and grasses to grow without being trampled by foot traffic and to maintain natural species diversity.

4. Elimination of the detached second unit

Elimination of the detached second unit would reduce the impact to sensitive dune ESHA by approximately 840 square feet. In addition, elimination of the second unit would avoid impacts to the cluster of rare plants (Dark-eyed gilia and Woolly-headed spineflower) located within the proposed footprint. The applicant is in agreement with the recommended removal of the second unit in order to reduce overall habitat impacts.

5. Elimination or reduction in size of the garage

No rare plants have been identified within the proposed garage footprint or within 20 feet. One cluster of rare plants occurs within the proposed footprint of the driveway turnaround southwest of the garage. Coastal dune habitat in the proposed garage location is dominated by nonnative beachgrass, native coyote brush, and lupine. The Applicant has already reduced the size of the garage by approximately 800 square feet, from 1,216 square feet to 864 square feet. In addition, the walkway to the main house was removed and the retaining wall stone work. Removal of the garage would reduce overall impacts to dune habitat by 864 square feet, however the Applicant states the garage is necessary to store vehicles and equipment associated with the residential use of the property. Further, without the garage, cars and boats would be visible from the Tides restaurant and all over Bodega Bay. Garbage and recycling containers would be exposed to animals and visible. Personal items, including recreational items, kayaks, trailers, furniture, etc. would not have a storage place and exposed to the elements of the coast, which are corrosive and damaging.

6. Residential development envelope conclusion

Based on the biological studies and alternatives analysis described above, coupled with the analysis of what a reasonable expectation would be in this case, the Commission finds that the least environmentally damaging feasible alternative would be to: (1) eliminate the second dwelling unit, (2) and move the main residence (and other development in relation) to the west to avoid the cluster of rare plants within and immediately adjacent to its footprint on the ease; (3) move the garage closer to the main house by approximately 5 feet to provide a tighter development cluster; and (4) reduce the motorcourt to the maximum extent, consistent with fire safety requirements, given that the second unit is no longer authorized. This would result in an approximately 3378 square foot residential building footprint (house and garage only), which is consistent with the residential development footprint sizes in the surrounding neighborhood. The total residential envelope would be approximately 9,909 square feet, not including the access road to the site. The total ESHA impact with road would be 17,107. Special condition 1 requires the Applicant to submit revised plans incorporating the modifications described above.

Because the proposed project directly impacts coastal dune ESHA, the Commission attaches Special Conditions that include requirements for onsite habitat restoration invasive plant removal, replanting with locally native genetic stock, and a 5-year monitoring and reporting program to evaluate mitigation success, with additional requirements if mitigation is

unsuccessful at the end of the 5-year period. As is typical in cases like this, the Commission's biologist has recommended that dune restoration occur at a ratio of 3:1, resulting in approximately 51,000 square feet of restored dune habitat onsite. Applicant must submit the restoration plan to the Executive Director for review and approval. Additionally, Special Conditions require that initial removal of invasive plants and replanting of exposed areas shall occur no later than within 90 days of completion of exterior residential construction activities. By restoring invasive-dominated areas, habitat quality on the entire parcel will be retained.

Special Conditions restrict the use of all areas outside of the approved building envelope as generally depicted on Exhibit No. 13, to open space and habitat restoration activities. Special Condition No. 5 prohibits all development in the open space area except for removal of non-native vegetation; the planting of native vegetation pursuant to Special Condition No. 3; installation of erosion control measures pursuant to Special Condition No. 1; erection of temporary protective fencing, and temporary construction activities and staging (minimum necessary) pursuant to Special Condition No. 5. As discussed above, Special Condition No. 12 requires the applicants to record a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property to ensure that both the applicants and future purchasers of the property are notified of the prohibitions on development within the open space area established by Special Condition No. 5.

To ensure the proposed development implements all feasible mitigation measures capable of reducing or eliminating project related impacts, the Commission attaches Special Conditions 11, which includes mitigation measures proposed in the May 2009 Prunuske Chatham report, including installation of temporary fencing to protect special status plants during construction and permanent protection of these plants after construction with wildlife friendly fencing.

To enhance coastal dune habitat on the property and prevent the development from degrading the habitat to the maximum extent feasible, the Commission attaches Special Condition No. 1, which requires that the applicant submit, prior to permit issuance for the review and approval of the Executive Director, a final landscaping plan for the property. The plan shall demonstrate that (a) No plant species listed as problematic and/or invasive shall be employed or allowed to naturalize or persist at the site of development; (b) No landscaping shall be installed outside of the approved building envelope; (c) All areas located outside of the approved building site envelope are considered rare plant habitat and shall not be landscaped except as required by this permit; (d) No herbicides or rodenticides shall be stored, mixed, or used on the subject parcel; (e) Plants used for landscaping shall be locally native species naturally occurring in coastal habitats; and (f) all proposed plantings shall be obtained from local genetic stocks within Sonoma County.

The Commission has required similar mitigation measures in past decisions on permit appeals where dune ESHA would be impacted as a result of development of a single-family residence, and where the residence was approved to avoid an unconstitutional taking of private property for public use.

In conclusion, although the proposed development is not an allowable use within the coastal dune ESHA, the Commission finds that as discussed in detail above, the project will include measures to mitigate all significant adverse environmental effects on environmentally sensitive dune habitat to the greatest extent feasible consistent with the requirements of the LUP, while providing for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use.

Furthermore, this particular project contains significant environmentally sensitive coastal dune habitat that is unique and unusual and has been approved with conditions that are specific to the project. Approval of the project would not establish a precedent for the Commission or Sonoma to approve development with coastal dune ESHA for other parcels.

Driveway

The proposed driveway would pass within 60 feet of a well-established heron rookery. As described above, the LUP prohibits development, including roads, within 600-feet of a heron rookery. The Applicant and Sonoma County staff conducted an exhaustive analysis of driveway alternatives to see if there is a less environmentally damaging alternative to the proposed location. Five alternatives were analyzed (exhibit 10):

Alternative A: Easement across 1831 Bay Flat Road (APN 100-020-022) using the existing driveway.

Alternative B: Easement across 1897 Bay Flat Road (APN 100-020-024) developing new road adjacent to existing barn.

Alternative C: Easement across 1897 Bay Flat Road (APN 100-020-024) using portions of existing driveways.

Alternative D: Easement across 1897 Bay Flat Road using Kee Point Road (private).

Alternative E: Easement across 1895 Bay Flat Road (APN 100-020-026).

Alternative A

Alternative A would use an existing driveway serving a 3,500 square foot home built in 2001. Use of this driveway would maintain the recommended 600-foot buffer to the heron rookery, but would not reduce disturbance of coastal dune habitat relative to the proposed project.

The Applicant has contacted the property owners several times, and has reported that they are unwilling to grant an easement for access to the subject parcel.

Even if the neighbor were to grant access, according to the County, the driveway was constructed on slopes ranging from 17-28%. Due to the very steep terrain the road contains several hairpin turns, one of which requires larger vehicles to execute a three-point turn before proceeding up to the house. Several small wooden retaining walls stabilize the dunes along the driveway.

In the opinion of Sonoma County Department of Emergency Services (DES) staff, this driveway does not meet the standards of the Sonoma County Fire Safety Ordinance Sec. 13-31. Thus, to allow the proposed project to use this driveway, DES would require the driveway be rebuilt to meet County standards. These improvements would require significant excavation of the coastal dunes, and construction of larger retaining walls.

While Alternative A would maintain the recommended 600-foot buffer from the heron rookery, the neighboring property owner has not granted permission to the Applicant for access, and it would create additional impacts to coastal dunes and visual resources.

Alternative B

Alternative B would access the project site from the south on an existing driveway along Kee Point Road across parcel APN 100-020-024. It would require a new road passing next to an existing barn on the neighboring parcel. As is the case in Alternative A, the property owners have been contacted but they are unwilling to grant an easement to allow access to the project site.

According to the County, this alternative would create a larger buffer than the proposed project between the driveway and the heron rookery, but would not meet the 600 foot buffer required by the LCP. Grading and disturbance of dune habitat would be similar to the proposed project, but trees near the nesting area would not have to be removed. Additionally, County staff observed evidence of wetlands in the vicinity of the barn, where the new road would have to be built. While Alternative B would improve the buffer between the project and the heron rookery, it would create new impacts to coastal wetlands. Alternative B does not appear to reduce overall impacts to coastal resources as compared to the proposed project.

Alternative C

Alternative C would use portions of existing driveways on the same parcel as Alternative B. Alternative C would avoid the wetlands that would be impacted by Alternative B, but would pass closer to the heron rookery than the proposed project, and would require tree removal (Exhibit E). The relevant trees are very closely spaced, and would have to be removed in order to develop this alternative. Alternative C thus would likely result in greater overall impacts to coastal resources than the proposed driveway alignment, and even if were determined that the impacts were less, as described above, the neighbor has not granted permission for an easement across his property.

Alternative D

Alternative D would access the project site from Kee Point Road near the southern boundary of APN 100-020-024. A large wetland separates Kee Point Road from the base of the coastal dunes on the subject property. While Alternative D would maintain the recommended 600-foot buffer from the heron rookery, it would require crossing the wetland and developing a driveway twice as long as the proposed project. Damage to dune resources would be greater than the proposed project, and a new impact to wetlands would result. Therefore, alternative D would likely result in greater overall impacts to coastal resources than the proposed project.

Alternative E:

This alternative would access the site through 1895 Bay Flat Road (APN 100-020-026). This alternative would significantly increase impacts to the heron rookery, as it would pass directly through the rookery and require removal of trees that are being used for nesting. Additionally, the applicant has contacted the property owners, but they are unwilling to grant an easement for access to the subject parcel.

Alternative F:

At the request of Commission Staff, the Applicant's consultant, Prunuske-Chatham analyzed an additional alternative alignment of approximately 250' north of Brooke Road and travel south upslope to meet the originally proposed driveway alignment. This would serve to provide an approximately 100-foot buffer from the heron rookery (based on the breeding location in 2009). Prunuske Chatham determined that this alignment has potential to reduce impacts on the heron rookery significantly because it would eliminate grading and vehicle traffic associated with construction and long-term occupancy directly adjacent to the rookery.

However, this alternative driveway alignment would have greater impacts on rare plant habitat in the dunes because it would cross through an additional occurrence population of Dark-eyed gilia and Woolly-headed spineflower. This is occurrence is one of the three locations seeded by the applicant with spineflower in gilia in winter 2009-2010. The impacts on rare plants would be increased by approximately 20%.

In addition, this alternative would destroy a significant amount of dune ESHA. According to the Applicant's civil engineer, John Kincheloe, large amounts of sand would have to be removed, and a 1:1 slope (45 degrees) would have to be cut back from the road, creating a chasm down the middle of the dune. This would damage the dune, its plant life, and have significant viewshed impacts from locations in and around Bodega Bay.

In conclusion, while Alternative F would significantly reduce impacts to the heron rookery, this alignment would result in significant impacts to dune and rare plant ESHA. The Commission's staff ecologist has opined that if the project must be approved to avoid a taking of private property, protection of the dune ESHA would have first priority over protection of the heron rookery. Therefore, the Commission finds that the proposed driveway alignment is the least environmentally damaging alternative.

Special condition 4 restricts construction activities to outside the critical breeding period for herons and egrets (March 15 to August 15). Prior to commencement of construction, a survey shall be conducted by a qualified biologist to determine that nesting activity has not yet occurred or is already complete for the season. Pre-construction surveys and monitoring reports shall be submitted to the Executive Director to insure that construction of the driveway and associated grading activities do not occur when birds are nesting in the rookery. In addition, for songbirds, Special condition 4 requires that if active nests are encountered during construction, a 50-foot buffer for small songbirds and 200 feet for larger species (e.g. raptors, owls, etc.) to be avoided until the nests have been vacated. Special conditions requires all trees to be preserved and protected against damage during construction activities. Special conditions also include additional measures to protect bats and monarch butterflies, since there is also potential for these species to occur on site.

Mitigation Measures to Minimize Adverse Visual Impacts

There are a number of LCP visual resources policies and design review policies that require and include standards and methods to minimize visual impacts of development in the coastal zone. While the project, as described above is not consistent with the prohibitive policies and hence

can only approved via a takings override, other LCP visual resources policies provide direction on minimizing visual impacts to the maximum amount feasible. LCP Alterations of Landforms Policy 4, which requires concentrating development on level areas so that steeper hillsides are left undisturbed and restoring landform after alteration during construction; Landform guideline policy 5, which in part, promotes roof angles and colors which blend with the hillside, concentrating development near existing vegetation, and designing structures to fit hillside sites. The policy also prohibits development and grading on hillsides with grades more than 30%, however the Rural Residential coastal zoning code section 26C-92(h)(3) implements this policy by adding language that says “unless no feasible alternate site is available.” Community Compatibility policies 10 – 12 require structures to be compatible with the surrounding community. Utilities Policy 13 requires all new lines to be placed underground. Vegetation Policies 14 – 18 requires development to be located and designed to minimize tree removal, and encourages the use of native plants for landscaping. These LCP policies are implemented in more detail in LCP Visual Resources Policy 20 (p. VII-51 to 54), Policies 25 & 26 (Coastal Zone Design Guidelines, p. VII-54 to 56), and by the design review requirements in Coastal Zoning Ordinance Section 26C-292.

As conditioned, the residential development footprint, is located on a plateau in the north and central part of the property, and would not break the ridgeline as seen from Bodega Bay (See exhibit 11), consistent with LCP Alterations of Landforms Policy 4. All landforms disturbed during construction would be restored to their natural condition, pursuant to special condition 3, consistent with this policy. While the home would be visible from this location, it would be less visible than other parts of the property, and would minimize the amount of grading that would be necessary, consistent with landform guideline policy 5. A steep slope along Bay Flat Road would screen the proposed house and garage from view in the immediate project vicinity from Bay Flat Road. A grove of trees along the southern property line would screen views from Bodega Head, consistent with design review guidelines of the LCP.

The proposed development is well designed and sited to preserve existing views of the ocean and shoreline to the maximum extent feasible. The structures would be single story and 16-foot-high relative to the average existing grade. This is consistent with the height requirements of LCP visual resources policy 26 (design guidelines for Bodega Bay Core Area) and the requirements of the Rural Residential zoning district. The applicant has proposed earth-tone materials to blend the development with the surrounding dune vegetation, consistent with LCP design guidelines policy 25, which requires earth colors which blend with the vegetative cover of the site. In addition, special conditions require that all exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-lumens, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the building envelope. The condition also requires that all utilities be placed underground, and that the current owner or any future owner shall not repaint or stain the house or other approved structures with products that will lighten the color of the house or other approved structures without an amendment to this permit. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare.

In terms of the driveway, as discussed above, while the entire driveway is 720 feet in length, only an approximately 200-foot stretch would be visible because the rest would be shielded by existing trees or by the house itself. Portions of the driveway would be built on slopes above

30%, because there are no other feasible sites, however where possible the driveway has been designed to fit the natural contours of the site. As proposed, the driveway would be paved with asphalt. Special conditions require the Asphalt to be colored to match the surrounding dune vegetation. As conditioned, the driveway is consistent with the LCP 4 to the maximum extent feasible.

Hazards

Sonoma County LUP Hazards Policy 2 prohibits development within any area designated unstable to marginally stable on Hazards maps unless a registered engineering geologist reviews and approves all grading, site preparation, drainage, leachfield and foundation plans and determines that there will be no significant impacts.

The LUP Hazards Maps classify the slope stability on different areas of the property as ‘unstable to marginally stable’ and ‘marginally stable to stable’. The driveway would cross through ‘unstable to marginally stable’ slopes, but the house would be located on slopes that are at the transition point into the marginally stable to stable category. The subject property is also designated ‘Sensitive and Hazardous,’ on the Land Use Plan map. This means, “Areas with major physical or biological constraints to development. Development is prohibited unless constraints can’t be mitigated.”¹² The LUP describes these lands as not suitable for development for several reasons, including severe geological stability, dunes lands, and the existence of environmentally sensitive areas, such as wetlands and riparian areas. The site is located in the San Andreas Fault Zone, and based on the Alquist-Priolo Earthquake Fault Studies Zone Map, a surface rupture of the 1906 San Francisco earthquake exists approximately 5,000 feet northeast of the site and another fault trace exists approximately 2,000 feet southwest of the site. According to the County staff report, the large sand dune face along the eastern property boundary is at its angle of repose and could be prone to lurching or lateral spreading during seismic ground shaking, and the driveway and residential structures are susceptible to damage.

Section 26C-252 of the Sonoma County Coastal Zoning Code requires that a geologic report be prepared that describes the hazards and includes mitigation measures to reduce risks to acceptable levels. PJC and Associates conducted a Design Level Geotechnical report, which finds that a major earthquake would damage the home beyond repair, but with a steel-reinforced grid spread footing foundation, the structure would not collapse. The project includes a layer of 1-2 foot diameter rocks to prevent collapse of the driveway. According to the geotechnical report, this gravity-type rock wall and rip rap facing of the dune near the driveway will stabilize the dunes and reduce lateral spreading of the sand dune face along Bay Flat Road during a major earthquake.

The Commission’s geologist has reviewed the application materials, including preliminary and design-level (respectively) geotechnical reports evaluating the geologic hazards at the site. Given the proximity of the site to the San Andreas fault and the sandy nature of the soils, ground shaking, fault rupture hazard, and lateral spread are identified as the principal hazards. Despite the poorly graded sandy soils, liquefaction is not identified as a likely hazard due to the

¹² Sonoma County Local Coastal Plan Part 1, page 183

presumed depth to groundwater, which was not encountered in any of the borings, the deepest of which extended to a depth of 21 feet. Nevertheless, the reports recommend the structures be supported by “stiff” foundations that can accommodate differential settlement due to possible seismic densification of soils. In addition, it is recommended that the stability of the bluff at the southeastern side of the property be evaluate in order to ensure the stability of the proposed driveway. This was done only qualitatively to date.

The Commission’s geologist concurs with the conclusions of the hazards reports that the site can be developed safely if the recommendations contained therein are adhered to. Surface fault rupture is a risk, but one that cannot be quantified easily because the young sand dunes deposit making up the upper 21 feet or more of the site are not likely to record offsets by historic earthquakes. The site lies some 2500 feet from the 1906 rupture of the San Andreas fault, and does not lie within an Alquist-Priolo fault zone (exhibit 12).

With respect to additional peer review conclusions in the record that certain hazards have not been adequately mitigated for by the proposed project and that the project’s feasibility has accordingly not been demonstrated, the Commission’s geologist does not concur. First, these reviews state that the “absence of fault traces within proposed building footprints must be demonstrated” [emphasis in original] to establish project feasibility. The reason for this necessity is unclear, but appears to derive from a quotation from in the original hazards evaluation in which the authors conclude that “the likelihood of ground rupture at the site due to faulting is considered to be moderate to high.” However, the site does not lie within an Alquist-Priolo Fault Zone and, trenching or shallow geophysical techniques are likely to yield equivocal results due to the recent sandy soils that exist at the site. The reviewer does not propose any means of conducting a fault hazard study that would yield unambiguous results. It is thus the opinion of the Commission’s geologist that a fault rupture hazard exists at the site, but that there is no evidence of a known active fault at the site, and the risk is no higher than at most other localities in and around Bodega Bay. Further investigation is unlikely to yield conclusive results regarding fault rupture hazard.

A second issue raised is the stability of the dune bluff face at the southeastern edge of the property, which must be traversed by the driveway and utilities. Although reports recommend further evaluation of this slope’s stability, this is only done in a qualitative way. Nevertheless, the driveway will traverse this slope in cuts supported by retaining walls. The design criteria for the retaining walls provided by the applicant are conservative and will mitigate any instability of the natural dune bluff. This bluff lies landward of Bay Flat Road, several hundred feet from the water’s edge, and is not subject to marine erosion in any but the most severe wave or tsunami events. Finally, reference is made to poor drainage that exists at the base of this bluff, and opinion is offered that ponded waters at this location could reduce the overall stability of the bluff. Based on this the Commission recommends that drainage plans be submitted for review by the Executive Director that demonstrate that such ponding will not be allowed to continue after the project is developed (Special condition 1)

As condition, the Commission finds the project to be consistent with the Sonoma County LCP.

Cultural Resources

Sonoma County Local Coastal Plan Part 1 Environmental Resource Management Policy 79 requires an anthropological study when proposed projects are within designated archaeological site areas, and require implementation of reasonable mitigation measures when recommended by the study. Policy 80 requires the County to refer all projects subject to CEQA to the Sonoma State Anthropology Laboratory for review.

Consistent with Policy 80, the County requested a records search at the Northwest Information Center (NWIC) (at Sonoma State University) of the California Historical Resources Information System to determine whether cultural resources had previously been identified within or adjacent to the study area. While the NWIC did not identify any specific records of previous cultural resource studies for the project area, it did state that the proposed project area has the possibility of containing unrecorded archaeological sites, and a study was recommended. Also, it was recommended that the County contact the local Native American tribe(s) regarding traditional, cultural, and religious values.

According to the County, two nearby properties have been examined for cultural resources. The adjacent 3-acre parcel to the north was investigated fifteen years ago, and no cultural resources were identified. A one-quarter acre parcel at 1860 Bay Flat Road was situated in close proximity to a recorded archaeological site, but no cultural resources were identified during a study of that parcel.

