


CALIFORNIA COASTAL COMMISSION

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Filed: Oct. 11, 1996  
 Hearing Opened & Continued: Nov. 12, 1996  
 Staff: James Muth  
 Staff Report: Jan. 24, 1997  
 Hearing Continued: Feb. 5, 1997  
 Commission Action:

STAFF REPORT AND RECOMMENDATION ON APPEAL

SUBSTANTIAL ISSUE DETERMINATION

LOCAL GOVERNMENT: Humboldt County

DECISION: Approval with Conditions

APPEAL NO.: **A-1-HUM-96-70**

APPLICANTS: **STEVE MOSER and  
 BRIAN & CINDI HUNT**

PROJECT LOCATION: North side of Murray Road near the Mad River in  
 McKinleyville, Humboldt County, APN 511-11-14.

PROJECT DESCRIPTION: **63-lot subdivision known as Sand Pointe of a 26.5  
 acre site**

APPELLANTS: Patricia Hassen/Concerned Citizens, Barbara  
 Kelly/Humboldt Coastal Coalition, and Lucille  
 Vinyard/Redwood Chapter of the Sierra Club.

SUBSTANTIVE FILE DOCUMENTS: Humboldt County Local Coastal Program