The County consulted with the Federated Indians of Graton Rancheria Sacred Sites Protection Committee (FGIR) and the Applicant retained archaeologists to conduct two studies on the site. According to the FGIR, known cultural resources exist on or near the proposed construction site, buried underneath the soils. As a result, as per standard State Historic Preservation Office procedures, an auguring program to the depths of planned construction excavations was performed on all portions of the site that would be graded or disturbed in July 2009. Under the supervision of a tribal monitor, Tom Origer and Associates conducted the auguring program. No artifacts, cultural resources, or human remains were found. As a result, FGIR did not recommend that a monitor be present during grading and construction, but that the possibilities of discovery still existed and recommended a condition requiring that all construction halt if resources were discovered, and specific steps be taken to ensure that the resources were protected. Therefore, the Commission adopts Special Conditions that require that in the event archaeological or cultural resources are discovered during construction, all construction shall cease and archaeologists and tribal representatives be consulted, and a supplemental archaeological plan be submitted to the Executive Director. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

California Environmental Quality Act (CEQA)

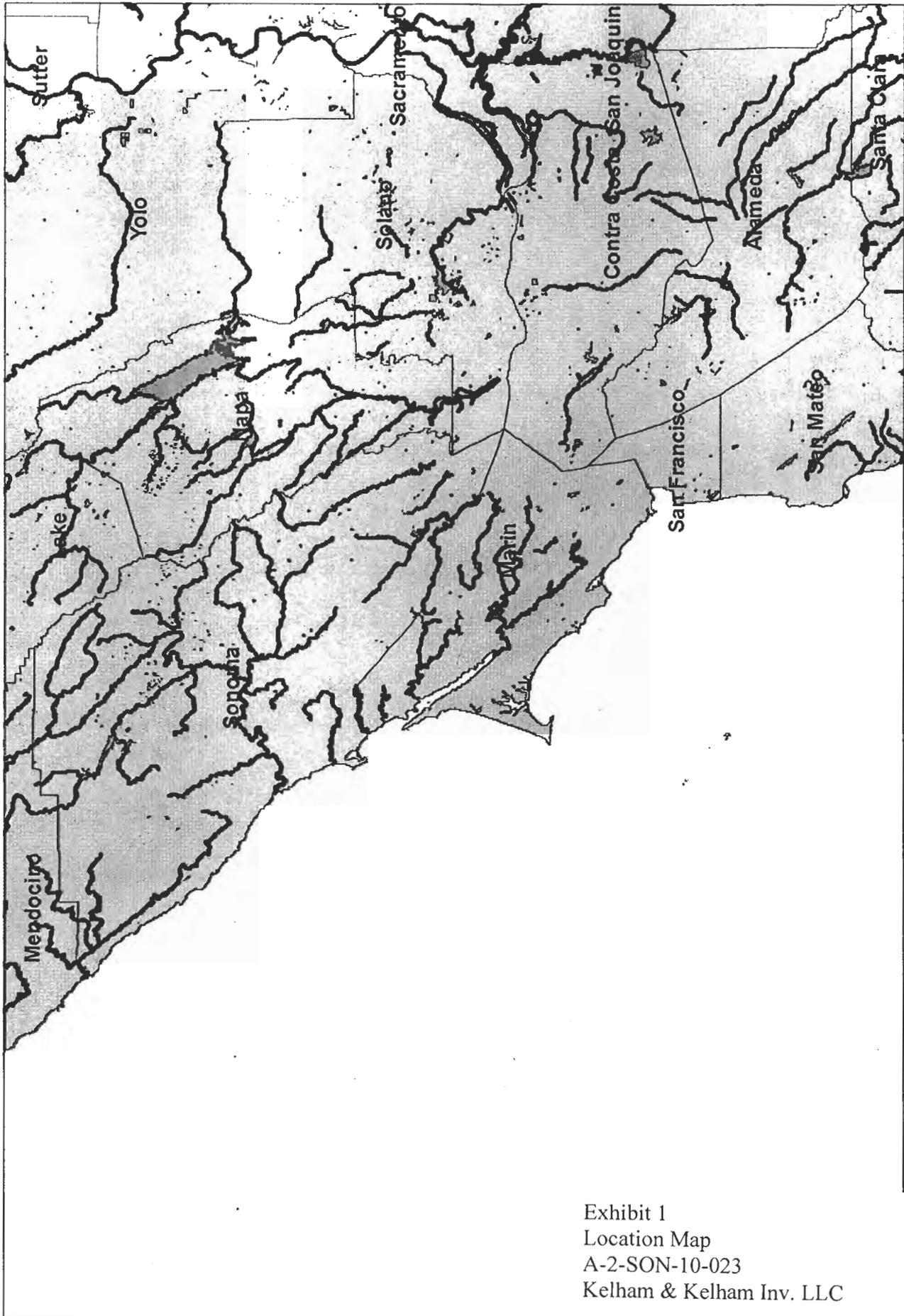
Section 13096 of the California Code of Regulations requires that a specific finding be made in

conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effects which the activity may have on the environment.

The County of Sonoma, acting as the lead CEQA agency, completed a mitigated negative declaration for the project that concluded that with the addition of mitigation measures the project would not have significant environmental impacts. The County incorporated said mitigation measures into its approval of the project.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).



Locations approximate.
For illustrative purposes only.

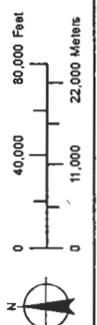
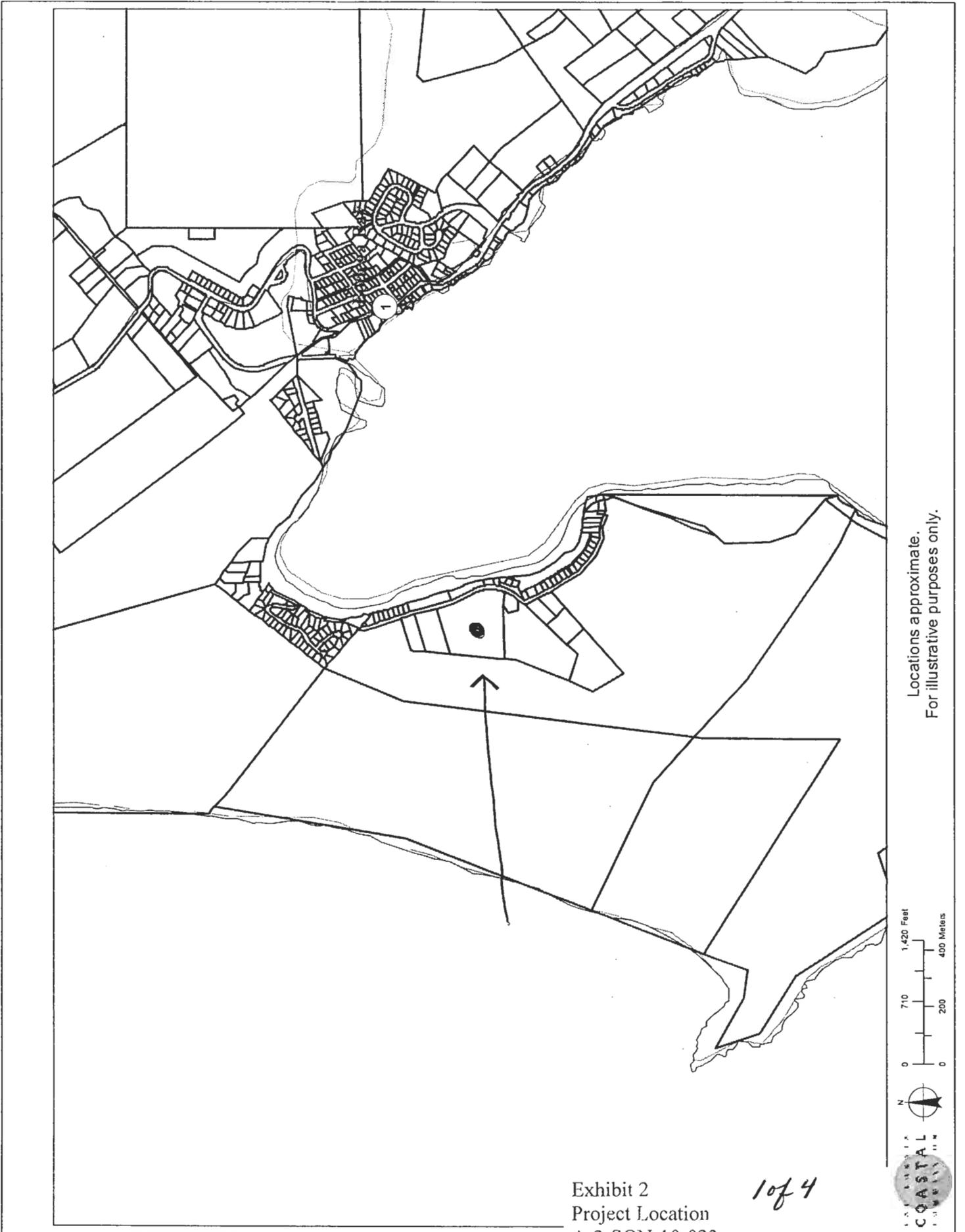


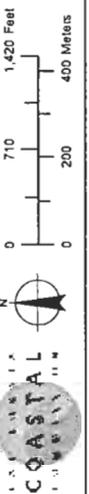
Exhibit 1
Location Map
A-2-SON-10-023
Kelham & Kelham Inv. LLC



Locations approximate.
For illustrative purposes only.

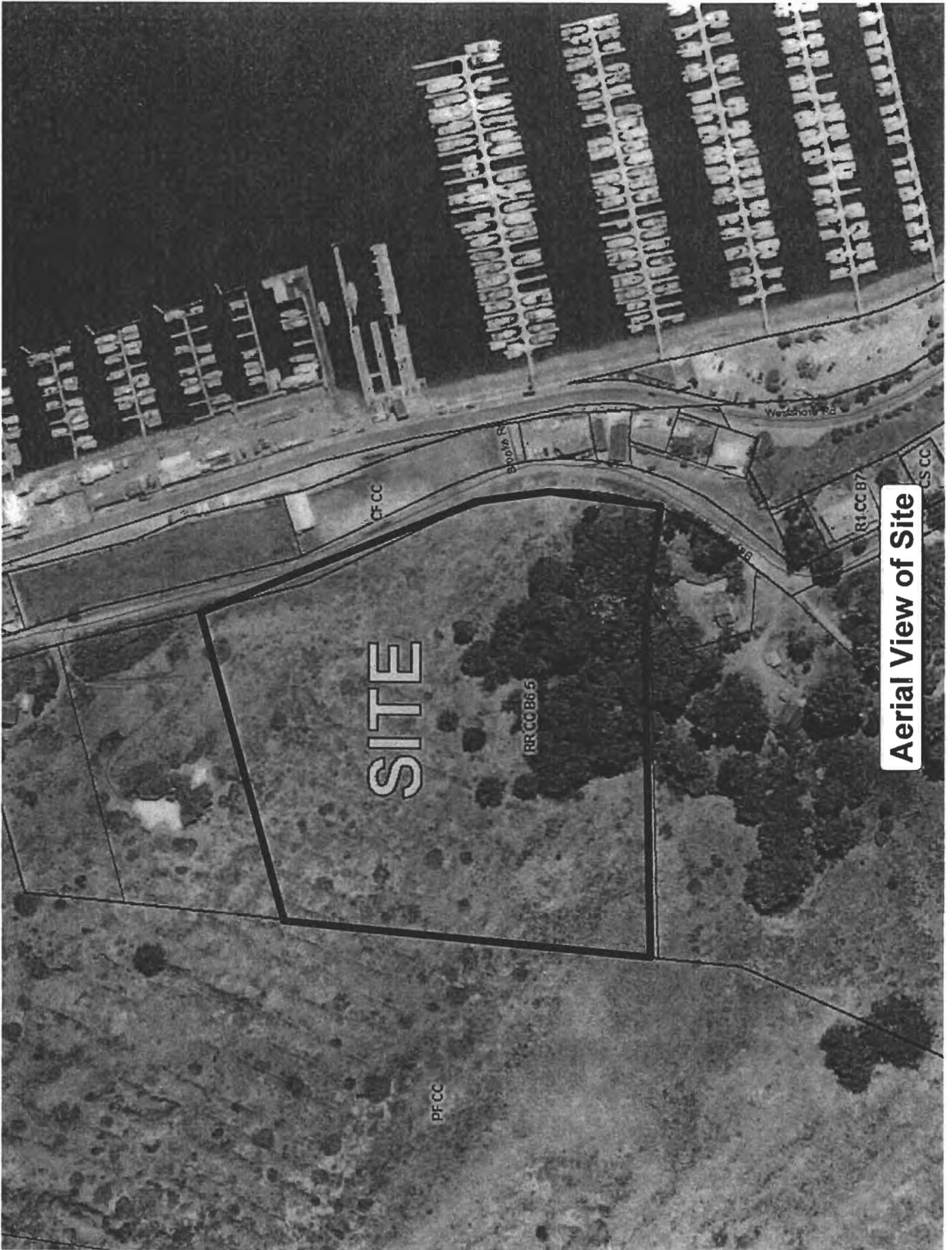
Exhibit 2
Project Location
A-2-SON-10-023
Kelham & Kelham Inv. LLC

10 of 4





Locations approximate.
For illustrative purposes only.



Aerial View of Site

6-9-93

CDBW-EBK-C 154-3



Aerial View

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260 FAX (415) 904-5400
www.coastal.ca.gov

**NOTIFICATION OF APPEAL PERIOD**

DATE: May 25, 2010
TO: Gary Helfrich, Planner
County of Sonoma, Permit and Resource Management
Department – Planning Division
2550 Ventura Avenue
Santa Rosa, CA 95403
FROM: Grace Ma, Coastal Program Analyst *GM*
RE: **Application No. 2-SON-09-120**

Please be advised that on May 24, 2010 our office received notice of local action on the coastal development permit described below:

Local Permit #: PLP08-0131

Applicant(s): William Kelham; Kelham Investments Llc

Description: Request for a Coastal permit to construct a new 2,514 square foot single-family residence and 1,216 square foot garage, and a zoning permit for a 840 square foot second dwelling unit on a vacant 9.96 acre parcel.

Location: 1835 Bay Flat Rd., Bodega Bay (Sonoma County) (APN(s) 100-020-25)

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on June 8, 2010.

Our office will notify you if an appeal is filed.

If you have any questions, please contact me at the address and telephone number shown above.

cc: William Kelham
Kelham Investments Llc

Exhibit 3 *10710*
Sonoma County Final Local Action
A-2-SON-10-023
Kelham & Kelham Inv. LLC



Notice of Final Action on a Coastal Permit

2-SON-09-120

Sonoma County Permit and Resource Management Department
2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-1103

RECEIVED

Date: May 18, 2010

File: PLP08-0131
Applicant: William Kelham
Address: 1119 Austin Way
City, State, Zip: Napa, CA 94558
Planner: Gary Helfrich

MAY 24 2010

CALIFORNIA
COASTAL COMMISSION

This notice is being distributed to the Coastal Commission and those who requested notice. The following project is located within the Coastal Zone. A project decision has been completed.

Project Description: Request for a Coastal Permit to construct a new 2,514 square foot single-family residence and 1,216 square foot garage, and a Zoning Permit for a 840 square foot second dwelling unit on a vacant 9.96 acre parcel.

Project Location: 1835 Bay Flat Road, Bodega Bay

Assessor's Parcel Number: 100-020-025

APPROVED by the Board of Supervisors on May 18, 2010.

Conditions of Approval: See Attached.

Findings: The project, as described in the application and as conditioned, conforms with the plans, policies, requirements and standards of the Sonoma County Coastal Program. Specifically:

1. The project, as described in the application and accompanying materials and as conditioned, is consistent with the Goals, Objectives and Policies of Sonoma County General Plan 2020.
2. The project, as described in the application and accompanying materials and as conditioned, conforms with the plans, policies, requirements and standards of the Sonoma County Local Coastal Program.
3. The project, as described in the application and accompanying materials and as conditioned is in conformity to the public access and public recreation policies of Chapter 3 of the California Coastal Act (commencing with Section 30200).
4. Construction of the project, as conditioned, is consistent with the Local Coastal Plan Design Review policies and the Coastal Zoning Ordinance Design Review requirements. In this specific case, the location and design of the new residence would be in character with the surrounding development, and blend with the natural landforms. The 16-foot height of the proposed residence will not block coastal views from public viewpoints, and will be compatible with the character and building heights of the community.
5. Denial of all residential use would deprive the applicant of economic use of property and interfere with reasonable investment backed expectations. The project, as conditioned, represents the least environmentally damaging feasible alternative that will not significantly degrade of coastal resources and permits the applicants a reasonable economic use of their property, consistent with Section 30010 of the Coastal Act.
6. The driveway providing access to the site has been designed to avoid tree removal, minimize impacts to dune resources, and maintain geological stability of the site.

20710

7. A Mitigated Negative Declaration has been prepared, and mitigation measures have been incorporated into the project that will mitigate impacts to a less than significant level.

X Appealable. The decision of the Board of Supervisors is appealable to the State Coastal Commission within ten (10) working days.

Address:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

9. The applicant shall include these conditions of approval on a separate sheet(s) of blueprint plan sets to be submitted for building and grading permit applications.

10. All building and/or grading permits shall have the following note printed on plan sheets:

"In the event that archaeological features such as pottery, arrowheads, midden or culturally modified soil deposits are discovered at any time during grading, scraping or excavation within the property, all work shall be halted in the vicinity of the find and County PRMD - Project Review staff shall be notified and a qualified archaeologist shall be contacted immediately to make an evaluation of the find and report to PRMD. PRMD staff may consult and/or notify the appropriate tribal representative from tribes known to PRMD to have interests in the area. Artifacts associated with prehistoric sites include humanly modified stone, shell, bone or other cultural materials such as charcoal, ash and burned rock indicative of food procurement or processing activities. Prehistoric domestic features include hearths, firepits, or house floor depressions whereas typical mortuary features are represented by human skeletal remains. Historic artifacts potentially include all by-products of human land use greater than 50 years of age including trash pits older than fifty years of age. When contacted, a member of PRMD Project Review staff and the archaeologist shall visit the site to determine the extent of the resources and to develop and coordinate proper protection/mitigation measures required for the discovery. PRMD may refer the mitigation/protection plan to designated tribal representatives for review and comment. No work shall commence until a protection/mitigation plan is reviewed and approved by PRMD - Project Review staff. Mitigation may include avoidance, removal, preservation and/or recordation in accordance with California law. Archeological evaluation and mitigation shall be at the applicant's sole expense.

If human remains are encountered, all work must stop in the immediate vicinity of the discovered remains and PRMD staff, County Coroner and a qualified archaeologist must be notified immediately so that an evaluation can be performed. If the remains are deemed to be Native American, the Native American Heritage Commission must be contacted by the Coroner so that a "Most Likely Descendant" can be designated and the appropriate provisions of the California Government Code and California Public Resources Code will be followed."

11. To avoid potential disturbance to the active heronry, construction of the driveway and associated grading activities is prohibited between March 15 and August 15. Prior to commencing construction, a survey shall be conducted by a qualified biologist to determine that nesting activity has not yet occurred or is already complete for the season. The allowed construction period may be extended if a survey conducted by a qualified biologist determines that nesting activity has not yet occurred or is already complete for the season. Work on the proposed single family house, garage, and second dwelling unit may proceed during the breeding season provided that construction noise is reduced to the maximum extent feasible.

PRMD Project Review staff shall review reports submitted by the applicants biologist to insure that construction of the driveway and associated grading activities does not occur when birds are nesting or breeding on the project site. Monitoring reports, when required, shall be submitted every ten days to PRMD. Monitoring frequency may be increased or reduced based on review by PRMD Project Review staff.

12. If active nests or behavior indicative of nesting birds are encountered while constructing the proposed structures or driveway, establish a 50-foot buffer area for small songbirds and 200 feet for larger species (e.g., raptors, owls, etc.) to be avoided until the nests have been vacated.

The applicant shall report any nests encountered during construction. PRMD staff shall inspect the site and verify that protection measures are in place.

13. All trees on the site shall be preserved and protected against damage during construction activities. If a licensed arborist determines that a tree needs to be removed during construction due to damage or disease, the tree shall surveyed by a qualified biologist for roosting bats or nesting birds prior to removal. Removal shall not occur until the roost or nest is unoccupied.

No tree shall be removed without prior review and approval by PRMD Project Review staff. An arborists and biological report shall be submitted with any request for tree removal.

14. Outdoor construction activities shall not begin until sunrise and must cease at sunset to avoid interference with the foraging abilities of bats. All plans shall contain a note stating that outdoor construction activities are to be limited to the daylight period between sunrise and sunset.
15. Temporary fencing shall be installed around special-status plants prior to issuance of grading and building permits in order to protect them from incidental impacts during construction. Where it is not feasible to avoid damaging special-status plants, collect seed from special-status plants and re-establish the populations elsewhere on the property in areas of suitable habitat (i.e., relatively level, sandy areas where European beach grass is not present or has been removed).

Prior to temporary or final occupancy the applicant's biologist shall submit to PRMD Project Review staff evidence that seeds have been collected, propagated, and replanted on the site. PRMD shall not issue a grading, drainage, or building permit until a site inspection has been conducted, and the applicant has provided written verification from the project's contractor, that the boundary areas for sensitive species are marked for avoidance. The areas to require fencing shall be shown on grading and building plans when final design of the project is complete.

16. Wildlife-friendly fencing shall be placed around special-status plant areas located within 100 feet of the proposed structures. Prior to temporary or final occupancy PRMD staff shall visit the site and verify that fencing has been placed around special-status plant areas within 100 feet of the proposed structures.
17. All utilities shall be placed underground.
18. An exterior lighting plan shall be submitted to PRMD Project Review Division for approval prior to issuance of building permits. The lighting plan shall indicate where exterior night lighting will be located and how it will be shielded in order to avoid nighttime light pollution. Lighting shall be downward facing, fully shielded, and located at the lowest possible point to the ground. The lighting plan shall include cut-sheets and photometric specifications for all proposed exterior lighting. Flood lights are not permitted. Luminaires shall have an maximum output of 1200 lumens per fixture. Total illuminance beyond the property line created by simultaneous operation of all exterior lighting shall not exceed 1.0 lux. Direct or reflected light generated by exterior lighting may not radiate into the night sky.
19. Site development shall be consistent with submitted project plans, and all materials and colors shall conform to plans, color chips, cut sheets and architectural specifications submitted as part of this application.
20. The owner/operator and all successors in interest, shall comply with all applicable provisions of the Sonoma County Code and all other applicable local, state and federal regulations. Any proposed modification, alteration, and/or expansion of the residential development authorized by this Coastal Permit shall require the prior review and approval of PRMD or the Planning Commission, as appropriate pursuant to Section 26C-349 of the Sonoma County Code. Such changes may require a new or modified Coastal Permit and additional environmental review.
21. The Director of PRMD is hereby authorized to modify these conditions for minor adjustments to respond to unforeseen field constraints provided that the goals of these conditions can be safely achieved in some other manner. The applicant must submit a written request to PRMD demonstrating that the condition(s) is infeasible due to specific constraints (e.g. lack of property rights) and shall include a proposed alternative measure or option to meet the goal or purpose of the condition. PRMD shall consult with affected departments and agencies and may require an application for modification of the approved permit. Changes to conditions that may be authorized by PRMD are limited to those items that are not adopted standards or were not adopted as mitigation measures or that were not at issue during the public hearing process. Any modification of the permit conditions shall be documented with an approval letter from PRMD, and shall not affect the original permit approval date or the term for expiration of the permit.

2. This permit shall be subject to revocation or modification by the Permit and Resource Management Department if: (a) the Department finds that there has been non-compliance with any of the conditions or (b) the Department finds that the use for which this permit is here by granted constitutes a nuisance. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to Section 26-92-120 and 26-92-140 of the Sonoma County Code.

In any case where a zoning permit, coastal permit, use permit, or variance permit has not been used within two (2) years after the date of granting thereof, or for such additional period as may be specified in the permit, such permit shall become automatically void and of no further effect provided, however, that upon written request by the applicant prior to the expiration of the two year period the permit approval may be extended for not more than one (1) year by the authority which granted the original permit pursuant to Section 26-92-130 of the Sonoma County Code.

Resolution No. 10-0432

**County of Sonoma
Santa Rosa, CA 95403**

**Date: 5/18/2010
PLP08-0131 Gary Helfrich**

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Approving The Request By William Kelham For A Coastal Permit For A 2,514 Square Foot Single Family Dwelling, A 1,216 Square Foot Attached Garage, And A 840 Square Foot Second Dwelling Unit For Property Located At 1835 Bay Flat Road, Bodega Bay; APN 100-020-025.

Whereas, the applicant, William Kelham, filed a Coastal Permit and Zoning Permit application with the Sonoma County Permit and Resource Management Department for a Coastal Permit for a 2,514 square foot single-family residence and 1,216 square foot garage, and a Zoning Permit for a 840 square foot second dwelling unit on a vacant 9.96 acre parcel located at 1835 Bay Flat Road, Bodega Bay; APN 100-020-025, zoned RR (Rural Residential), CC (Coastal Combining), 5-Acre density; Supervisorial District No. 5; and

Whereas, a Mitigated Negative Declaration was prepared and posted for the proposed project in accordance with the appropriate law and guidelines; and

Whereas, on July 1, 2009, staff notified surrounding property owners, consistent with the noticing requirements of the Coastal Zoning Code, of the intent to waive the public hearing and approve a request for a Coastal Permit for a 2,514 square foot single-family residence and 1,216 square foot garage, and a Zoning Permit for a 840 square foot second dwelling unit; and

Whereas, within the established 10-day period to request a public hearing, PRMD received requests for a public hearing; and

Whereas, in accordance with the provisions of law, the Board of Zoning Adjustments held a public hearing on February 11, 2010 with deliberations continued to March 25, 2010 and with a 5-0 vote, adopted the Mitigated Negative Declaration and approved the request for the Coastal Permit and Zoning Permit; and

Whereas, on March 25, 2010, Ronnee Rubin on behalf of Bodega Bay Concerned Citizens, filed an appeal of that decision; and

Whereas, in accordance with the provisions of law, the Board of Supervisors held a public hearing on May 18, 2010, at which time all interested persons were given an opportunity to be heard.

Now, Therefore, Be It Resolved, that the Board of Supervisors makes the following findings:

1. The project, as described in the application and accompanying materials and as conditioned, is consistent with the Goals, Objectives and Policies of Sonoma County General Plan 2020.

2. The project, as described in the application and accompanying materials and as conditioned, conforms to the plans, policies, requirements and standards of the Sonoma County Local Coastal Program.

3. The project, as described in the application and accompanying materials and as conditioned is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act (commencing with Section 30200).

4. Construction of the project, as conditioned, is consistent with the Local Coastal Plan Design Review policies and the Coastal Zoning Ordinance Design Review requirements. In this specific case, the location and design of the new residence would be in character with the surrounding development, and blend with the natural landforms. The 16-foot height of the proposed residence will not block coastal views from public viewpoints, and will be compatible with the character and building heights of the community.

5. A Mitigated Negative Declaration has been prepared, and mitigation measures have been incorporated into the project that will mitigate impacts to a less than significant level.

6. The driveway providing access to the site has been designed to avoid tree removal, minimize impacts to dune resources, and maintain geological stability of the site.

7. Denial of all residential use would deprive the applicant of economic use of property and interfere with reasonable investment backed expectations. The project, as conditioned, represents the least environmentally damaging feasible alternative that will not significantly degrade of coastal resources and permits the applicants a reasonable economic use of their property, consistent with Section 30010 of the Coastal Act.

Be It Further Resolved that the Board of Supervisors adopts the Mitigated Negative Declaration and Mitigation Monitoring Program set forth in the Conditions of Approval. The Board certifies that the Mitigated Negative Declaration has been completed, reviewed, and considered, together with comments received during the public review process, in compliance with CEQA State and County guidelines, and finds that the Mitigated Negative Declaration reflects the independent judgment of the Board.

Be It Further Resolved that the Board of Supervisors hereby grants the requested Coastal Permit and Zoning Permit, subject to the Conditions of Approval in Exhibit "A", attached hereto.

Be It Further Resolved that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Clerk of the Board, 575 Administration Drive, Room 100-A, Santa Rosa, California 95403.

Resolution # 10-0432

Date: 5/18/2010

Page 3

Supervisors:

Kerns: Aye

Zane: Aye

Kelley: Aye

Carrillo: Aye

Brown: Aye

Ayes: 5

Noes: 0

Absent: 0

Abstain: 0

So Ordered.

10 of 10

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2 219
VOICE AND TDD (415) 904-5 260
FAX (4 15) 904-5.400

**COMMISSION NOTIFICATION OF APPEAL**

DATE: June 3, 2010
TO: Gary Helfrich, Planner
County of Sonoma, Permit and Resource Management Dept. – Plng. Division
2550 Ventura Avenue
Santa Rosa, CA 95403
FROM: Grace Ma, Coastal Program Analyst *RP (for)*
RE: **Commission Appeal No. A-2-SON-10-023**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: PLP08-0131
Applicant(s): William Kelham; Kelham Investments LLC
Description: Request for a Coastal permit to construct a new 2,514 square foot single-family residence and 1,216 square foot garage, and a zoning permit for a 840 square foot second dwelling unit on a vacant 9.96 acre parcel.
Location: 1835 Bay Flat Rd., Bodega Bay (Sonoma County) (APN(s) 100-020-25)
Local Decision: Approved with Conditions
Appellant(s): Bodega Bay Concerned Citizens, et al
Date Appeal 6/2/2010

The Commission appeal number assigned to this appeal is A-2-SON-10-023. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Sonoma's consideration of this coastal development permit must be delivered to the North Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Grace Ma at the North Central Coast District office.

cc: William Kelham; Kelham Investments LLC

Bodega Bay Concerned Citizens, et al

Exhibit 4
Appeal, Bodega Bay Concerned
Citizens et al
A-2-SON-10-023
Kelham & Kelham Inv. LLC *10734*

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260 FAX (415) 904-5400

RECEIVED



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Bodega Bay Concerned Citizens, et al

Mailing Address: P. O. Box 815

City: Bodega Bay, CA

Zip Code: 94923

Phone: 707-875-2297

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Sonoma - Board of Supervisors

2. Brief description of development being appealed:

Construction of access/egress road through ESHA area and construction of a new 2,514 sq. ft. single family residence and 1,216 sq. ft. garage and 840 sq. ft. single family dwelling unit located in Alquist-Priolo Zone.

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

1835 Bay Flat Road, Bodega Bay, A.P. No. 100-020-025

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

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

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	<u>A-2-SON-10-023</u>
DATE FILED:	<u>6/21/10</u>
DISTRICT:	<u>North Central Coast Dist</u>

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

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

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

6. Date of local government's decision: May 18, 2010 - Resolution 10-0432

7. Local government's file number (if any): PLP08-0131

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:

William Kelham - Kelham Investments LLC
Napa, California

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Margaret C. Briare
P. O. Box 998
, Bodega Bay, CA 94923

(2) Ronnee Rubin
1895 Bay Flat Road
Bodega Bay, CA 94923

(3) Sheila J. Gilmore
1897 Bay Flat Road
P. O. Box 968
Bodega Bay, CA 94923

(4) Tony Anello
1910 Westshore Rd.
Bodega Bay, CA 94923

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.

We believe this appeal meets all the factors and requirements of the Coastal Act.

This project, as approved by the County of Sonoma, does not conform to the provisions of the Coastal Act, the Local Coastal Plan, ordinances and regulations of the Alquist-Priolo Map Act and any and all applicable environmental laws and regulations with regard to development in the Coastal and Bodega Bay area. The project as proposed, will seriously damage the Environmentally Sensitive Habitat Area within the property by allowing for the access/egress road to be built on unstable land directly through and under the canopy of the largest heron/egret/osprey rookery in the Bodega Bay area, as witnessed by Audubon Canyon Ranch (who has maintained observations of this site since 1990).

This site also contains many geological issues as to seismically sensitive areas, known fault zones, instability of the sand dunes upon which this project is to be built, drainage issues, public safety issues, etc. It is located within the Alquist-Priolo Map Zone, sits directly within the heart of the San Andreas Fault Zone, on unstable sand dunes and fill.

No Environment Impact Report has been prepared for this project. Sonoma County Permit & Resource Management Department, under the direction of County Planner Gary Helfrich, did institute a Mitigated Negative Declaration for the project which completely disregards the issues connected with the project and contains conditions of approval that do not come close to protecting this sensitive area...even allowing for the removal of trees within the rookery. Further environmental study is necessary.

Much more information and documentation will be forwarded to the Commission within the next few days as time constraints do not allow for all the information to be included with this appeal. Some pertinent information was forwarded to you on March 13, 2010 and is now a part of this appeal. The packet to be sent will also include this information.

We thank you for your consideration and ask that we receive information as to the steps and actions the Commission will take to protect this sensitive and important habitat area in Bodega Bay.

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

SECTION V. Certification

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

Margaret C. O'Keefe
Signature of Appellant(s) or Authorized Agent

Date: 5-28-10

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

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BODEGA BAY CONCERNED CITIZENS

**P. O. Box 815
Bodega Bay, California**

May 28, 2010

Charles Lester
Senior Deputy Director
CALIFORNIA COASTAL COMMISSION
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Lester,

We, the Bodega Bay Concerned Citizens, are hereby forwarding and enclosing an Appeal From Coastal Permit Decision of Local Government (County of Sonoma) for the following project:

Applicant: William Kelham, Kelham Investments LLC
Address: 1835 Bay Flat Road, Bodega Bay, Sonoma County, CA
A.P. No. 100-020-025 – PLP08-0131
Request for a Coastal Permit, et al, for a 2,514 square foot single-family dwelling, a 1,216 square foot attached garage and a 840 square foot second dwelling unit, and access/egress road to serve.

We believe this proposed project and its approval by the County of Sonoma Permit & Resource Management Department goes against the very heart of the Coastal Act (Chapter 3) and its standards, is not in accordance with the provisions and policies of the LCP for this area, and will allow for damage to our fragile coastal environment.

As previous pleadings to the County of Sonoma have been exhausted, we ask that you review this appeal on its merits and the information that is enclosed. The project and its instruments of approval do not come close to meeting the legal, environmental, geological and public safety aspects as defined in the laws and purposes of the State of California and its governing agencies.

We will be forwarding much more information to you within the next week. We are still awaiting some of the information and documents that are a part of the approval process from the County of Sonoma.

Page 2 – Letter to Charles Lester, California Coastal Commission dated 5/28/10

We thank you for your consideration of the appeal and ask that we be informed of any aspects of your investigation. We are looking forward to attending the Coastal Commission meeting in July 2010 and possibly meeting with you at any time before or during that time.

Should you require more information other than what is being forwarded to you, we can be contacted at any time at our address as shown above, or at briarepach@aol.com, or by phone at 707-875-2297 (Margaret Briare).

Sincerely,



Margaret Briare
Bodega Bay Concerned Citizens

Enclosures – Appeal Form dated May 28, 2010
Attached list of 11 enclosures

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CALIFORNIA
COASTAL COMMISSION

Enclosures submitted with appeal dated May 28, 2010:

1. Letter dated 2-10-10 from Grace Ma, CCC Coastal Planner.
2. Letter dated 3-13-10 to Grace Ma from Bodega Bay Concerned Citizens
3. Letter dated 8-24-09 from AUDUBON CANYON RANCH, John Kelly, Director, to County of Sonoma.
4. Follow-up email from ACR re preliminary bird count in rookery. Updated information to be forthcoming
5. Letter/report dated 2-08-10 from Ray Waldbaum, Geologist, re geologic feasibility issues for 1835 Bay Flat Road.
6. Letter dated 5-14-10 from Bodega Bay Fire Protection District, Chief Sean Grinnell, regarding fire services.
7. Copies of letters from nearby residents given to BZA and Board of Supervisors at hearing on 5-18-10.
8. Written and oral statements given to Board of Supervisors at hearing on 5-18-10.
9. Site map of proposed project per Permit & Resource Management Department contained in Staff Report. NOTE: Site map, as presented, was printed upside down and does not show proper orientation.
10. Photos regarding inhabitants of the protected rookery. NOTE: Birds officially returned to the site as of February 10, 2010, with a few returning earlier in late January.
11. Photos showing projected site of access/egress roadway and its location to Bay Flat Road.

NOTE: Follow up information to be sent later will include important environmental issues and documents not yet received from County of Sonoma, along with information regarding the flawed Mitigation Negative Declaration and its approval.

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STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

JUN 02 2010 ARNOLD SWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2 219
VOICE (415) 904-5 200
FAX (4 15) 904-5 400
TDD (415) 597-5885

CALIFORNIA
COASTAL COMMISSION



February 10, 2010

Gary Helfrich
County of Sonoma
Permit and Resource Management District
2550 Ventura Avenue
Santa Rosa, CA 95403

Subject: Mitigated Negative Declaration and Coastal Permit for 1835 Bay Flat Road, Bodega Bay, PLP08-0131 (Kelham)

Dear Mr. Helfrich,

Thank you for the opportunity to comment on the Mitigated Negative Declaration for construction of a new 2,367 square foot single family dwelling, 840 square foot second dwelling, detached garage, and 640 foot driveway on a 9.96-acre parcel at 1835 Bay Flat Road in Bodega Bay. As you know, the standard of review for the Coastal Permit is the certified Sonoma County Local Coastal Program (LCP). Because the project site is located between the first public road and the sea, County approval of a CDP for the proposed development would be appealable to the Coastal Commission. Since we have not received a staff report, the comments below are based solely on Commission staff's preliminary review of the mitigated negative declaration materials. Due to the proposed development's location, review of the coastal development permit application should assess its consistency with the following LCP policies.

Visual Resources

The LCP Visual Resources policies (VII-43) support protection of scenic corridors along the coast, and Highway 1 is a designated scenic corridor in the Sonoma General Plan as described in the LCP. The mitigated negative declaration states that the development is visible from most public viewpoints from Highway 1 and Bodega Bay at distances of 1300 feet or greater. Therefore, we recommend that the County evaluate and make findings on the proposed development's consistency with the LCP visual resources policies as part of its action on the CDP.

90734

Environmental Resources

The LCP has mapped habitats and specific resources along the coast and provided environmental management policies (III-3, policies 4-7). The LCP restricts activities and development on dunes and coastal strand; prohibits the removal of sand from dunes except for dune management; protects dune habitat from disturbance and destruction with exceptions for resource dependent, scientific, educational, and passive recreational uses only if revegetation is a condition of project approval; limits foot traffic on vegetated dunes and recommends well-defined footpaths and raised boardwalks when necessary. The proposed driveway would alter a section of dune and the proposed building footprint would displace two special species plants that comprise native dune vegetation. The proposed mitigation of propagating and establishing the special species does not appear to be consistent with environmental resources management policy 5. *Bolsa Chica Land Trust v. Superior Court* (1999) 83 Cal.Rptr. 85 affirmed that the relocation of environmentally sensitive habitat areas (ESHA) is prohibited under the California Coastal Act.

In addition, the LCP prohibits public access in areas of identified heron rookeries and new development within 600 feet of a heron rookery (III-7, policies 65-66). The proposed driveway would be adjacent to a nonnative tree grove that is a heron rookery. Therefore, it appears that the proposed development is inconsistent with LCP policies III-7, 65-66.

We recommend that the County evaluate and make findings regarding the proposal's consistency with these LCP policies as part of its action on the CDP.

Thank you for the opportunity to comment on this project. Please feel free to contact me at (415) 904-5260 if you have any questions concerning these comments.

Sincerely,



Grace Ma
Coastal Planner
North Central Coast District

Cc: Applicant

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COASTAL COMMISSION

March 13, 2010

Grace Ma, Coastal Planner
North Central Coast District
CALIFORNIA COASTAL COMMISSION
45 Fremont, Suite 2000
San Francisco, CA 94105-2 219

RE: Mitigated Negative Declaration and Coastal Permit
1835 Bay Flat Road, Bodega Bay, CA
PLP08-0131 (Kelham)

Dear Ms. Ma,

We, the Bodega Bay Concerned Citizens, wish to thank you for your letter of February 10, 2010 with regard to the above project.

We are deeply concerned with the actions of the Sonoma County Permit and Resource Management Department with regard to this project and the process they are using to gain approval via a Coastal Permit.

At our insistence a hearing was held on February 11, 2010 with regard to the submitted Mitigated Negative Declaration prepared by County Planner Gary Helfrich, along with the premature request for issuance of a Coastal Permit. We feel that the documents prepared for this project are completely inconsistent with the policies of both the Local Coastal Plan and the California Coastal Act.

As you know, the proposed access road would go through and under the canopy of an identified and important heron rookery that has been observed by Audubon Canyon Ranch for many years (a copy of their report is enclosed. It is well worth your reading.) ACR is completely correct in their determination of the "non-nesting" season for this site and the consequences of approval of this project. Although the County of Sonoma has offered conditions for this project, these conditions do not go far enough and we have found over the years that conditions are seldom, if ever, followed or enforced in this area. This year, the herons returned to their nesting site on February 10, 2010, somewhat earlier than usual, but not outside the limits of normal activity. The nesting season for this particular site can extend from January thru September as many of us have witnessed over the years. We are enclosing photos taken on February 10th upon their return.

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This site is especially important to the preservation of the environment in Bodega Bay as it is one of the few such rookery sites left in the Bodega Bay area. The removal of trees and natural habitat in Bodega Bay has accelerated in recent years due to construction activity, especially in the area adjacent to the bay. This area is being threatened more than ever before as there are two more significant projects adjacent to Bay Flat Road in the planning stages. One of these is in regard to the wetlands occupied by shorebirds---especially endangered rails---that have nested in the area for many years.

In addition to the preservation of the heron rookery, another important issue of this project is the geology of this area. The access/egress road, as proposed, is planned to traverse the area of the rookery; an area composed of sand dunes and fill from previous dredging of the bay. This area has become more unstable over the years and is known to be on an undetermined fault line that is a part of the San Andreas Fault. Any seismic activity in the area could produce landslides within the entire site; affecting the rookery and its trees, Bay Flat Road and the businesses and residences downhill from the site.

A continuance of the Board of Zoning hearing of February 11th will be heard on Thursday, March 25th. We have been instructed that we will not be allowed further comment at this continuance as the public comment segment has been closed. However, should a coastal permit be approved at this continuance, we are prepared to further appeal this project to the Board of Supervisors and eventually to the Coastal Commission.

We thank you for sharing our concerns and welcome your input on this and other projects to come. We are also enclosing a copy of an article published in today's issue of the Sonoma County newspaper, The Press Democrat, which speaks to the continuing peril to our shorebirds in Bodega Bay. We believe that even though the article addresses the threats from climate change alone, the threat of continuing encroachment of unwarrantable development in the area looms as an even bigger threat.

Our representative, Margaret "Maggie" Briare, can be reached at P. O. Box 998, Bodega Bay, CA 94923, or at BriarePach@aol.com. Phone 707-875-2297. Please feel free to contact me at anytime with regard to this and other projects in this area.

Sincerely,

BODEGA BAY CONCERNED CITIZENS
P. O. Box 998
Bodega Bay, CA 94923

CC: Peter Douglas, Executive Director
Charles Lester, Senior Deputy Director

Enclosures: Report of Audubon Canyon Ranch, John P. Kelly PhD
"Birds' New Peril"., The Press Democrat, March 13, 2010
Photos of Herons' return to Rookery, February 10, 2010

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JUN 02 2010

CALIFORNIA
COASTAL COMMISSION



AUDUBON CANYON RANCH

Cypress Grove Research Center, P. O. Box 808, Marshall, CA 94940
Tel 415-663-8203 • E-mail CGRC@egret.org • Fax 415-663-1112

August 24, 2009

Gary Helfrich
Permit and Resource Management Department
County of Sonoma
Permit and Resource Management Department
2550 Ventura Ave.
Santa Rosa, CA 95403

RE: Bodega Bay project: PLP08-0131, 1835 Bay Flat Road

Dear Mr. Helfrich:

Audubon Canyon Ranch (ACR) has conducted activities in conservation science, habitat protection, and nature education in the San Francisco Bay area since the mid-1960s (www.egret.org). We also own and manage a system of wildlife sanctuaries in Sonoma and Marin counties, including a large nesting colony of herons and egrets at Bolinas Lagoon that we have studied intensively since 1967. As Director of Conservation Science and Habitat Protection at ACR, I would like to comment on protection of the heron and egrets that nest at the site of the proposed development at 1835 Bodega Bay Flat Road.

My comments are supported by scientific work on herons and egrets conducted since 1990 at all known heronries in the San Francisco Bay area (selected references listed below). I have provided scientific information regarding the protection of heronries to numerous environmental consulting groups, county planning agencies (including the County of Sonoma, on effects of the proposed Dutra Asphalt Plant) and natural resource agencies (including the California Coastal Commission, California Department of Fish and Game, Marin Islands National Wildlife Refuge, and the National Park Service). I have published numerous scientific papers on birds, including a recent paper on the conservation of heron and egret nesting colonies in the San Francisco Bay area (Kelly et al. 2007).

Although I have reviewed maps and blueprints for the proposed development, I have not had an opportunity to see a complete project description. Therefore these comments include some general concerns and may not address other potentially important issues

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that might be indicated in a complete project description. Please consider the following points when determining the risks of heron and egret colony site disturbance or abandonment associated with the proposed development on Bodega Bay Flat Road:

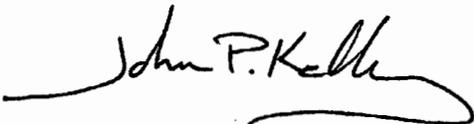
1. Based on observations at this colony site and at other colony sites throughout the San Francisco Bay area, the "non-nesting" season (when construction or other on site development work could be conducted without immediate risk to nesting herons or egrets) should extend from 1 January through 31 August. In addition, permits should indicate that the intraseasonal timing of heron and egret nesting activity in this region is highly variable among years and species. Therefore, predicted "nesting" or "non-nesting" periods may not adequately protect the colony site if birds begin to select nest sites earlier or extend their use of the colony site beyond the predicted range. To avoid such disturbance, a qualified biologist should confirm the absence of birds before work is initiated in September. If a qualified biological observer confirms that all nesting activity has ended before 31 August, construction activities could be initiated during August.
2. Nesting activity may begin any time in January, February, or March, and can be delayed into April. It is critically important that the colony site at Bodega Bay Flat Road is protected from disturbance during this early part of the nesting season because birds are most likely to be deterred from using the area when they begin to select nest sites.
3. The proposed development should protect all trees in the vicinity of the nesting colony. The planned removal of any trees should be specifically indicated and justified with regard to protection of the heronry. The protection of perimeter trees in the nesting patch could be important not only to provide visual screening from human disturbance but also to ensure suitable thermal conditions (e.g., protection from wind), protection from nest predators, or other habitat requirements needed to sustain the colony.
4. Buffer distances should be carefully considered to protect the heronry from disturbances associated with the construction of new roads and buildings (see attached figure). Scientific (peer-reviewed) recommendations for buffer distances needed to avoid disturbance to nesting herons and egrets range from 320 to 960 feet (Kelly 2002, Kelly et al. 2006, and references therein). Such distances are far greater than distances to the proposed road and building construction sites. In addition, these scientific recommendations are based on disturbances caused by only 1-2 humans approaching on foot. Additional people, construction activities, or vehicle traffic near the colony site are likely to disturb the colony at greater distances, increasing the risk of colony site abandonment. The sensitivity of nesting herons and egrets to human disturbance is highly variable. At some sites in the region, disturbance from nearby

construction activities have resulted in partial or complete abandonment of colony sites (Kelly et al. 2006). Other colony sites have persisted in spite of nearby construction activity. Thus, the tolerance of specific colonies to new sources of disturbance cannot be precisely predicted. To avoid the risk of colony site disturbance or abandonment, a substantial buffer zone around the nesting colony is necessary. Associated buffer distances should be aligned as closely as possible with recommendations from peer-reviewed science.

5. Plans for future use of the property should consider that there is no scientific evidence that herons and egrets habituate to human activity. Although heron colonies occasionally occur near areas with considerable human activity, evidence from other colony sites in the San Francisco Bay region suggest that such tolerance reflects choices made when nesting birds establish new colonies and that sites may be subsequently abandoned in response to changes in the frequency or intensity of human activity.
6. It is difficult to assess the underlying consequences of colony site abandonment. If the colony site is abandoned, birds may not establish a new site in the Bodega Harbor area and may not re-nest that season. Evidence from other areas indicates that colony site abandonment is often associated with a net decline local nesting abundance, suggesting a potential reduction in the number of herons and egrets in Bodega Harbor.

Please call me if you would like to discuss this further. Thank you for this opportunity to comment.

Sincerely,



John P. Kelly, PhD
Director, Conservation Science and Habitat Protection

Selected publications related to heron and egret conservation

- Kelly, J. P., D. Stralberg, K. L. Etienne, and M. McCaustland. 2008. Landscape influences on the conservation of heron and egret colony sites. *Wetlands* 28: *in press*.
- Kelly, J. P., K. Etienne, C. Strong, M. McCaustland, and M. L. Parkes. 2007. Status, trends, and implications for the conservation of heron and egret nesting colonies in the San Francisco Bay area. *Waterbirds* 30: 455-478.
- Kelly, J. P., K. L. Etienne, C. Strong, M. L. Parkes, and M. McCaustland. 2006. Annotated atlas and implications for the conservation of heron and egret nesting colonies in the San Francisco Bay area. Audubon Canyon Ranch, Stinson Beach, CA 94940. 236 pp. [available online: www.egret.org/atlas.html].

4

aolrich://69292251033/

Subj: FW: the birds
Date: Sunday, May 16, 2010 6:18:57 PM
From: rdr@cprcomputing.com
To: BriarePach@aol.com, kidcrone@comcast.net

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

From: Ann Cassidy [mailto:annalistair@comcast.net]
Sent: Sunday, May 16, 2010 5:51 PM
To: Ronnee Rubin
Subject: the birds

Hi Ronnee,

These are the total counts so far. You must remember that because we look at the nests under the cypress trees that are near the proposed road, we cannot see in very well. It is hard to know exactly how many nests are occupied unless a bird stands up, leans over or we see a wing or bill. They are still arriving and we won't have a full count for a month or so. The black crowned night herons were just standing in the trees when we were last out 5/8/10, they had not started nesting yet and the snowy egrets had not either. when the chicks get bigger we can tell what nests are occupied as they get active and we see movement. There are more than we actually see.

We counted 10 active Great Egret nests in the cypress trees near the proposed driveway. In the eucalyptus near the road and also near that driveway, two Great Blue Heron nests. We heard others but did not see them so they were not in the count. It is frustrating when you hear but cannot see.

The other trees near the house but not in the driveway area have 14 nests so far. (11 Great Blue Heron and 3 Great Egret)

I hope this helps.

Ann Cassidy
Heron Egret Project volunteer monitor.
Bodega, CA

- Kelly, J. P. 2006. Snowy Egret, *Garza Nivea (Egretta thula)*: waterbird species account, Coastal California Region, (Draft) *California Waterbird Conservation Plan*, Waterbird Conservation for the Americas, Washington, DC.
- Kelly, J. P., K. L. Etienne, and J. E. Roth. 2005. Factors influencing nest predatory behaviors of Common Ravens in heronries. *Condor* 107: 402-415.
- Kelly, J. P. 2005. Common water: sharing the landscape with herons and egrets. *Ardeid* 2005: 1-3 [available online: www.egret.org/pdfs/Ardeid2005.pdf].
- Kelly, J. P. 2002. A safe place to nest: disturbance patterns in heronries. *Ardeid* 2002: 1-3 [available online: www.egret.org/pdfs/Ardeid2002.pdf].
- Kelly, J. P., Helen M. Pratt, and Philip L. Greene. 1993. The distribution, reproductive success, and habitat characteristics of heron and egret breeding colonies in the San Francisco Bay area. *Colonial Waterbirds* 16:18-27.

Figure 1. Location of Bodega Bay Flat Road nesting colony of herons and egrets in 2009. Approximate perimeter of colony is indicated in red. Data provided by Audubon Canyon Ranch.



6



BODEGA BAY FIRE PROTECTION DISTRICT

P.O. Box 6
510 Highway One
Bodega Bay CA 94923

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Committed
to
Safety and Service

CALIFORNIA
COASTAL COMMISSION

May 14, 2010

Sonoma County PRMD
2550 Ventura Ave.
Santa Rosa, CA 95403

Re: PLP08-0131

To Whom It May Concern:

We are sensitive to the many issues surrounding development in and around Bodega Bay. Our primary concern has always been for the fire and life safety of the residents and visitors to our area. I generally do not get involved with the placement of new homes and businesses in our area because I believe in the system that is in place to ensure that our local fire and life safety concerns are addressed.

However, this particular project has me concerned. I do not believe that building roads and residences on sand dunes is a good practice in general as all dune area homes face the very real threat to wildland fire; especially so since the general practice is not to limit the dune grass growth for fear of losing the stability of the sand.

The passage of the access/egress road through the dunes and bird habitat can impact the ability to meet health and safety requirements. The planned road does not contain adequate facilities for access or egress for our safety equipment.

In the end, it is our desire to offer the same level of services to everyone who lives and works in the Bodega Bay area. It is my concern that it may not be possible to do so in this particular case.

Respectfully submitted,


Sean Grinnell
Fire Chief

Administration: (707) 875-3700
Operations: (707) 875-3001

Fax: (707) 875-2660
Fax: (707) 875-2285

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AUG 17 2009
PERMIT AND RESOURCE
MANAGEMENT DEPARTMENT
COUNTY OF SONOMA

SPUD PT. CRAB CO.
1910 Westshore Rd.
Bodega Bay, CA 94923
(707) 875-9408

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Aug. 13, 2009

Gary Helfrich
County of Sonoma Permit & Resource Management Department
2550 Ventura Ave.
Santa Rosa, CA 95403-2829

Subject: Property on Bay Flat Rd: Parcel # 100-020-025 owned by
Kelham Investments

Dear Mr. Helfrich,

My husband and I own and live on the property right below the
above mentioned parcel. The front of our property is on Westshore
Rd. and the back of our property is on Bay Flat Rd.

We are concerned with the development of parcel # 100-020-025.
Directly behind our property is a hill that is all sand dunes. There
are clusters of large trees at the top of the sand dunes. We feel that
if Kelham Investments puts a road in behind our property we will
be in danger of the hillside eroding, the trees and the sand coming
down and burying us and our property. I have talked to one of the
owners and expressed my concerns. I was told that there would be
an extensive retaining wall put up. Down the road, off of
Whaleship Dr. there are homes with retaining walls that after time
have given way, they are dangerous. We truly fear that with any
disturbance of the sand dunes our well being and our property will
be in jeopardy.

If Kelham Investments wants to build on the site that they bought we have no problem with that, as long as they stay within the boundaries that we all had to abide by when we built. We do have a problem with them disturbing the sand dunes and putting us in danger, if not in the present, in the future. We believe there are other options to putting a road into their property. Easements from surrounding properties could be an option that would benefit everyone involved. If there are not any easements than maybe the owners of the property can try to obtain one from any of the surrounding neighbors. We are not against growth, but we are against disturbing a natural part of our landscape when there could be other alternatives.

Most everyone that you talk to that lives in Bodega Bay say that they live here for the beauty and tranquility. Nature has provided us with a beautiful and natural environment that makes up our landscape. I do not want to see our natural landscape altered. Fearing that you will be buried under sand and trees is not my idea of tranquility.

We hope that you can help us with this problem. If you were living below this project I'm sure that you would have the same concerns that we do. We would like to thank-you for your time. Feel free to contact us at any time. Our home phone is 875-9408 and my husbands cell phone number is (707) 953-7743.

Sincerely,



Tony & Carol Anello

R C E I V E D

JUN 02 2010

CALIFORNIA
COASTAL COMMISSION

7a

SHEILA J. GILMORE

P O Box 968
Bodega Bay, CA 94923
415-302-4753

July 19, 2009

Gary Helfrich, Planner
Permit and Resource Management Department
2550 Ventura Ave
Santa Rosa CA 95403-2809

Dear Mr. Helfrich,

I am writing to protest the waiver of public hearing planned in the matter of parcel # 100-020-025 located at 1835 Bay Flat Rd, Bodega Bay.

The property is not appropriate for building and I hereby request a public hearing on the matter.

Please acknowledge this letter and confirm your action to me at the address at top. I also request to be notified personally of the date, time, and place of the hearing. Thank you.

Sincerely,



Sheila J Gilmore

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SHEILA J. GILMORE

P.O. Box 968
Bodega Bay, CA 94923-0968
kidcrone@comcast.net
707-875-9091
415-302-4753

Charles Lester, Senior Deputy Director
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

August 13, 2009

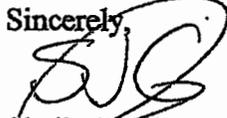
Dear Mr. Lester,

I am a concerned citizen of Bodega Bay. I live on a property next to **parcel #100-020-025**, on which the owner plans to build. This property is next to a snowy egret and great blue heron rookery. My neighbors and I have **MANY** concerns about their building there.

I'd like to know if you given permission to build on **PLP08-0131**. Has that permit been granted?

I'd also like to know what the regulation is regarding distance for **DRIVEWAYS** from rookeries. I understand from a source that the rule about **BUILDINGS** is they must be 600 feet from a rookery.

Thank you for your information.

Sincerely,

Sheila J. Gilmore

cc: Efron Carrillo, Sonoma Co Supervisor
Dave Hardy, Supervisor at Sonoma county PRMD
Ronnee Rubin, Bodega Bay Concerned Citizen

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COASTAL COMMISSION

COMMENTS REGARDING
PROJECT PLP-08-0131
1835 Bay Flat Road, Bodega Bay

Hearing of Board of Supervisors on May 18, 2010

Supervisors:

This packet contains additional photos and information not contained in the Mitigation Negative Declaration and Memorandum dated May 18, 2010 for the above project. Other issues regarding this project were brought up and discussed in the hearings before the Board of Zoning Adjustments but have not been presented to you.

Of great concern are the environmental impacts this project would bring to the site. The property contains one of the last important sanctuaries in and around Bodega Bay and contains a rookery inhabited by Black-crowned Night Herons, Great Blue Herons, Great and Snowy Egrets, Osprey, owls, bats and many more creatures contained in all the trees on this property.

The Coastal Act and the Local Coastal Plan both speak to the protection of heronries and rookeries along the California coast. Regulations call for "NO CONSTRUCTION OF ANY SORT SHALL TAKE PLACE WITHIN 600 FT. OF AN ESTABLISHED ROOKERY..." yet the access/egress road for this project is planned to be placed directly *under* these old and important trees with their visible nesting sites. In no way should this roadway be allowed to intrude. The conditions placed in the Mitigation Negative Declaration do not provide adequate protection for either the birds or the trees.

Please read the enclosed report from Audubon Canyon Ranch dated August 24, 2009. It is important and worthwhile reading.

Also of great importance are the geological features of this site and the potential for serious impacts. This issue was not brought out in the staff report. The applicant did recruit a geological study for this area, but it did not substantiate all the geological aspects of the area and the dangers. This study did not go far enough in determining the problems and issues to be faced by building on this parcel.

Page 2

We commissioned our independent registered geologist, Ray Waldbaum, to prepare a report with regard to the geologic conditions and a copy of this report is enclosed in each packet. Ray also addresses the inadequacy and dangers of building the road and its retaining walls in this designated area.

Also inadequately addressed are the issues of Public Safety. Many issues stem from the effects this project will have on the stability of the land, its effects on the dunes and topography and the ongoing problems with flooding on Bay Flat Road and vicinity. PRMD states that the project is designed to have runoff percolate into the sand dunes. Contrary to their finding, runoff can and will increase storm water discharge to the already flooded area. There is simply no other place for it to go.

In addition, we are enclosing a letter from the Bodega Bay Fire Protection District addressing the design and inadequacy of the access/egress road to allow emergency vehicles to enter the area for safety reasons. All roads must be designed to allow for entry and turnaround. The present design does not meet these requirements and can result in a "cannot serve" designation given to the property.

Testimony was given that the unstable dunes along Bay Flat Road are dredge spoils deposited between 1938 and 1943. Contrary to the statement in the report, the soil profiles on the project site and neighboring parcels show no evidence of silt or mud deposits normally encountered in dredge soils because the sand was not taken from the bottom of the bay, but from the sandy soil which later became a part of the bay. There was no "bay" in this vicinity until the area was dredged and water was not present at that time.

There are many, many more issues with regard to this project that time and space does not allow for.

We ask that you do not approve this project as presented. An appeal will be sent to the Coastal Commission regardless of the outcome as this project should not be allowed to proceed.

Thank you.

TESTIMONY GIVEN BY RONNEE RUBIN AT HEARING HELD ON
FEBRUARY 11, 2010

Hello. My name is Ronnee Rubin. My family and I have lived at 1895 Bay Flat Road for the past 5 ½ years next to the heron and egret rookery that the proposed driveway is to go through. We along with our neighbors, previous tenants, visitors and the Audubon Canyon Ranch (which has monitored the rookery since the 1990's) have been privileged to watch the annual nesting habits of the egrets and herons and the vibrant community they create. We are very concerned about the welfare of the heron and egret rookery if this project driveway is built as planned.

My family and I observe when the birds start nesting and when they leave the rookery each year. Over the past two seasons we have noticed some dramatic changes in their nesting habits. Instead of nesting in the back of the grove they have moved to the front of the grove, much closer to the bay side. This means that there will be many nests located very near or over the proposed driveway; they are also arriving much earlier in the year and are leaving much later, just before the rainy season begins; leaving doubt as to the time that the project could be built without disturbing the rookery.

A copy of a letter from Audubon Canyon Ranch is enclosed in the packets that have been provided to you. It will explain their concerns about any construction of the driveway and project during the nesting season and the removal of any trees damaged or otherwise slated for removal.

These trees provide a buffer between the rookery and the elements as well as predators. Any intense or repeated disturbance will cause birds to abandon a colony site permanently. ACR recommends that the nesting season should extend from January 1 through August 31st. Reproduction could be negatively affected by human disturbance especially during the beginning of nesting. Repeated human intrusion into nesting areas often results in nest failure, with abandonment of eggs or chicks.

Page 2 – Testimony

ACR explains that buffer distances should be carefully considered to protect the rookery from disturbances associated with the construction of new roads and buildings. Scientific recommendations for buffer distances needed to avoid disturbance to nesting herons and egrets range from 320 to 960 feet. These recommendations are for only 1 or 2 humans approaching on foot! The proposed driveway will go through the rookery with no buffer distance whatsoever.

ACR says it is difficult to assess the underlying consequences of colony site abandonment. If the colony site is abandoned, the birds may not establish a new site in the Bodega harbor area.

This project site is mapped by the Local Coastal Plan as a conservation area and would be considered ESHA under the Coastal Plan.

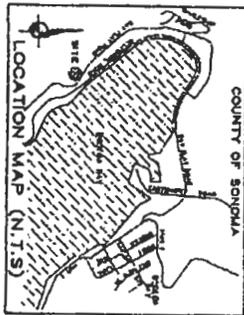
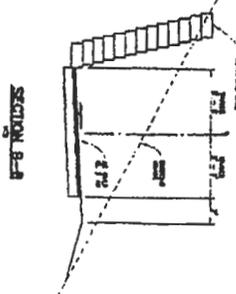
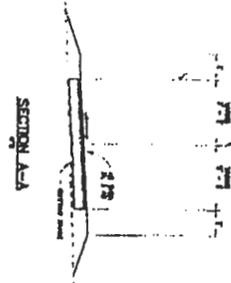
We are losing more of our natural resources every day and we strongly urge you to protect this amazing natural resource.

Presented to the Sonoma County Planning
Commission on February 11th, 2010 by
Resident Ronnee Rubin.

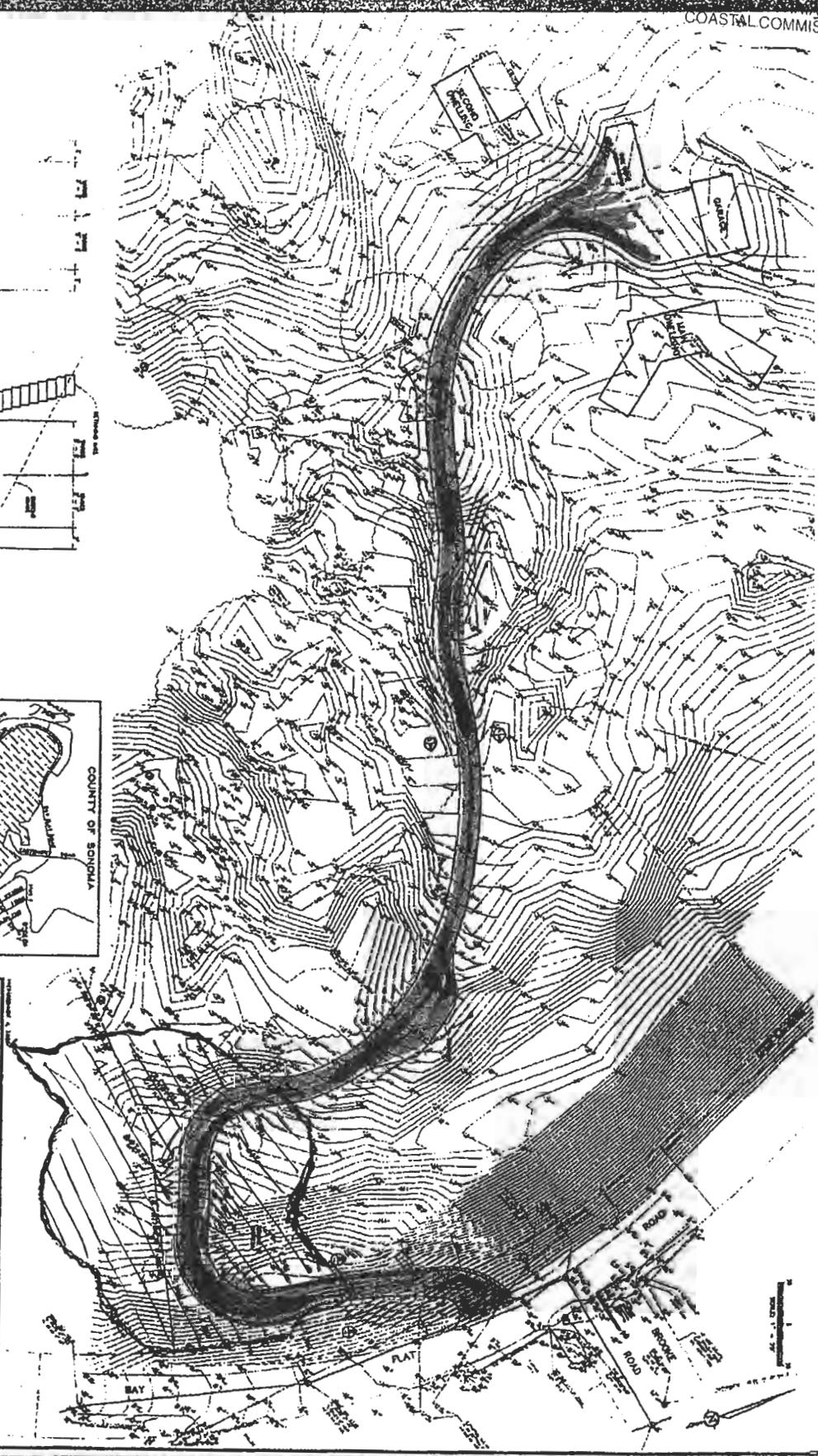
JUN 02 2010

6)

COASTAL COMMISSION



Contours



1835 BAY FLAT ROAD, BODEGA BAY

SITE PLAN

Asst. for the Commission

NO.	DATE	REVISIONS
1	08-18-10	DATE REVISION

BAY

- ACCESS ROAD
- ROCKERY TREES

TOP

PLP 08-0131

280734

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Just a few of the many nests found in the trees at the rookery at 1835 Bay Flat Road.

Photo taken February 10, 2010.

29734



February 10th 2010



Just one of many ospreys found to be inhabiting the rookery at 1835 Bay Flat Road.

Photo taken in May, 2010.

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Photo No. 1.

Site of the proposed access road to the project from Bay Flat Road. Note extent of dune failure continuing and exacerbated by the rain Pole on right of photo shows what once was the edge of Bay Flat Road and the large area of slippage that has occurred.

Flooding due to drainage from the dune area occurs each rainy season. Wet season rains cause excessive water problems in the entire area along Bay Flat Road.

Photo taken in early January 2010 before substantial rain had fallen.

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Photo No. 2.

Pole designating what was once the boundary of Bay Flat Road and applicant's property. Photo was taken 2 days after a light rain fell on the area. Extent of flooding due to drainage from applicant's property. Flooding of both the road and surrounding area can be excessive during a wet storm.

Photo taken in early January 2010 before substantial rain had fallen.



Photo No. 3.

Photo shows extent of flooding of both Bay Flat Road and Brooke Road during the beginning of January when only light rain had hit the area. Entire area is subject to flooding from drainage from applicant's property and remains standing water.

Photo taken in early January 2010 before substantial rain had fallen.

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CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
 45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 (415) 904-5260 : FAX (415) 904-5400
 www.coastal.ca.gov

**COMMISSION NOTIFICATION OF APPEAL**

DATE: June 8, 2010

TO: Gary Helfrich, Planner
 County of Sonoma, Permit and Resource Management Department -- Planning
 Division
 2550 Ventura Avenue
 Santa Rosa, CA 95403

FROM: Grace Ma, Coastal Program Analyst *GM*

RE: **Commission Appeal No. A-2-SON-10-023**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: PLP08-0131

Applicant(s): William Kelham; Kelham Investments Llc

Description: Request for a Coastal Development Permit to construct a new 2,514 square foot single-family residence, 1,216 square foot garage, and driveway, and a zoning permit for a 840 square foot second dwelling unit on a vacant 9.96 acre parcel.

Location: 1835 Bay Flat Rd., Bodega Bay (Sonoma County) (APN(s) 100-020-25)

Local Decision: Approved

Appellant(s): California Coastal Commission, Attn: Commissioner Sara Wan;
 California Coastal Commission, Attn: Commissioner Steve Blank

Date Appeal Filed: 6/8/2010

The Commission appeal number assigned to this appeal is A-2-SON-10-023. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Sonoma's consideration of this coastal development permit must be delivered to the North Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Grace Ma at the North Central Coast District office.

cc: William Kelham; Kelham Investments Llc

Exhibit 5 *10717*
 Appeal, Commissioners Blank and
 Wan
 A-2-SON-10-023
 Kelham & Kelham Inv. LLC

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE

45 FREMONT STREET, SUITE 2000

SAN FRANCISCO, CA 94106-2219

VOICE (415) 904-5260 FAX (415) 904-5400

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Commissioners Steve Blank and Sara Wan

Mailing Address: 45 Fremont Street

City: San Francisco

Zip Code: 94105

Phone: 415-904-5260

SECTION II. Decision Being Appealed

1. Name of local/port government:

Sonoma County Board of Supervisors

2. Brief description of development being appealed:

A new 2,514 square foot single-family residence, 1,216 square foot garage, 840 square foot second dwelling unit, and driveway on a vacant 9.96 acre parcel in a Rural Residential District.

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

1835 Bay Flat Road, Bodega Bay, APN 100-020-025

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

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

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CALIFORNIA
COASTAL COMMISSION
NORTH CENTRAL COAST

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-2-SON-10-023

DATE FILED: June 8, 2010

DISTRICT: North Central Coast

20717

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

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

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

6. Date of local government's decision: May 18, 2010

7. Local government's file number (if any): PLP08-0131

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:

William Kelham, Kelham Investments LLC
1119 Austin Way
Napa, CA 94558

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Bodega Bay Concerned Citizens
P.O. Box 815
Bodega Bay, CA 94923

(2) Margaret C. Briare
P.O. Box 998
Bodega Bay, CA 94923

(3) Ronnee Rubin
1895 Bay Flat Road
Bodega Bay, CA 94923

(4) Sheila J. Gilmore
P.O. Box 968
Bodega Bay, CA 94923
(Resident of 1897 Bay Flat Road)

3 of 17

(5) Tony Anello
1910 Westshore Rd.
Bodega Bay, CA 94923

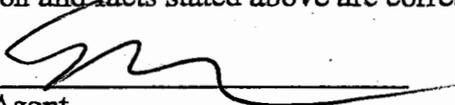
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Please see attached sheet

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: 
Appellant or Agent

Date: 6/8/10

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

Signed: _____

Date: _____

Kelham Appeal Attachment A
Section IV Reasons Supporting This Appeal

Applicable LCP Policies

Local Coastal Plan, Part I

Dunes and Coastal Strand (III-3)

Dunes and Coastal Strand Coastal dunes are sandy beach materials formed into dunes by the wind. Most of the ground is bare sand, either actively moving or stabilized by a vegetative cover: low growing annual or perennial herbs with low water requirements and a high salt tolerance. (Coastal Strand is the plant community found on sandy beaches and dunes scattered along the entire coast).

Environmental Resource Designations and Mapping (III-4)

The environmental resources of the Sonoma Coast were identified, reviewed and mapped by a biological consulting firm, the Environmental Technical Advisory Committee and staff. Based on this assessment a hierarchy of environmental sensitivity was established. Especially sensitive areas are designated Sanctuary-Preservation; the more important environmental resource areas are designated Conservation; the remaining environmental resources are designated Potentially Sensitive. Sanctuary-Preservation areas are the most environmentally sensitive areas along the coast. They correspond to "Environmentally Sensitive Habitat Areas" as defined in the 1976 Coastal Act Sections 30107.5 and 30240. No development other than nature trails and resource dependent uses shall be allowed within such areas. There shall be no significant disruption of habitat values. Pesticide and herbicide applications would not be allowed within or affecting such areas unless it is necessary to maintain or enhance the functional capacity of the Sanctuary Preservation area. Conservation areas also encompass sensitive resource areas. No development will be allowed in Conservation areas unless an environmental study determines that no adverse effects would occur. Pesticide and herbicide applications would not be allowed within or affecting Conservation areas unless it is necessary to maintain or enhance the functional capacity of the Conservation area. Potentially sensitive areas include minor or disturbed drainages, coastal bluffs, beaches, windbreaks, known or suspected archaeological sites, and sensitive soils. Of the mapped environmental resources, the potentially sensitive are the least sensitive or are of undetermined sensitivity. Development shall be allowed only if no adverse effects would occur. Environmental studies may be required. Policies and recommendations governing specific resource categories provide guidance for protection of the mapped area in each of the three designations as well as adjacent lands, and unmapped areas.

.....

TABLE 111-1 ENVIRONMENTAL RESOURCE CATEGORIES (III-6)

...
Heron Rookeries
Dunes/Coastal Strand
Rare and/or Endangered Plants (California Native Plant Society list)

ENVIRONMENTAL RESOURCE SUMMARIES

....
9. Bodega Bay (III-10)

...

Conservation Areas:

Dunes, coastal strand and sandy beach areas of Salmon Creek Beach and the adjacent State Park
Entire Bodega Head

ENVIRONMENTAL RESOURCES MANAGEMENT RECOMMENDATIONS

....

Dunes and Coastal Strand (III-12)

4. Prohibit the removal of sand from dunes except for dunes management.

5. Preserve and protect coastal dune habitats from all but resource dependent, scientific, educational, and passive recreational uses including support facilities. Disturbance or destruction of any dune vegetation should be prohibited unless as required for public park facilities, and then only if revegetation is a condition of project approval.

6. Prohibit all off-road, non-authorized vehicles from dune areas.

7. Minimize foot traffic for all permitted uses, including recreation, on vegetated dunes. Where access through dunes is necessary, well-defined footpaths or raised boardwalks shall be developed and used. Access areas should be posted with explanations describing the importance of the use of limited access routes for the purpose of protecting the plant communities. 8. Identify wildlife nesting and breeding habitats of rare or sensitive plants or animals for the publicly owned dune areas in order to temporarily restrict access to these areas during identified breeding and nesting seasons.

Heron Rookeries (III-17)

65. Prohibit public access in areas of identified heron rookeries. Access to Penny Island should be limited to low intensity usage for scientific and educational

purposes. Scientific and educational use should be managed so as not to interfere with heron nesting. (February to mid July).

66. Prohibit new development (construction of structures or roads) within 600 feet of a rookery.

Discussion

This appeal concerns a County-approved development to construct a new 2,514 square foot single-family residence, 1,216 square foot garage, and driveway, and an 840 square foot detached second dwelling unit on a vacant 9.96 acre parcel at 1835 Bay Flat Road, Bodega Bay in Sonoma County. The property is located in a Rural Residential zoning district and Conservation Area.”

The approved development places a single family residence, garage, detached second unit and garage in an environmentally sensitive habitat area (ESHA), as defined by Local Coastal Plan, Part I, III-3, III-4, and III-10. According to County approval documents, the entire property is comprised of dunes and a heron rookery, both considered ESHA under Local Coastal Plan, Part I, III-3, III-4, III-6, III-10 and III-17. The approved driveway would alter a section of dune habitat and the approved building footprint would displace two special species plants that comprise native dune vegetation. In addition, the approved driveway would be located adjacent to a tree grove that is a heron rookery.

The approved home site is zoned as a Conservation Area, within the Rural Residential District. A Conservation Area is considered a Sensitive Area and requires a use permit (Coastal Zoning Ordinance, Part III, Article IX, Section 26C-91). The Sonoma County LCP has mapped sand dune and coastal strand habitat along the coast and provided environmental management policies (Local Coastal Plan, Part I, III-3, III-4, III-6, III-10, III-12). The LCP restricts activities and development on dunes and coastal strand; prohibits the removal of sand from dunes except for dune management; protects dune habitat from disturbance and destruction with exceptions for resource dependent, scientific, educational, and passive recreational uses; limits foot traffic on vegetated dunes and recommends well-defined footpaths and raised boardwalks when necessary Local Coastal Plan, Part I, III-12). In addition, the LCP prohibits public access in areas of identified heron rookeries and new development within 600 feet of a heron rookery (Local Coastal Plan, Part I, III-17). For the reasons discussed below, the development approved by the County is inconsistent with LCP Policies contained in III-3, III-4, III-6, III-10, III-12, and III-17.

The County approved the subject development with findings stating that a regulatory takings of private property would occur if the subject development were denied based on its impacts to environmentally sensitive habitat areas (ESHA). However, the County did not fully consider how to minimize the impacts of the approved development, even if some of that development must be approved to avoid a taking. Though applicants are

entitled under Coastal Act Section 30010 to an assurance that their property will not be taken, this section does not authorize the County to completely avoid application of any policies and standards of the certified LCP including Local Coastal Plan, Part I, III-12 and III-17. Instead the County is only directed to avoid construing these applicable policies in a way that would take private property for public use. Aside from this instruction, the County is still directed to enforce to the maximum extent feasible, all requirements of the LCP including the requirements of the Local Coastal Plan, Part I, III-12 and III-17 to protect and minimize adverse impacts on sand dunes, coastal bluffs and a heron rookery. This means considering all methods to mitigate and/or avoid significant adverse impacts to ESHA.

Although Sonoma County PRMD staff conducted (1) a driveway analysis that looked at five alternatives and concluded that current driveway placement is the best option for the site and (2) a takings analysis that showed the property owner had a reasonable investment backed expectation to develop the property, the approved development must adhere to the applicable County of Sonoma Local Coastal Program Policies to the maximum extent feasible. Consequently, no approval should have occurred without considering: (1) a reduction in the size of the house; (2) alternative placement of the house; (3) the elimination of the detached second dwelling unit; and (4) a revised driveway alternatives analysis taking into account any feasible alternative placement of the house.

CALIFORNIA COASTAL COMMISSION

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45 FREMONT STREET, SUITE 2000
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VOICE (415) 904-5260 FAX (415) 904-5400



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioners Steve Blank and Sara Wan

Mailing Address: 45 Fremont Street

City: San Francisco

Zip Code: 94105

Phone: 415-904-5260

SECTION II. Decision Being Appealed

1. Name of local/port government:

Sonoma County Board of Supervisors

2. Brief description of development being appealed:

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

1835 Bay Flat Road, Bodega Bay, APN 100-020-025

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

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

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**CALIFORNIA
COASTAL COMMISSION
NORTH CENTRAL COAST**

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<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	A-2-SON-10-023
DATE FILED:	June 8, 2010
DISTRICT:	North Central 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: May 18, 2010

7. Local government's file number (if any): PLP08-0131

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

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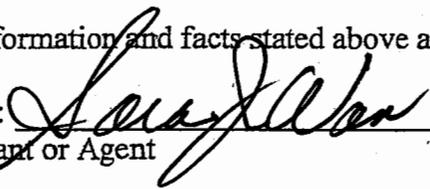
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The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: 6/8/10

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

Signed: _____

Date: _____

Kelham Appeal Attachment A
Section IV Reasons Supporting This Appeal

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Heron Rookeries
Dunes/Coastal Strand
Rare and/or Endangered Plants (California Native Plant Society list)

ENVIRONMENTAL RESOURCE SUMMARIES

....
9. Bodega Bay (III-10)

...
Conservation Areas:

Dunes, coastal strand and sandy beach areas of Salmon Creek Beach and the adjacent State Park
Entire Bodega Head

ENVIRONMENTAL RESOURCES MANAGEMENT RECOMMENDATIONS

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Dunes and Coastal Strand (III-12)

4. *Prohibit the removal of sand from dunes except for dunes management.*

5. *Preserve and protect coastal dune habitats from all but resource dependent, scientific, educational, and passive recreational uses including support facilities. Disturbance or destruction of any dune vegetation should be prohibited unless as required for public park facilities, and then only if revegetation is a condition of project approval.*

6. *Prohibit all off-road, non-authorized vehicles from dune areas.*

7. *Minimize foot traffic for all permitted uses, including recreation, on vegetated dunes. Where access through dunes is necessary, well-defined footpaths or raised boardwalks shall be developed and used. Access areas should be posted with explanations describing the importance of the use of limited access routes for the purpose of protecting the plant communities.* 8. *Identify wildlife nesting and breeding habitats of rare or sensitive plants or animals for the publicly owned dune areas in order to temporarily restrict access to these areas during identified breeding and nesting seasons.*

Heron Rookeries (III-17)

65. *Prohibit public access in areas of identified heron rookeries. Access to Penny Island should be limited to low intensity usage for scientific and educational*

purposes. Scientific and educational use should be managed so as not to interfere with heron nesting. (February to mid July).

66. Prohibit new development (construction of structures or roads) within 600 feet of a rookery.

Discussion

This appeal concerns a County-approved development to construct a new 2,514 square foot single-family residence, 1,216 square foot garage, and driveway, and an 840 square foot detached second dwelling unit on a vacant 9.96 acre parcel at 1835 Bay Flat Road, Bodega Bay in Sonoma County. The property is located in a Rural Residential zoning district and Conservation Area.”

The approved development places a single family residence, garage, detached second unit and garage in an environmentally sensitive habitat area (ESHA), as defined by Local Coastal Plan, Part I, III-3, III-4, and III-10. According to County approval documents, the entire property is comprised of dunes and a heron rookery, both considered ESHA under Local Coastal Plan, Part I, III-3, III-4, III-6, III-10 and III-17. The approved driveway would alter a section of dune habitat and the approved building footprint would displace two special species plants that comprise native dune vegetation. In addition, the approved driveway would be located adjacent to a tree grove that is a heron rookery.

The approved home site is zoned as a Conservation Area, within the Rural Residential District. A Conservation Area is considered a Sensitive Area and requires a use permit (Coastal Zoning Ordinance, Part III, Article IX, Section 26C-91). The Sonoma County LCP has mapped sand dune and coastal strand habitat along the coast and provided environmental management policies (Local Coastal Plan, Part I, III-3, III-4, III-6, III-10, III-12). The LCP restricts activities and development on dunes and coastal strand; prohibits the removal of sand from dunes except for dune management; protects dune habitat from disturbance and destruction with exceptions for resource dependent, scientific, educational, and passive recreational uses; limits foot traffic on vegetated dunes and recommends well-defined footpaths and raised boardwalks when necessary (Local Coastal Plan, Part I, III-12). In addition, the LCP prohibits public access in areas of identified heron rookeries and new development within 600 feet of a heron rookery (Local Coastal Plan, Part I, III-17). For the reasons discussed below, the development approved by the County is inconsistent with LCP Policies contained in III-3, III-4, III-6, III-10, III-12, and III-17.

The County approved the subject development with findings stating that a regulatory takings of private property would occur if the subject development were denied based on its impacts to environmentally sensitive habitat areas (ESHA). However, the County did not fully consider how to minimize the impacts of the approved development, even if some of that development must be approved to avoid a taking. Though applicants are

entitled under Coastal Act Section 30010 to an assurance that their property will not be taken, this section does not authorize the County to completely avoid application of any policies and standards of the certified LCP including Local Coastal Plan, Part I, III-12 and III-17. Instead the County is only directed to avoid construing these applicable policies in a way that would take private property for public use. Aside from this instruction, the County is still directed to enforce to the maximum extent feasible, all requirements of the LCP including the requirements of the Local Coastal Plan, Part I, III-12 and III-17 to protect and minimize adverse impacts on sand dunes, coastal bluffs and a heron rookery. This means considering all methods to mitigate and/or avoid significant adverse impacts to ESHA.

Although Sonoma County PRMD staff conducted (1) a driveway analysis that looked at five alternatives and concluded that current driveway placement is the best option for the site and (2) a takings analysis that showed the property owner had a reasonable investment backed expectation to develop the property, the approved development must adhere to the applicable County of Sonoma Local Coastal Program Policies to the maximum extent feasible. Consequently, no approval should have occurred without considering: (1) a reduction in the size of the house; (2) alternative placement of the house; (3) the elimination of the detached second dwelling unit; and (4) a revised driveway alternatives analysis taking into account any feasible alternative placement of the house.

and any necessary support service facilities, be greater than 25 percent of the total wetland area to be restored.

- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities.
- (5) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource-dependent activities.
 - (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.
 - (c) In addition to other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California" shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of South San Diego Bay, if otherwise in accordance with this division.

30236. Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects; (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or; (3) developments where the primary function is the improvement of fish and wildlife habitat.

30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Definitions of Habitat Categories

Wetlands

Areas where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Wetlands are here defined to include marshes, ponds, seeps, and reservoirs, but not the Bodega Harbor tide flats. The upland limit of a wetland is designated as 1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; 2) the boundary between soil that is predominantly hydric and soil that is predominantly non-hydric. Typical wetland vegetation: pickleweed, cordgrass, Jaumea, salt grass, rushes, bulrushes, sedges, cattails, tule, marsh rosemary, marsh grindelia.

Bodega Harbor Tideflats

A marshy, sandy or muddy nearly horizontal coastal flatland which is alternately covered and exposed as the tide rises and falls. Vegetation is limited to algae and some other wetland vegetation.

Riparian

Tree and shrub vegetation of freshwater courses. A line or belt of vegetation following the course of a river or stream on the immediate banks and appearing visually and structurally separate from the surrounding landscape. Boundaries are delineated by the outer edge of riparian vegetation. Riparian vegetation consists of that vegetation in or adjacent to permanent or intermittent freshwater streams and other freshwater bodies where at least 50 percent of the cover is made up of species such as alders, willows, cottonwoods, box elders, fens, and blackberries.

Dunes and Coastal Strand

Coastal dunes are sandy beach materials formed into dunes by the wind. Most of the ground is bare sand, either actively moving or stabilized by a vegetative cover: low growing annual or perennial herbs with low water requirements and a high salt tolerance. (Coastal Strand is the plant community found on sandy beaches and dunes scattered along the entire coast).

Coastal Bluffs

Area between the cliff edge and the highest high tide line. Bluffs or cliffs are scarps or steep faces of rock, decomposed rock, sediment or soil resulting from erosion, faulting, folding or excavation. When the top edge of the cliff is rounded away from the face of the cliff, the edge shall be defined as that point nearest the cliff beyond which the downward gradient of the land surface increase more or less continuously until it reaches the general gradient of the cliff.

Rocky Intertidal

Coastal rocky shore between the highest high tide line and the low tide line.

Coastal Prairie and Grassland

Discontinuous grassland usually within 100 km of the coast; usually on southerly facing slopes or terraces. Today is a mixture of heavily grazed, introduced annual grasses and some native perennial grasses. Generally sandy to clay loam surface soils. This mapping category does not indicate pristine coastal prairie.

A heron rookery is located on Penny Island in the cypress trees on the northeastern side of the island. Successful nesting at this site has been observed during the most recent three years. The island is presently part of the State Park, but does not have any particular sanctuary status. Log shags in the Russian River from Penny Island to Willow Creek provide habitats for seals, sea lions, and water birds and should be preserved.

Sanctuary-Preservation Areas:

Penny Island
 Willow Creek freshwater marsh
 Coastal bluff at Duncan Point
 Rare and/or endangered plant site
 Osprey nest sites
 Heron rookeries in Willow Creek Park
 Freshwater marsh, sand spit, and riparian corridor on south side of the Russian River
 Riparian corridor of Willow Creek upstream to its second land-crossing by Willow Creek Road
 Riparian corridor of Scotty Creek and Kolmer Gulch
 Rocky intertidal area

Conservation Areas:

Coastal woodland and grassland between the south side of Freezeout Creek and the north side of Willow Creek

9. Bodega Bay

Bodega Harbor is an area of high natural resource value, combined with intensive activities of commercial and sport fishing, passive recreation, and educational institutions. The natural resources of the area include a salt marsh which is rare on the northern California coast and which would benefit from restorative measures; tidal mud flats; freshwater-brackish water on the west side and north end of the harbor.

Sanctuary-Preservation Areas:

Freshwater marshes on west side and at north end of Bodega Harbor
 Ocean, rocky intertidal, and sandy beach of the Bodega Marine Life Refuge
 Bodega Rock
 Freshwater marsh along Salmon Creek
 Dunes and mud flats on the north side of Doran Park
 Rare and/or endangered plant sites
 Ponds, reservoirs, seeps
 Freshwater marsh areas north of the entrance road to Bodega Dunes State Park and at the north end of the harbor
 Marsh areas at the southeast side of Bodega Harbor
 Seabird nest sites near Bodega Head
 Riparian areas of Salmon Creek
 Riparian areas west of the entrance road to the State Park and at the north end of the harbor

Conservation Areas:

Dunes, coastal strand and sandy beach areas of Salmon Creek Beach and the adjacent State Park
 Entire Bodega Head

ENVIRONMENTAL RESOURCES MANAGEMENT RECOMMENDATIONS

The habitats or specific resources which have been mapped for the Sonoma County coast are listed below with management recommendations for each.

Sandy Beaches and Sand Spits, including Smelt Spawning Areas

1. Prohibit the opening of sandbars except for maintenance of tidal flow to assure the continued biological productivity of streams and associated wetlands and in particular cases to prevent flooding. Bars should not be breached until there is sufficient in-stream flow to preserve anadromous fish runs.
2. Prohibit all off-road non-authorized motor vehicles from beach areas.
3. Prohibit the removal of sand from beaches and spits.

Dunes and Coastal Strand

4. Prohibit the removal of sand from dunes except for dunes management.
5. Preserve and protect coastal dune habitats from all but resource dependent, scientific, educational, and passive recreational uses including support facilities. Disturbance or destruction of any dune vegetation should be prohibited unless as required for public park facilities, and then only if revegetation is a condition of project approval.
6. Prohibit all off-road, non-authorized vehicles from dune areas.
7. Minimize foot traffic for all permitted uses, including recreation, on vegetated dunes. Where access through dunes is necessary, well-defined footpaths or raised boardwalks shall be developed and used. Access areas should be posted with explanations describing the importance of the use of limited access routes for the purpose of protecting the plant communities.
8. Identify wildlife nesting and breeding habitats of rare or sensitive plants or animals for the publicly owned dune areas in order to temporarily restrict access to these areas during identified breeding and nesting seasons.

Riparian: Note - Where General Plan standards and policies are more restrictive than the following, development shall comply with the General Plan or Coastal Plan policies, whichever are more restrictive, provided that no development shall be approved which does not comply with Coastal Plan policies.

9. Prohibit construction of permanent structures within riparian areas as defined, or 100 feet from the lowest line of riparian vegetation, whichever is greater, except development dependent on the resources in the riparian habitat, including public recreation facilities related to the resource. Any development shall be allowed only if it can be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of the riparian habitat. The riparian area or 100 foot wide buffer zone should generally be maintained in a natural, undisturbed state. Trails and access may be permitted if studies determine no long-term adverse impacts would result from their construction, maintenance, and public use. Trails should be made of porous materials.
10. Require erosion-control measures for projects affecting the riparian corridor.

51. Encourage use of the upland area of Stillwater Cove County Park as a suitable area for educational facilities concerning coastal grassland or prairie.

Coastal Woodland

52. Include erosion and sediment control measures in coastal permits.
53. Minimize disruption to vegetation in all grading operations, placement of fills, or construction of structures.

Pygmy Forest

54. Prohibit construction of permanent structures except for those necessary for scientific and educational uses of this particular habitat.
55. Prohibit off-road motor vehicles, except for those required for management or emergency use in the forest area.

Windbreaks

56. Promote retention and proper management of existing windbreaks which are predominantly east-west oriented and do not block extensive coastal views.
57. Discourage new windbreaks that would interrupt coastal views.

Rare or Endangered Plants and Animals

58. Protect designated sites of rare or endangered plants. Prior to any development in or adjacent to designated sites, conduct precise botanical surveys to determine the distribution of any rare or endangered plants. Botanical surveys should be conducted during natural blooming season of species in question. Development should be sited and designed and constructed to prevent impacts of grading, paving, construction of roads or structures, runoff, and erosion from significantly degrading rare or endangered plant habitats, and shall be compatible with the continuance of such habitat areas.
59. Assure compliance with the Federal Endangered Species Act of 1973 and the California Endangered Species Act of 1970 as amended.

Osprey Nest Sites

60. Limit recreational activities near identified osprey nesting sites to low intensity passive recreation. These limitations are especially important during May through July when incubation takes place.
61. Protect osprey nesting sites located along the Willow Creek, Freezeout Creek and Russian River uplands from disturbance by logging activities.
62. Prohibit removal of snags and dead tops of live trees in areas surrounding identified osprey sites.
63. Prohibit removal of osprey nests.
64. Prohibit development of structures and avoid development of new roads if at all possible within the nesting site areas.

Heron Rookeries

65. Prohibit public access in areas of identified heron rookeries. Access to Penny Island should be limited to low intensity usage for scientific and educational purposes. Scientific and educational use should be managed so as not to interfere with heron nesting. (February to mid July).
66. Prohibit new development (construction of structures or roads) within 600 feet of a rookery.

Spotted Owl Territory

67. Minimize impacts of development near identified Spotted Owl nesting and breeding areas.

Anadromous Fish Streams

68. Maintain flows in streams identified as anadromous fish habitat at a minimum flow level as required to continue their use as an anadromous fish spawning area.
69. Stop all stream diversions when stream flow falls below minimum flow standards until stream flows return to levels above the minimum standards.
70. Prohibit dredging in all anadromous fish streams.
71. Prohibit dams or other structures which would prevent upstream migration of anadromous fish in streams designated as "anadromous fish habitat" unless other measures are used to allow fish to bypass these obstacles. Any bypass measures should be approved by the Department of Fish and Game.

Marine Mammal Haul-out Grounds

72. Limit recreational activities near and prohibit disturbance of designated areas used for harbor seal and sea lion hauling-out grounds to passive recreation to insure continued viability of these habitats.
73. Encourage annual monitoring by the Department of Fish and Game of designated marine mammal hauling-out grounds to determine the condition of hauling out grounds and to take counts of mammals for long term management of marine mammals.

Kelp

74. To the extent consistent with all applicable provisions of law, including but not limited to Section 30260 of the Coastal Act, encourage the appropriate State and Federal jurisdictions to:

Monitor the size and habitat viability of kelp beds and their associated fisheries resources,

Monitor and regulate activities such as sewage disposal, dredging, and renewable energy development which may adversely affect near shore marine water quality and thus kelp resources. Prohibit petroleum and other forms of energy development which may significantly impact the environment through normal operations or accidents (oil spills, well blowouts, etc.).

75. Require specific site investigations prior to any kelp harvesting.

Open Water

76. Prohibit construction of new structures, and dredging, filling or diking in open water except in accordance with Section 30233 of the 1976 Coastal Act. Open water shall be defined in a manner consistent with the Commission's Wetlands Guidelines.
77. Prohibit dredging during periods of fish migration and spawning, and limit dredging to the smallest area feasible.

Designated Sanctuary Preservation and Conservation Areas

78. Implement Sanctuary-Preservation and Conservation Area limitations in order to assure special consideration and protection for unique resources of the coastal zone.

Archaeological Resources

79. Require an archaeological study when proposed projects are within designated archaeological site areas, and require implementation of reasonable mitigation measures when recommended by the study.
80. Continue to send all projects subject to CEQA to Sonoma State Anthropology Laboratory for review.

ENVIRONMENTAL HAZARDS**INTRODUCTION - COASTAL ACT POLICIES**

Various environmental hazards are constraints to human activity in the coastal zone. Geologic, seismic, flood, and fire hazards are found throughout the planning area and must be respected. Coastal Act policies direct new development to minimize risks to life and property from environmental hazards and to avoid substantial alteration of natural land forms:

30253. New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluff and cliffs.

GEOLOGIC HAZARDS - DESCRIPTION

The Sonoma County Coastal Zone is subject to earthquake hazards. The San Andreas fault runs parallel to the coast coming inland at Bodega Harbor and Fort Ross. Geologic and historic records indicate that earthquakes have and will occur on this portion of the San Andreas fault. An earthquake could be accompanied by surface fault rupture, ground shaking, and ground failure. Earthquakes and their associated hazards will affect both the man-made and natural environments within the coastal zone. Related seismic hazards should be anticipated and respected, and considered in the planning process.

While property damage represents a monetary loss, the potential loss of life and the destruction of natural resources from fire is difficult to measure. Wildland fires destroy vegetation and wildlife and scar the land. Removal of vegetation alters watersheds, affecting natural stream flow and the water storage capacity of the soil.

The California Division of Forestry considers weather, fuel loading, and slope steepness the most important criteria in classifying fire hazards into three categories: moderate, high, or extreme hazard. Because of the mild climate conditions in the Sonoma County coastal zone, no areas of extreme fire hazard exist. All heavily wooded areas and brush areas with very steep slopes (greater than 61 percent) are considered a high fire hazard.

Wildland fire is a process occurring on a normal cycle in nature. As residential and recreational developments encroach further into the wild lands, the natural cycle is disturbed and the potential for disaster increases. Mitigation measures must be implemented to reduce the risk to humans and the environment.

RECOMMENDATIONS

Geologic Hazards

1. Anticipate the effects of, and develop a plan in response to a major earthquake generated along the San Andreas fault zone.
2. Prohibit development within 100 feet of a bluff edge or within any area designated unstable to marginally stable on Hazards maps unless a registered engineering geologist reviews and approves all grading, site preparation, drainage, leachfield and foundation plans of any proposed building and determines there will be no significant impacts. The engineering geologist report shall contain, at a minimum, the information specified in the Coastal Administrative Manual.
3. Enforce the requirements of the Alquist-Prilo Special Studies Zone Act for protection from fault rupture hazard.
4. Design and construct all structures for human occupancy, including mobile homes, in accordance with Zone 4 standards of the Uniform Building Code.
5. Enforce the geologic provisions of Chapter 70 of the Uniform Building Code.
6. Require engineering geologic reports in accordance with the Permit and Resource Management Department geologic review procedure.
7. Encourage grazing practices of steep slopes which mitigate erosion problems.
8. Encourage resource use where suitable on lands which are hazardous to development and other uses.
9. Prohibit new dwellings within designated Tsunami Hazard Zones.

Bodega Harbour. Bodega Harbour Subdivision located just south of Bodega Bay is a second home development begun in 1969. Development is proceeding at a steady pace.

This subdivision has a design review procedure which is evident in the development which has occurred. The residences relate to one another with few homes dominating.

Structures are large one-and-a-half to two-story structures with unpainted wood exteriors and varied modern architectural designs. To establish a continuity of design between homes, the design guidelines require that roof slopes conform to those established by existing adjacent structures. The community also encourages architectural forms of new homes to relate to adjacent structures. This strategy goes a long way toward providing a sense of design unity. Other unifying features are a 16 foot height limit, size limits, and indigenous landscaping guidelines. Fences are used for screening of service yards and not to delineate property boundaries. Grading must be minimized. Roofs, trim, and driveways are of dark, non-reflective materials. Garages and other accessory buildings must relate to the main structure on the site and be physically connected.

Valley Ford. Valley Ford received its name from the fact that an old Indian and Spanish ford across the Estero Americano was located there. This historic community has evolved over the years and has no distinct architectural theme. Styles include Greek Revival, Queen Anne, Western Falsefront, Italianate, and bungalow. Many of the existing buildings date to the 1870's and 1880's. Several have been identified as worthy of landmark status.

RECOMMENDATIONS

View Protections

1. Prevent development (including buildings, structures, fences, paved areas, signs, and landscaping) from obstructing views of the shoreline from coastal roads, vista points, recreation areas, and beaches.
2. Prohibit development which will significantly degrade the scenic qualities of major views and vista points.
3. Except in rural community and urban service areas, require a minimum setback of 100 feet from the right-of-way along scenic corridors and greater where possible. However, permit a 50 foot setback when sufficient screening exists to shield the structure from public view. Where the General Plan policies and standards are more restrictive than the above standards, development shall comply with the General Plan or Coastal Plan policies, whichever are more restrictive, provided that no development shall be approved which does not comply with Coastal Plan policies.

Alterations of Landforms

4. Minimize visual destruction of natural landforms caused by the cutting, filling, and grading for building sites, access roads and public utilities by:

Concentrating development on level areas so that steeper hillsides are left undisturbed.

Prohibiting new development which requires grading, cutting, or filling that would significantly and permanently alter or destroy the appearance of natural landforms

Restoring landforms as completely as possible after any permitted temporary alteration during construction, timber harvesting, or mineral extraction

Constructing roads, buildings, and other structural improvements to fit the natural topography

Sharing private roads and driveways

Landform Guidelines

5. Minimize visual impact of development on hillsides by:

Requiring construction or grading to follow the natural contours of the landscape

Prohibiting development and grading on hillsides with grades more than 30 percent

Designing structures to fit hillside sites rather than altering the landform to accommodate buildings designed for level sites

Concentrating development near existing vegetation

Promoting roof angles and colors which blend with hillsides

6. Minimize the visual impacts of development on terraces by:

Prohibiting development in open fields in rural areas

Minimizing the number of structures and clustering them near existing natural or man-made vertical features

Designing structures to be in scale with the rural character of the region

7. Minimize the visual impact of development on ridges by:

Prohibiting development in rural areas that projects above the ridgeline silhouette

Locating development adjacent to existing vegetation

Prohibiting the removal of tree masses which destroy the silhouette of the ridgeline form

8. Minimize the visual impact of development on inland valleys by:

Concentrating development within existing communities

Requiring development outside of communities to be located on the edge of the valley or within existing tree clusters leaving the valley floor and agricultural land open

Natural Landscape Compatibility

9. Locate and design development to fit the setting and to be subordinate to the pre-existing character of the site.

Community Compatibility

10. Design structures to be compatible with existing community characteristics.
11. Relate structures in size and scale to adjacent buildings.
12. Locate and design all development to minimize the impacts of noise, light, glare, and odors on adjacent properties and the community at large.

Utilities

13. Require that all new distribution line extensions be placed underground.

Vegetation

14. Discourage the removal of significant trees except through legitimate logging operations.
15. Locate and design new development to minimize tree removal.
16. Prohibit removal of windbreaks unless required because of the disease.
17. Prohibit the planting of vegetation west of Highway 1 which could block coastal views.
18. Encourage the use of appropriate native plants for landscaping. A Native Plant List for the Sonoma County Coast will be made available at Sonoma County PRMD.

Procedure

19. Require design review for all new development in Urban and Rural Community Service areas. This requirement may be waived by the Director of PRMD on parcels not visible from and east of Highway 1.
20. Require design review for:
 - A. All new development within designated scenic view shed areas as depicted on the Coastal Visual Resource Maps (incorporated herein by reference and on file in County PRMD. The following criteria shall be used in evaluating the projects:
 1. New structures proposed within a scenic view shed area shall, to the maximum extent feasible, be designed and sited to preserve existing views of the ocean and shoreline as viewed from scenic corridor routes.
 2. New structures proposed within a scenic view shed area shall, to the maximum extent feasible, be screened from scenic corridor route view by existing topography and vegetation.
 3. Development authorized within scenic view shed areas shall be subject to the condition that neither topography nor vegetation shall be altered or removed if doing so would expose the development to view from any scenic corridor route.

4. New structures shall not be located on ridgelines or prominent hilltops, as viewed from scenic corridor routes, unless screened by existing topography and/or vegetation.
 5. Agricultural structures are exempted from scenic view protection policies if they are to be located landward of scenic corridor routes from which there are ocean or river views.
 6. Development proposed upon a parcel mapped in more than one view shed rating category shall, whenever feasible, be located within the area with the lowest view rating.
 7. Any satellite dish that requires a building permit shall be sited so that it is not visible from scenic corridor routes.
 8. Subdivisions proposals within scenic view shed areas shall be subject to the following: a) lots shall be clustered where potential visual impacts can be reduced (unless clustering is prohibited in agricultural districts), b) building envelopes shall be established so that residences are located upon the least visually sensitive areas, and c) driveways and access roads are hidden from public view whenever feasible.
- B. All new projects in areas mapped as Outstanding and Above Average View Areas on the Coastal Visual Resource Maps (incorporated herein by reference and on file in the County Planning Department). The following criteria relate to landform and vegetation categories identified on the View shed Composition Maps, and shall be used in evaluating the projects. Figures on Figure VII-10 graphically depict a number of the View shed Protection Criterion and policies.

Hillside/Woodland Location

1. Locate structures within or behind existing wooded areas such that they are screened from scenic corridor routes.
2. Retain existing trees to the maximum extent possible when locating structures. Removal of tree masses, which would interrupt or destroy ridgeline or hilltop silhouettes, is prohibited. Permits shall specify that existing vegetative screening shall not be pruned or removed if doing so would render the structure more visible from a scenic corridor route.
3. In order to ensure structures are integrated well into the landscape and to minimize the incidence of unsightly erosion scars, the applicant shall demonstrate that the amount of grading proposed is the minimum necessary to site the structure.

Cliffs and Bluffs Location

1. Locate structures within or behind existing tree cover such that they are screened from scenic corridor routes. When there is limited opportunity to screen proposed structures from scenic corridor routes, design review shall ensure that:
 - a) the structure's design complements and is in scale with the surrounding environment.
 - b) if possible, structures shall be screened by using alternative siting or existing landforms,
 - c) when no other measures to screen development from scenic corridor routes are feasible, a landscape design is developed that relies upon native tree and shrub species to (1) screen the structure but not grow to block ocean or coastline views, (2) integrate the man-made and natural environments, and (3) effectively screen the structure from the scenic corridor route within 5 years.

Terrace/Grassland Location

Inland Valley Location

1. Locate structures near existing vegetation or topographic relief to screen them from the scenic corridor routes. When there is limited opportunity to screen proposed structures from scenic corridor routes, design review shall ensure that:
 - a) the structure's design complements and is in scale with the surrounding environment and existing community characteristics.
 - b) if possible, structures shall be screened by using alternative siting or existing landforms,
 - c) when no other measures to screen development from scenic corridor routes are feasible, a landscape design is developed that relies upon native tree and shrub species to: (1) screen the structure but not, over time, grow to block ocean or coastline views from scenic corridor routes, (2) integrate the man and natural environments, and (3) effectively screen the structure from the scenic corridor route within 5 years.

Terrace/Woodland Location

1. Locate structures within or behind existing wooded areas such that they are screened from scenic corridor routes.
2. Retain existing trees to the maximum extent possible when locating structures. Permits shall specify that existing vegetative screening shall not be pruned or removed if doing so will render the structure more visible from a scenic corridor route.

Hillside/Grassland Location

1. Locate structures near existing vegetation or topographic relief to maximize screening from the scenic corridor routes. When there is limited opportunity to screen proposed structures from scenic corridor routes, design review shall ensure that:
 - a) the structure's design compliments and is in scale with the surrounding environment and existing community characteristics.
 - b) if possible, structures shall be screened by using alternative siting or existing landforms,
 - c) when no other measures to screen development from scenic corridor routes are feasible, a landscape design is developed that relies upon native tree and shrub species to: (1) screen the structure but not grow to block ocean or coastline views, (2) integrate the man-made and natural environments and, (3) effectively screen structures from the scenic corridor route within 5 years.
 2. When structures are proposed near ridgelines or prominent hilltops where there is insufficient vegetation to screen them from scenic corridor routes, they shall be located and designed so that they do not project above ridgeline or hilltop silhouettes.
 3. In order to ensure structures are integrated well into the landscape and to minimize the incidence of unsightly erosion scars, the applicant shall demonstrate that the amount of grading proposed is the minimum necessary to site the structure.
21. Require compliance with community design guidelines, when applicable, or the overall Coastal Zone Design Guidelines.
 22. Apply Coastal Zone Design Guidelines to all new coastal zone development in areas described in 19. and 20. except Bodega Harbour subdivision and The Sea Ranch. The guidelines apply to Bodega Bay town with the amendments described in 26.
 23. Encourage formation of local design review committees to apply the Coastal Zone Design Guidelines.
 24. Encourage adoption of local design criteria to augment or replace the Coastal Zone Design Guidelines, subject to County Design Review Committee review and approval.

Design Guidelines

25. Coastal Zone Design Guidelines

General. Design and site structures to preserve unobstructed broad views of the ocean from Highway 1 and to minimize visual impacts. Cluster structures to the maximum extent feasible.

Height. Limit residential building height to 16 feet west of Highway 1. However, an increase in height, to a maximum of 24 feet, is permissible if (1) the structure is no higher than 16 feet above

the corridor route grade directly across from the building site, and (2) the structure will not affect views to the ocean or be out of character with surrounding structures.

Limit building height to 24 feet east of Highway 1. However, an increase in height to a maximum of 35 feet is permissible if (1) the structure is no higher than 24 feet above the corridor route grade directly across from the building site, and (2) the structure will not affect water views, or be out of character with surrounding structures.

Height for residential structures is measured as the vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building to the topmost point of the roof. (See Figure VII-11.) Where these requirements conflict with the height, site, and bulk criteria of Appendix B (Bane.BIII), for those properties listed, the requirements of Appendix B shall be followed.

Bulk. Keep buildings in scale with their natural and man-made setting.

Siting. Utilize natural landforms and vegetation for screening. Minimize the alteration of natural landforms caused by grading, cutting, or filling. Prescribe building envelopes for lots west of Highway 1 in Timber Cove and other appropriate areas.

Building Materials and Color. Use natural materials and earth colors which blend with the vegetative cover of the site unless the building is a historic reproduction, in which case colors should be in keeping with the historic style. Encourage use of non-reflective exterior surfaces. Encourage composition shingle and shake roofs in harmonizing colors with the building exterior. Dark colors are preferred. Discourage tar and gravel roofs. Discourage metal window frames unless they are bronze anodized aluminum or baked enamel. Encourage dark and non-reflective driveway materials. To maintain natural drainage flows, the use of impervious material should be minimized.

Architectural Form. Encourage traditional architectural styles of the coast in older development areas and contemporary styles in newer subdivisions. Encourage pitched roofs and relate roof slopes to existing nearby buildings. Relate the architectural shape and style of new buildings to existing nearby structures and natural features. Design accessory buildings to be consistent with the main building architectural character, materials, and finishes.

Landscaping. Use indigenous plant materials in areas visible from public roads. Protect existing vegetation where possible. Utilize plant materials to integrate the man-made and natural environments and to screen and soften the visual impact of new development. Use landscaping to screen parking areas from public view. Landscape, grade, and fill areas as soon as possible to minimize soil erosion.

Fences. Discourage property line fences to minimize visual disruption of the natural terrain. Design fences as extensions of the main house. Materials should be the same as, or complementary to, the building. Six foot fences are intended to be used only for screening of service yards, etc., and for privacy purposes.

Commercial. Design buildings which are compatible with the predominant design of existing buildings in the area and are of wood or shingle siding. Buildings should employ natural or earth colors, and use pitched, non-reflective roofs unless they are historic reproductions. Require that exterior lighting be functional, subtle, and architecturally integrated with the building style, materials, and colors. Limit maximum height to 24 feet unless the greater height will not have effect on coastal views and there are overriding considerations. Height for commercial structures.

is measured as the vertical distance between the average level of the highest and lowest point of that portion of the lot covered by the building to the topmost point of the roof. Screen parking areas from view through use of plantings, design, and siting.

In Bodega Bay, reflect the nautical character of the harbor with wooden exteriors, stained or painted white or subdued earth colors. For heavy, commercial structures, permit textured metal in subdued colors with proper architectural detailing and landscaping to add visual interest and soften building lines.

Agricultural Structures. Locate large agricultural structures out of public view when possible. Encourage designs and materials which blend with the natural vegetative cover.

Signs. Relate signs to their surroundings in terms of size, shape, color, texture, and lighting so that they are complimentary to the overall design of the building and are not in visual competition with other conforming signs in the area. Insure that signing is subtle, unobtrusive, vandal proof and weather resistant, and if lighted, not unnecessarily bright. Avoid using struts, braces, kickbacks, or guy wires to support signs.

26. **Bodega Bay Core Area** (includes Taylor Tract and the residential area between Taylor Tract, Highway 1 and the proposed bypass). In addition to the Coastal Zone Design Guidelines, the following guidelines will be applied to Bodega Bay development. (Where conflicts occur, these guidelines supersede the general guidelines).

General. Site and design structures to take advantage of bay views without blocking views of neighboring structures.

Architectural Form. Encourage traditional building forms of coast buildings including Greek Revival, Salt Box, and simple cottage styles similar to existing homes. Encourage pitched roofs. Flat roofs may be appropriate where compatible with existing structures. Where a building is between two existing structures, the design should act as a transition between the two existing structures.

Height. Limit building height to 16 feet except that in major developments up to 15% of the units may exceed the height limit. Height for residential structures is measured as the vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building to the topmost point of the roof. (See Figure VII-11.) Where these requirements conflict with the height, site, and bulk criteria of Appendix B (Bane Bill), for those properties listed, the requirements of Appendix B shall be followed.

Fences. Discourage property line fences over three feet in height and encourage traditional picket fences.

Materials and Colors. Encourage wood board or shingle siding. Encourage painted exteriors in colors similar to those existing in the town of Bodega Bay (i.e., rust, red, white, green, beige, brown, gray, yellow, and blue). Other colors must be approved by the Design Review Committee. Natural wood exteriors may be intermixed but should not dominate the new development area. Encourage wood trim windows painted in a contrasting, harmonizing color.

Streets. Encourage minimum paved street widths consistent with circulation, safety, and parking requirements to provide a sense of continuity between the new development and the original town.

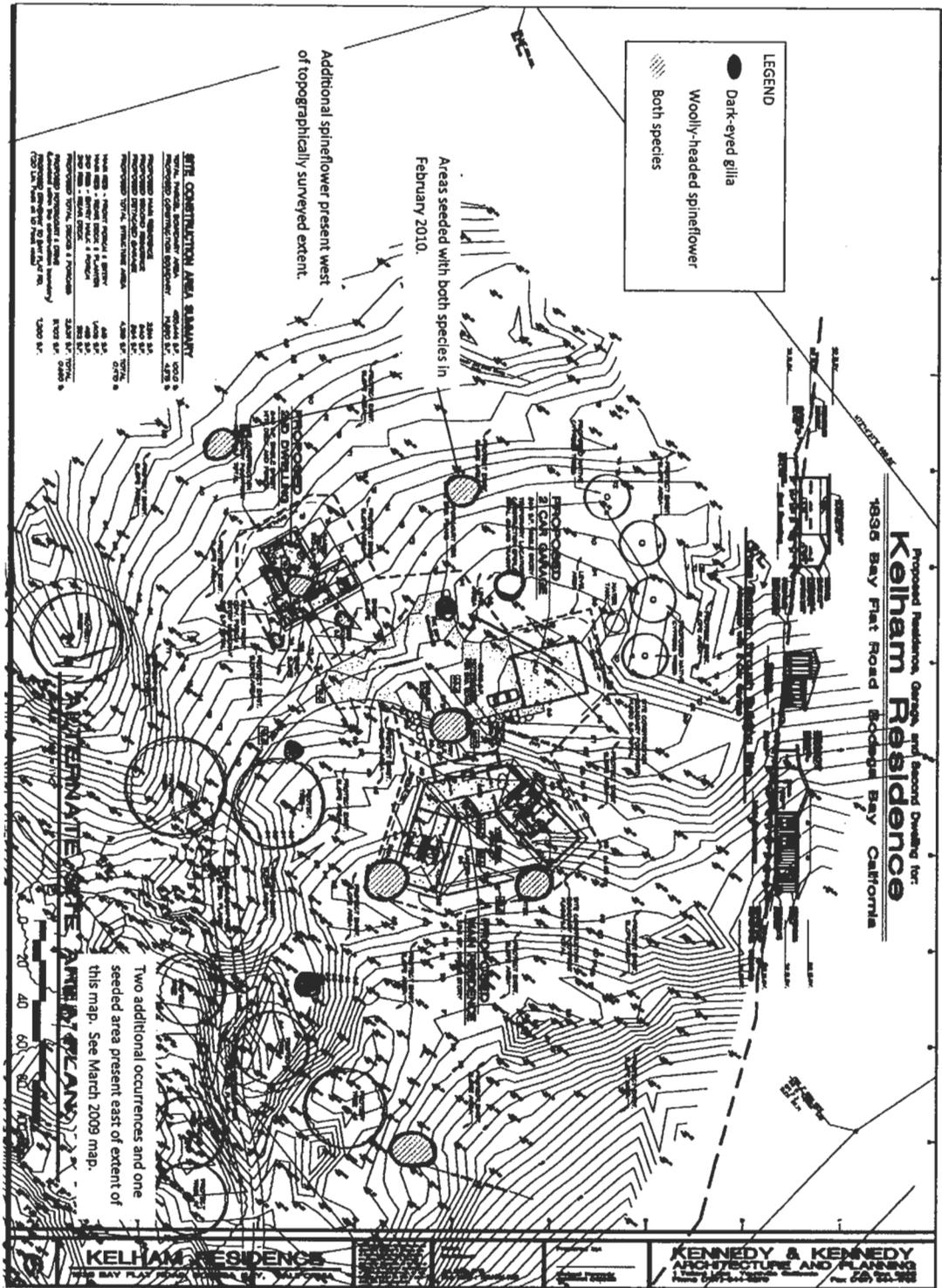
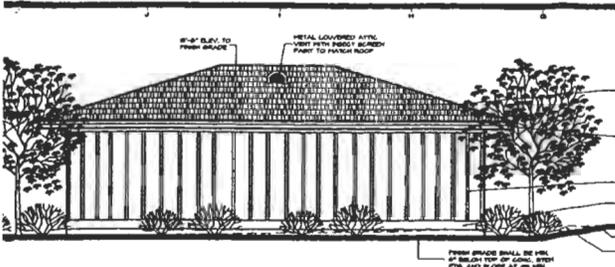
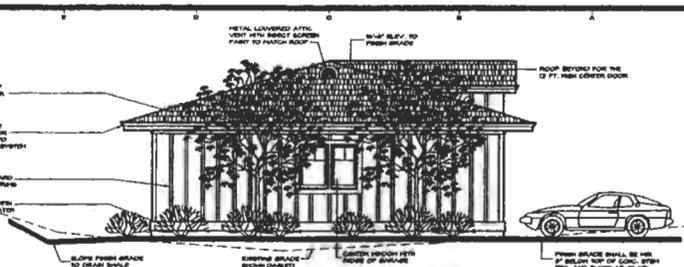


Figure 1. Approximate locations of special-status plants found on the Kelham property during site visits in 2009 and 2010. Map prepared August 12, 2011 by Prunuske Chatham, Inc.



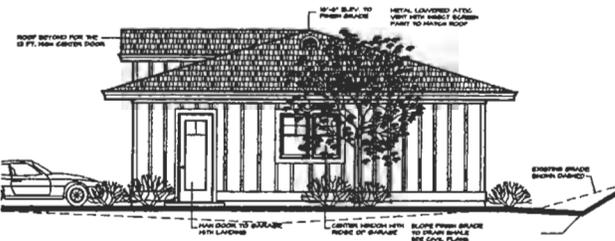
REAR ELEVATION

SCALE: 1/4" = 1'-0"



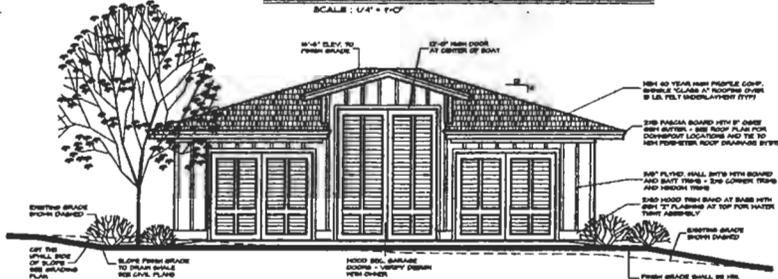
SIDE ELEVATION

SCALE: 1/4" = 1'-0"



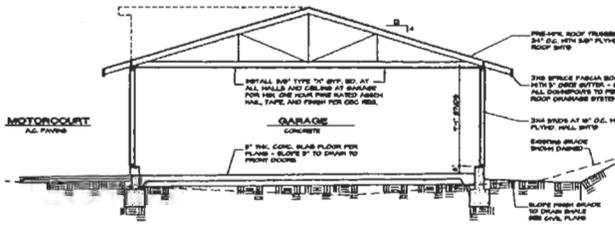
SIDE ELEVATION

SCALE: 1/4" = 1'-0"



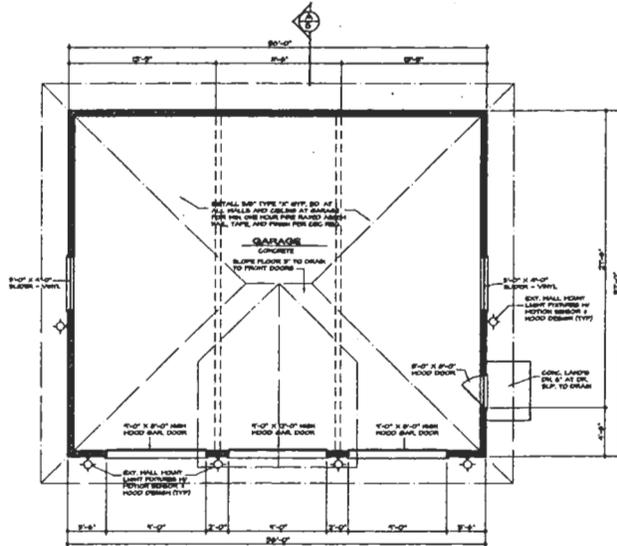
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



Cross Section "A"

SCALE: 1/4" = 1'-0"

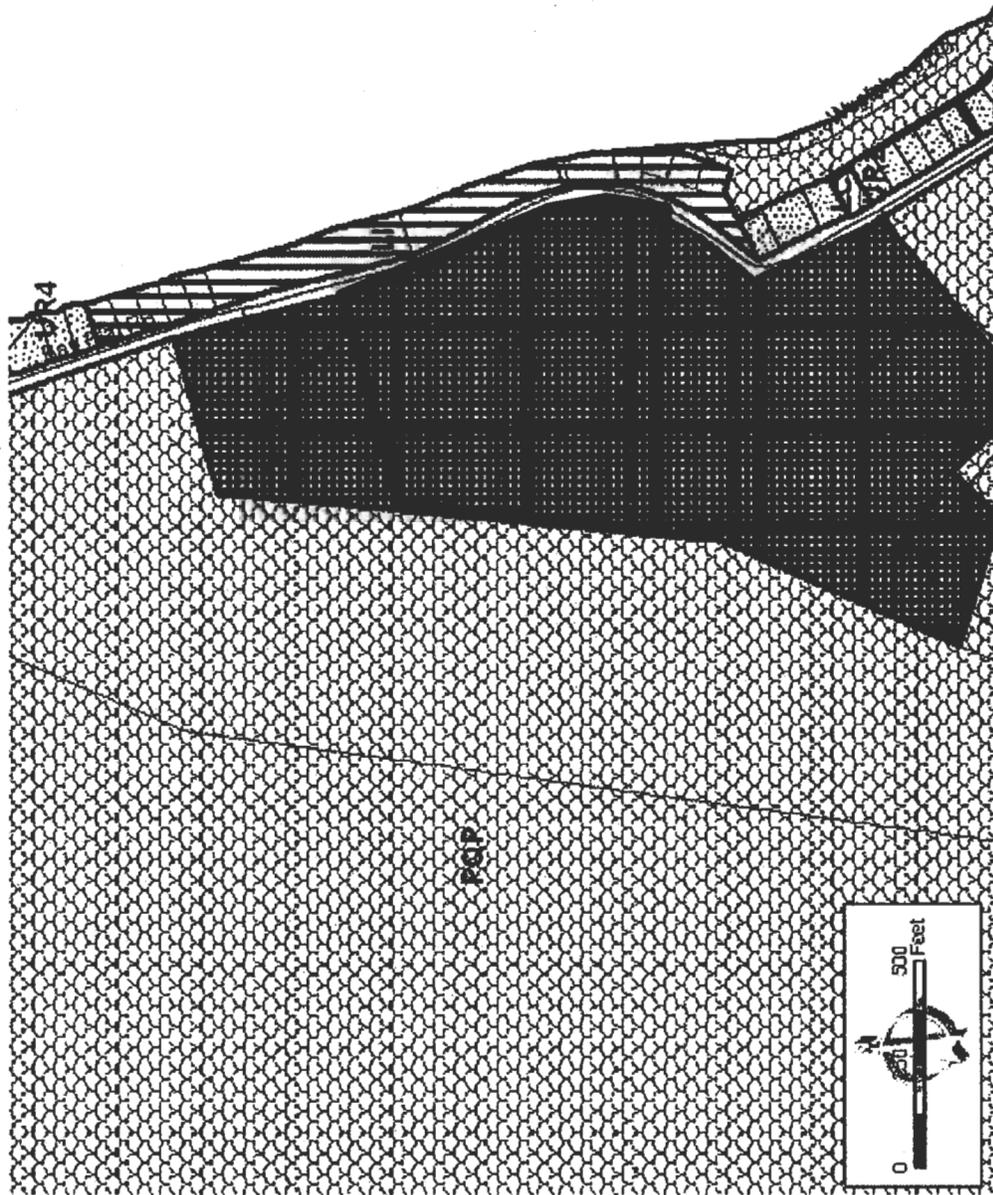


GARAGE FLOOR PLAN

SCALE: 1/4" = 1'-0"

KENNEDY & KENNEDY ARCHITECTURE AND PLANNING
 11000 15th Avenue, Suite 100, Oakland, CA 94612
 Phone: (415) 551-1000
 Fax: (415) 551-1000
 Prepared by: **J. Kennedy**
 Date: 8/1/07
 Title: **KELHAM RESIDENCE**
 Drawing: **06**
 Scale: **1/4" = 1'-0"**
 Project: **1535 BAY FLAT ROAD, BOGOTA BAY, CALIFORNIA**

2 of 3



General Plan Land Use

- Diverse Agriculture
- Land Extensive Agriculture
- Land Intensive Agriculture
- Resource and Rural Development
- Rural Residential
- Urban Residential
- Recreation / Visitor-Serving Commercial

- General Commercial
- Limited Commercial
- Limited Commercial Traffic Sensitive
- General Industrial
- Limited Industrial
- Public / Quasi Public

- Planning Area Policy
- Affordable Housing

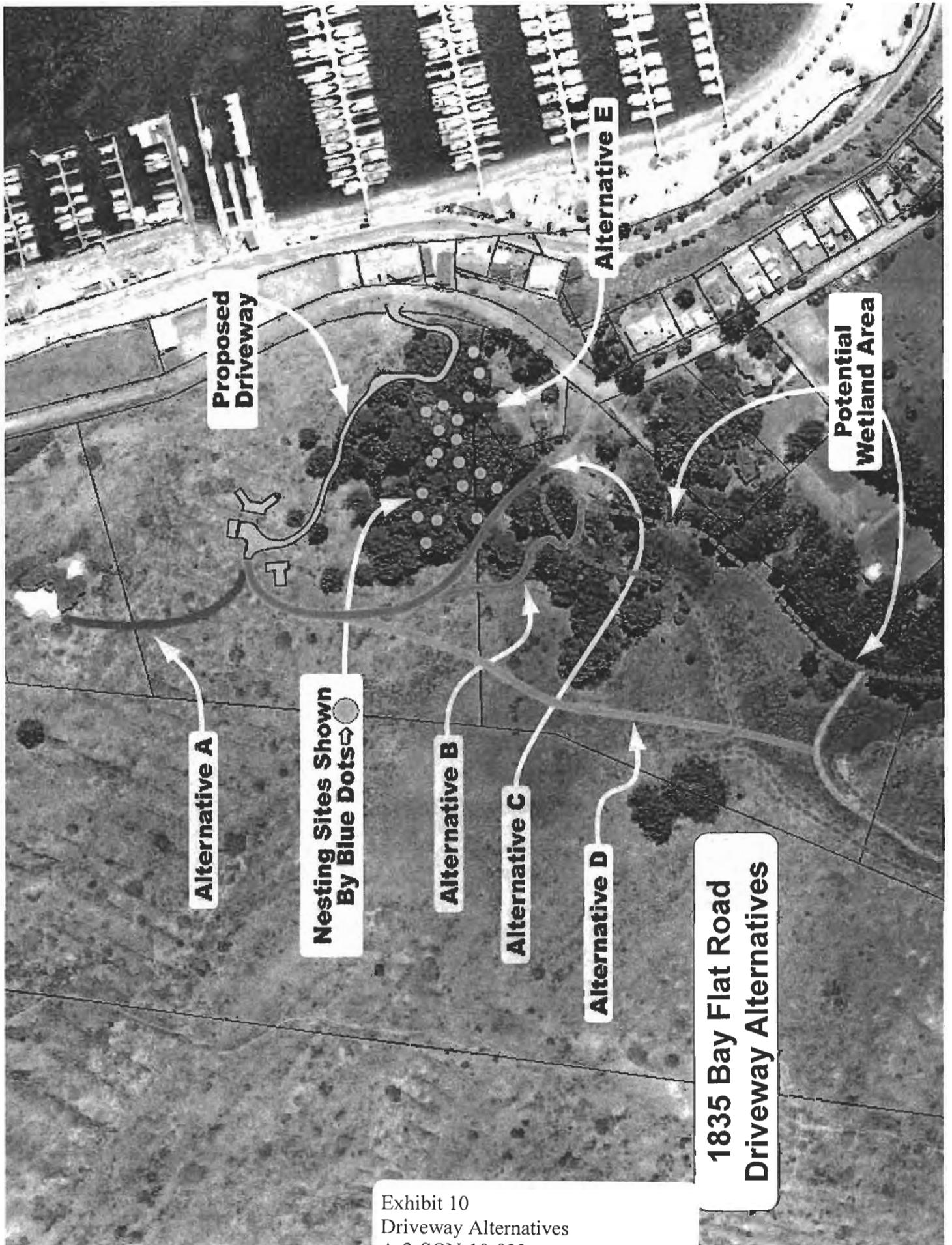
Base Map Data

- Coastal Commission Boundary
- Urban Service Area Boundary
- Highways
- Perennial Streams
- Intermittent Streams

Numbers on map indicate maximum density in Acres/Unit, except Urban Residential where numbers indicate Units/Acre.

General Plan Land Use

3073



Alternative A

Proposed Driveway

**Nesting Sites Shown
By Blue Dots**

Alternative B

Alternative C

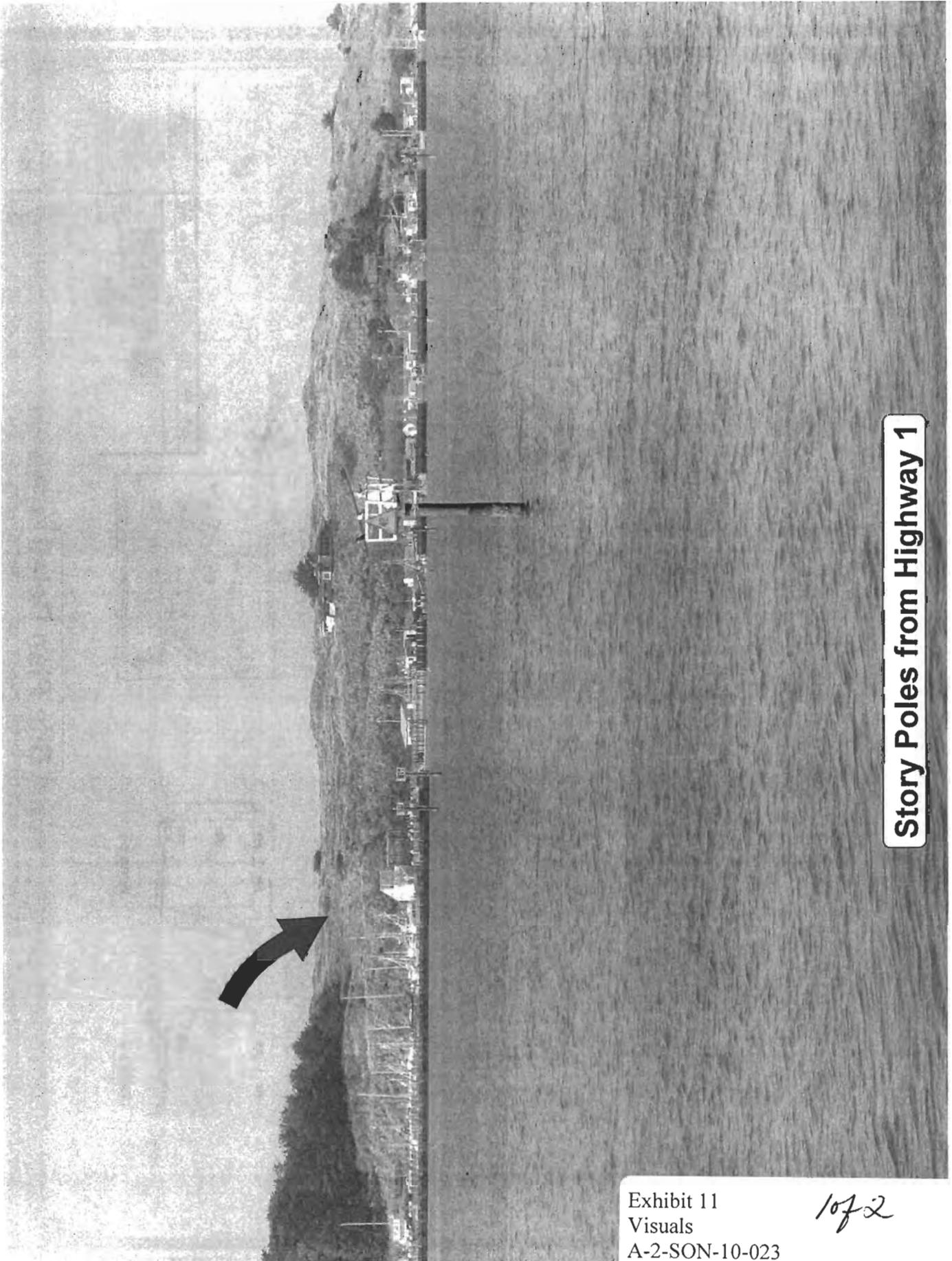
Alternative D

Alternative E

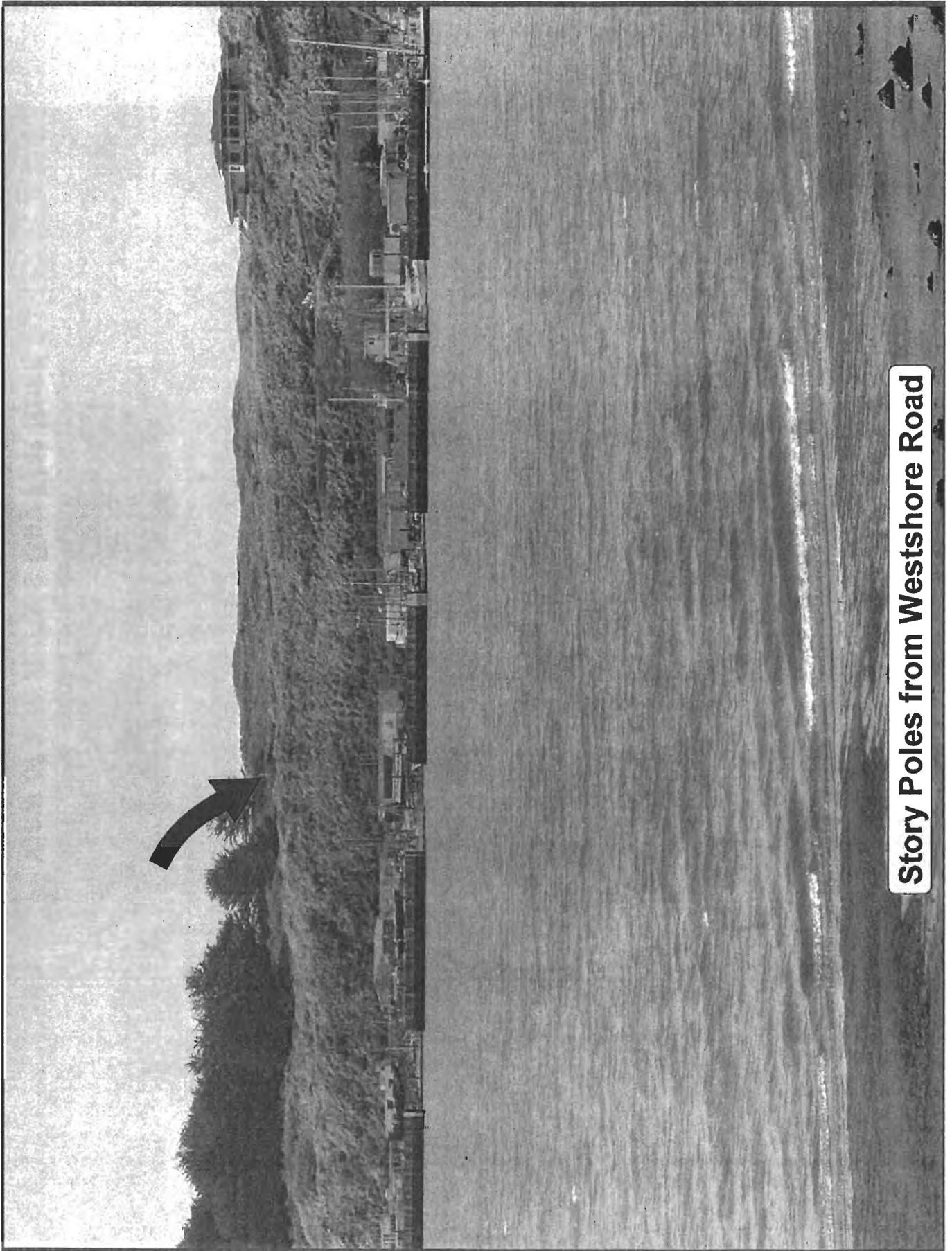
Potential Wetland Area

**1835 Bay Flat Road
Driveway Alternatives**

Exhibit 10
Driveway Alternatives
A-2-SON-10-023
Kelham & Kelham Inv. LLC



Story Poles from Highway 1



Story Poles from Westshore Road

Th5.5a

Tony & Carol Anello
Spud Pt. Crab Co.
Bodega Bay, CA 94923

August 29, 2011

Coastal Commission North Central Coastal District Office
45 Fremont Suite #2000
San Francisco, CA 94105

Subject: Property on Bay Flat Rd: Parcel # 100-020-025 owned
by Kelham Investments

Dear Members of the Coastal Commission, North Central Coastal
District

My husband and I own and live on the property right below the
above mentioned parcel. The front of our property is on Westshore
Rd. and the back of our property is on Bay Flat Rd.

We are concerned with the development of parcel # 100-020-025.
Directly behind our property is a hill that is all sand dunes. There
are clusters of large trees at the top of the sand dunes. We feel that
if Kelham Investments puts a road in behind our property we will
be in danger of the hillside eroding, the trees and the sand coming
down and burying us and our property. I have talked to one of the
owners and expressed my concerns. I was told that there would be
an extensive retaining wall put up. Down the road, off of
Whaleship Dr. there are homes with retaining walls that after time

disturbance of the sand dunes our well being and our property will
be in jeopardy.

If Kelham Investments wants to build on the site that they bought
we have no problem with that, as long as they stay within the
boundaries that we all had to abide by when we built. We do have
a problem with them disturbing the sand dunes and putting us in
danger, if not in the present, in the future. We believe there are
other options to putting a road into their property. Easements from
surrounding properties could be an option that would benefit
everyone involved. If there are not any easements then maybe the

everyone involved. If there are not any easements than maybe the owners of the property can try to obtain one from any of the surrounding neighbors. We are not against growth, but we are against disturbing a natural part of our landscape when there could be other alternatives.

Most everyone that you talk to that lives in Bodega Bay say that they live here for the beauty and tranquility. Nature has provided us with a beautiful and natural environment that makes up our landscape. When we built we were told that NOTHING would ever be built on that hill because of the birds and the natural habitats. I do not want to see our natural landscape altered. Fearing that you will be buried under sand and trees is not my idea of tranquility.

Mr. Kelham and Kelham Investments (the people that bought the property) should have had the foresight to check into how they were going to get into their property or the problems they may in counter in putting roads in. They are in the business of buying property, building and selling real estate. A good business person could have put in a contingency about access to the property before buying it. Because of the Kelham's neglect the rest of us will be paying for it.....maybe even with our lives. The Coastal Commission is to protect the coast and the beauty of our area, I

think that it also has a obligation, to the people living there. This is a problem of the environment and peoples well being verse an investor trying to make money off of a piece of property. PLEASE, before there are any more decisions made on this project, go to the site. Check out the landscape. See if you would be comfortable with the sand being disturbed while roads are being put in if you lived below the site. If the people buying the property didn't have the foresight to think about the roads and getting into their property how can we have faith in their knowledge that they have everything under control. The sand and trees are part of nature and no engineer or well meaning person has control over Mother Nature now or a few years down the line when things can go wrong. All they saw was \$\$ signs and a way to make money off their investment.... That is what they do for a living....but it is at the people living in the areas expense. We have a lot to lose if things go wrong, we not only live on the property below the Kelhams property, we have our business there. We have told them that if our lives, home or business are in any way effected by their project we will have our lawyer go after any and all that approved this hap hazard project....and if we are not here to pursue it our Estate will.

We hope that you can help us with this problem. If you were living below this project I'm sure that you would have the same concerns that we do. We would like to thank-you for your time. Feel free to contract us at any time. Our home phone is 875-9408 and my husbands cell phone number is (707) 953-7743.

Sincerely yours,

Signature on File

Tony & Carol Anello

Th55 RECEIVED

AUG 31 2011

The Engineering Geologist
Since 1989

COASTAL COMMISSION
NORTH CENTRAL COAST

RG 3142 CEG 923
7945 St. Helena Road Santa Rosa, CA 95404
Phone 707-539-2577
Fax 707-539-5778

August 30, 2011

Ms. Ruby Pap, District Supervisor
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Subject: **California Coastal Commission Appeal, Proposed Grading and Residential Construction, 1835 Bay Flat Rd., Bodega Bay, Sonoma County, California.**

Reference: Summary of Geologic Feasibility Issues, 1835 Bay Flat Rd.
Bodega Bay, Sonoma County, California dated February 8, 2010, by
Raymond Waldbaum.

Dear Ms. Pap:

INTRODUCTION

I have been asked by Bodega Bay Concerned Citizens to provide you and the Commissioners with information about the unresolved geologic feasibility issues affecting proposed development of the subject site. These geologic issues are described in my referenced report dated February 8, 2010.

The Coastal Commission Staff Report dated August 25, 2011 fails to acknowledge that resolution of these two geologic feasibility issues is essential in determining the very legality of this proposed project.

The two geologic feasibility issues are the potential presence of active fault traces underlying the proposed building sites and the stability of the slope along Bay Flat Road that will be traversed by the driveway; the only access to the proposed residence. These unresolved issues are described in more detail below.

ACTIVE FAULT HAZARDS

The Alquist-Pirolo Earthquake Fault Zoning Act became law on December 22, 1972 and became effective March 7, 1973. The Act prohibits construction of structures for human occupancy over the traces of active faults. The PJC report dated March 2,

2009 states "In the event of a large or major earthquake, particularly on the nearby San Andreas Fault System, the project is susceptible to ground rupture, ground shaking and seismic related ground failures". Also on page 8, the PJC report states "Consequently, we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high". In other words, it is the finding of PJC that active faults probably underlie the site.

Under the Alquist-Priolo Earthquake Fault Zoning Act, the Office of State Geologist delineates areas of fault hazards. An integral part of that work is reviewing consultants' geologic site investigations of fault hazards so that the State Geologist's Official Map can be revised and modified. These revisions occur when site investigations disclose previously unknown active faults, as is apparently reported by PJC on this site. Revisions by the State Geologist also occur when geologic site investigations determine that faults shown on the Official Maps are absent or incorrectly plotted on the maps. In other words, the Official Maps are works in progress that are periodically updated based on exactly the kind of information that has apparently been developed by PJC on this site.

On this site where the geologic consultant, PJC, has stated "... we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high" the precise locations of the fault traces must be determined so that appropriate building setbacks can be determined in order to conform to the requirements of the Alquist-Priolo Earthquake Fault Zoning Act. Contrary to what is stated in the Staff Report, this requirement is not voided by the difficulty of the task or the presence of neighboring residences that may be subject to the same or similar active fault rupture hazards.

The absence of active faults in proposed building areas has not been demonstrated. A great deal more work needs to be done to resolve this basic feasibility issue.

SLOPE STABILITY

The proposed driveway providing access to the proposed structures traverses a steep sand dune slope. Under the heading of "Slope Stability" the PJC report dated March 2, 2009 states "This section of driveway should be evaluated for static and seismic instability during the geotechnical phase of the project", in other words "later". This deferred "geotechnical" work is presented in the PJC report dated August 7, 2009. This report does not present a stability analysis of the steep slope to be traversed by the driveway. The August 7, 2009 report states "... the slope could be prone to lurching or instability during seismic ground shaking". "Could" is not stability analysis. Stability analysis is an Engineering Geologic and Geotechnical Engineering calculation that results in determination of a numerical factor of safety that either does or does not conform to minimum criteria based on statewide standards of practice.

It is my understanding that it is proposed to construct the driveway using retaining

walls. There are two obvious logistical problems associated with this retaining wall concept.

First, in order to construct a retaining wall it is necessary to make a temporary excavation called a "backcut" upslope of the wall to create working room to construct a wall foundation system that conforms to code requirements concerning footing design and setback from descending slopes and to construct the wall itself. This proposed driveway traverses the face of a sand dune that appears to be standing at the "Angle of repose", which is the maximum (most steep) gradient that loose dune sand will stand at without failing.

The inherent instability of excavations into loose sand deposits is the reason why there are fatalities when children dig sand tunnels and when excavations into sand collapse onto construction workers. On this site, any "Backcut" made at a steeper angle than the "Angle of repose" will probably cause a failure that extends upslope until the "Angle of repose" is reestablished, at which time a condition of equilibrium will exist again. In simple terms, this means that conventional retaining wall design and construction methods may not work in this application. Failure of retaining wall backcuts in loose dune sand are diagrammatically illustrated below.

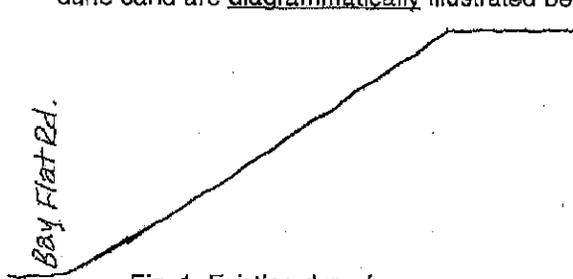


Fig. 1. Existing dune face.

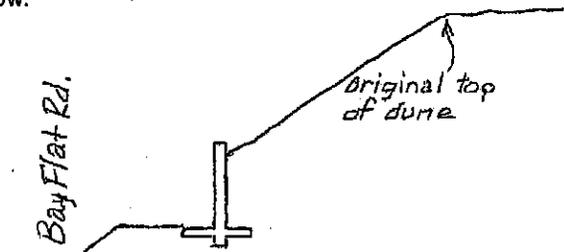


Fig. 2. Design concept.

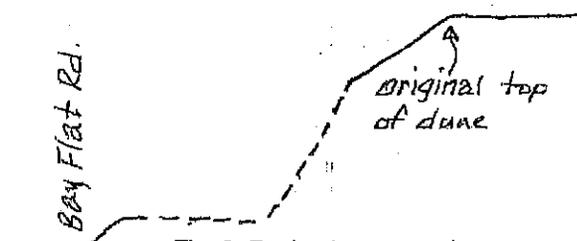


Fig. 3. Backcut attempted.

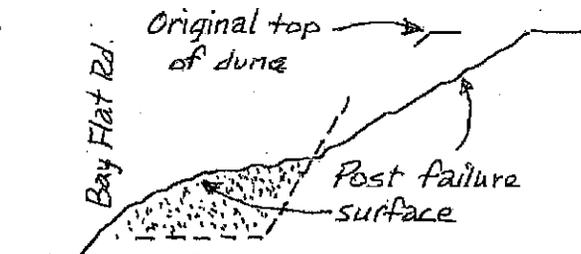


Fig. 4. Backcut fails.

Alternative retaining wall designs and construction methods that can be proven to be feasible may not meet Coastal Commission criteria. With regard to retaining wall design, unreinforced masonry and/or rocks simply placed on the ground surface

without proper footings and reinforcement do not appear to comply with the requirements of Sonoma County Permit and Resource Management Department retaining wall design criteria for new construction.

Secondly, dunes are deposits of loose sand moved about by strong winds. In order for the project to be feasible this driveway, that traverses the face of a sand dune, must remain stable and functional to underground utilities and pedestrian, homeowner and emergency vehicle traffic even during and after an earthquake on the nearby San Andreas fault. The ability of the driveway slope to meet this requirement has not been demonstrated. In fact no effort to demonstrate that has even been attempted.

With regard to the geologic stability of the sand dune face PJC & Associates, in their report dated August 7, 2009, states "...the slope could be prone to lurching or instability during seismic ground shaking".

"Could be prone" is not a stability analysis to either demonstrate stability or to improve stability to minimum industry standards, typically a factor of safety against failure of 1.5. In fact, "Could be prone" should mean to everybody involved with this project to not move forward with design, approvals and/or construction until the stability issue is resolved along with the issue of active fault hazards.

CONCLUSION

The present issue is whether or not geologic hazards exist at the site whose mitigation, for example existence of a building site free of active fault hazards and construction of a buttress fill to support the driveway slope, would be 1. feasible from a construction standpoint, and 2. consistent with the laws, codes and criteria that govern development in this Coastal Area.

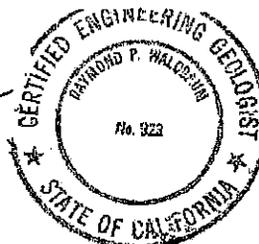
Copies of this report and my prior reports on this site are being provided to the California State Geologist, John G. Parrish, Ph.D., PG to verify that State laws and criteria concerning seismic hazards are applied uniformly by all State agencies with review authority on this project.

I trust that the forgoing information fulfills your present requirements. If you have any questions or require additional information, please do not hesitate to call.

Very truly yours

Signature on File

Raymond Waldbaum
Professional Geologist 3142
Certified Engineering Geologist 923



Pap, August 30, 2011

page 5

distribution: Addressee
Bodega Bay Concerned Citizens, attn. Ms. Maggie Briare
John G. Parrish, Ph.D., PG, State Geologist

Th 5.5a

SHEILA J GILMOREP O Box 352
Cazadero CA 95421-0352**Attention: Ruby Pap**
California Coastal Commission
North Central Coast District Office
45 Fremont, Suite 2000
San Francisco CA 94105-22198/30/11
Permit #A-2-SON-10-023**RECEIVED**

AUG 31 2011

CALIFORNIA
COASTAL COMMISSION

Dear Members of the California Coastal Commission,

I write to you as a member of the Concerned Citizens of Bodega Bay. I live right next door to the proposed multi-family home at 1835 Bay Flat Road.

Please know that there were once 5 egret/heron nesting sites around the bay. But now there is only this one, for which the only existing remnant of protection is the body of rules/law protecting ESHA. These rules/law can simply be "taken", and then what of the loss that might result?

Your very purpose as a Coastal Commission is to sort out in responsible manner the issues of human interaction in the delicate ESHA that is so vital to our well-being and the well-being of the many varied forms of life that inhabit that ESHA.

If you simply allow the taking of these rules, you vacate them entirely. You vacate their intention of caretaking. If you are only a rubber stamp for moneyed interests, you have not fulfilled your purpose.

The proposed driveway to the houses intended at 1835 Bay Flat Road would pass directly alongside and under the trees which are the nesting site...not 600 feet away, as per ESHA guidelines. If ANY trees come down as a result of the (driveway or home) building, that site is deeply compromised. Every tree lost significantly reduces the viable nesting spots.

One by one, all the other nesting sites have come down around the bay, and now this proposal nibbles at the last one. How much taking is enough? When do we say "No"? And when it IS too late, do we just say, "Oops"?

Nothing in our lifetimes can restore a nesting site. Once those birds are gone, how does the balance restore itself, and will we like it when it does? It is easier to protect this stand of trees for the birds than to try to "shore up" the resulting sways in natural balance. Please consider rejecting the proposed development.

Sincerely,

Signature on File~~Sheila J Gilmore~~

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SEP 02 2011

CALIFORNIA
COASTAL COMMISSION

Th5.5a

September 1, 2011

To:
COMMISSIONERS & STAFF OF THE CALIFORNIA COASTAL COMMISSION

Regarding:

a. Appeal No. A-2-Son-10-023 (Kelham & Kehlam Investments LLC, Sonoma Co.
Appeal by Commissioners Wan and Blank and appeal by Bodega Bay
Concerned Citizens, et al, from decision of County of Sonoma granting permit to
William Kelham & Kelham Investments LLC for construction of a new 2,515 sq. ft.
home, 1,216 sq. ft. garage, driveway, and 840 sq. ft. second dwelling unit on
vacant 9.96 acre parcel at 1835 Bay Flat Rd., Bodega Bay, Sonoma County.

The Bodega Bay Concerned Citizens, appellants in the above project, hereby
request a postponement be granted for the above agenda item scheduled to be
heard on Thursday, September 8, 2011, for the reasons listed below:

- Proper noticing procedure not followed. Information of the hearing and subsequent staff report was not received in a timely manner.
- Inconvenient time and place of hearing for all appellants to attend due to long distance and short notice.
- Staff report did not distinguish that two separate appeals were received. Each should be accepted separately for its merits and not combined.
- Development is inconsistent with the Local Coastal Plan.
- Project and staff recommendations violate LCP policies, LUP Environmental Resource Management Policies 4, 5, and 66; View Protection Policy 2; Alteration of Natural Landforms Policy 4; and Landform Guidelines Policy 5.
- Development is proposed within 600 ft. of established rookery. Access/egress road is sited within the rookery.
- Proposed development site consists entirely of coastal dunes and rookery. Entire site is determined to be ESHA.
- Lack of proper mitigation for loss of ESHA for dune habitat and for functionality of historic rookery.
- Incomplete geological hazards study. Appellants technical geologic reports submitted with the appeal were not provided to the Commissioners. Serious impacts were not fully addressed in staff report and recommendations. Project is sited in the San Andreas Fault Zone.
- Zoning was changed prior to purchase by Applicant to RR (Rural Residential). Prior to change, parcel had not been deemed "buildable" for decades due to its environmental and dunes status.

Page 2 – Request for Postponement for Hearing of September 8, 2011
Appeal No. A-2-SON-10-023 (Kelham)

- Applicant did not pursue due diligence with regard to the purchase of the property despite the fact that he is a licensed contractor and well versed in land acquisition. County of Sonoma allowed the applicant to pay necessary fees for permitting up front in order to establish a reasonable assumption of development.
- "Takings" claim is weak. County approval and staff recommendations did not adequately analyze existing feasible alternatives to the project and its impacts.
- No Environmental Impact Report was prepared for the project. A Mitigated Negative Declaration prepared by County staff was found to be flawed and was not included with the staff report. Staff recommendations contain virtually no workable mitigation for harm that will occur to ESHA.
- Staff Report Special Conditions beginning on Page 4 of 41, do not adequately protect the area, especially with regard to the rookery. Habitat protection Measures, Page 8 of 41, G & H allows for disturbance as it does not protect the area during the complete nesting period. Nesting can begin as early as January and last thru August. It also calls for and allows for the prevention of birds to establish nests within the work area prior to construction and calls for all nest structures and vegetation to be removed during the non-breeding season once the nests are vacated. All large species of raptors, osprey etc. along with the herons rely on the same nests they return to year after year. Removal of osprey nests, snags or dead tops of trees in areas surrounding osprey sites is prohibited by the LCP [see Page 5 of 18 of the staff report under "applicable policies", Items 61, 62, 63 and 64, along with Items 65 and 66 regarding heron rookeries.]
- Although the staff recommendations (K) call for all trees on the site to be preserved, it does not go far enough to ensure preservation. The site map for the road shows that it would be necessary to remove some of the most important trees containing nests in order to install the road. The recommended condition allows for removal of these trees when the roost or nest is unoccupied upon the word of a licensed arborist. Seldom are proper procedures followed regarding removal of trees and preservation of active rookeries. This is the prime reason why the 600 ft. buffer zone was established in the LCP and the Coastal Act. Most of the trees carry Landmark status due to their age and use. All the more reason the access road should not be placed as proposed.
- Staff did not adequately take into effect the fact that the road would be used for construction access for the residences during the nesting

**Page 3 – Request for Postponement of Hearing – September 8, 2011
Appeal No. A-2-SON-10-023 (Kelham)**

season. Use of this access site by heavy construction equipment would have a far-reaching effect to the rookery and stability of sand dunes.

For these reasons along with other important issues, we ask that this project be postponed to allow for a hearing be held at a more accessible place and time in the near future.

Thank you for your consideration.

Sincerely,

Signature on File

Margaret Briare, Representative
Acting on Behalf of the Bodega Bay Concerned Citizens, Appellants

Copies to: Peter M. Douglas, Executive Director
Charles Lester, Senior Deputy Director
Mary K. Shallenberger, Chair

Th5.5a

From: Francis Drouillard [mailto:dooly@novato.net]
Sent: Friday, September 02, 2011 9:43 AM
To: Charles Lester
Cc: Ruby Pap
Subject: Request to Postpone Hearing Item Th5.5a

Dear Senior Deputy Director Lester and District Supervisor Pap,

First, allow me to apologize for this late request. With the distant Commission hearing following a holiday, I believe you too will see the urgency.

Project: Hearing item Th5.5a Appeal No. A-2-SON-10-023 (Kelham & Kelham Investments LLC, Sonoma Co.)

Appellants: Commissioners Wan and Blank, as well as Bodega Bay Concerned Citizens and others.

For: Maggie Briare of Bodega Bay Concerned Citizens
(appellant)

Seeking: Postponement of hearing

This is a flawed project that can be turned into a good project with the right Commission action. For that reason, a postponement of the hearing is sought so this project can become a "win" for the applicants as well as the appellants.

The reasons for this request are enumerated below:

1. Request postponement of Appeal hearing.

1a. It appears that the Commission did not follow their own noticing procedure for a legal Appellant, and if so, should remedy that by granting a brief postponement;

1b. This appeal is entirely independent of the one filed by [former Commissioner] Sara Wan, and Commissioner Steve Blank, and thus deserves to be considered separately of theirs;

1c. Material technical attachments to the Appeal were not provided to the Commission in their meeting packet, which could also allow for an postponement;

1d. There appears to be no pressing deadline or economic urgency to the project applicant to have the appeal held at this meeting.

2. If the Commission chooses to begin the Appeal hearing now, ask them either to Continue it [without a final vote] until the next meeting, to give all commissioners a chance to read, and consider, technical reports left out of their packets;

3. If the Appeal is held now, ask the Commission to Deny the Project without Prejudice, due to the unmitigated Class One adverse impact under the Coastal Act [and CEQA] of the proposed drive constructed in the middle of a protected Heron rookery.

4. While there was some casual discussion of "a taking" at the Sonoma County PC hearing, this is clearly not a genuine issue here, since no

one has proposed that the property owner be allowed no reasonable use of any kind for the project site.

5. It would set a terrible precedent to approve a project that openly violates Sonoma County's LCP and its CEQA guidelines;

5a. If the project, and the driveway through the Heron rookery, were approved without mitigation or major offsets, off of a "mitigated Negative Declaration" rather than an EIR, even though the project site is delineated Coastal Zone ESHA.

5b. Sonoma County has, thus, never published public findings of "urgent or significant public benefit" to justify findings of overriding consideration for the applicant's proposed project.

6. There are "reasonable and feasible alternatives" to the driveway location and project footprint which might eliminate all significant Class One CEQA and Coastal Act impacts, if they were pursued.

6a. That the Appellant has offered to work with the Applicant and Sonoma County staff to pursue "reasonable and feasible alternatives" to the driveway location and project footprint, but that, so far, the applicant has categorically refused to accept the offer.

7. Note that the potential impact to the sensitive coastal dunes project site could be significantly reduced if the footprint of the proposed house were slightly shifted within the applicant's existing acreage, but that they have refused to consider that as well.

8a. Note that the issues of seismic stability, and potential coastal inundation and liquefaction issues, have not been fully or adequately addressed, either by Sonoma County, or by Coastal Commission staff.

8b. Geotechnical issues were addressed in the technical report that was left out of the Commissioner packets.

9. The significance and totality of these issues under the Coastal Act justify Denial without Prejudice for this application.

10. The Appellant would be willing to seriously consider accepting a revised project which would be conditioned on use of the "environmentally superior alternative" for the driveway, and a slight re-positioning of the proposed house on the site to reduce "worst damage" to the sand dune system.

Thank you very much for considering this late and lengthy request.

Frank Drouillard, PE
Novato, CA
ORCA Mendocino Chapter
Commissioner Liaison

ORCA DOES NOT TAKE A POSITION ON ANY PROJECT HEARD BY THE COMMISSION!
Rather, we present the position of other environmental groups in a manner that addresses Coastal Act and LCP requirements and allows Commissioners to act well within their authority.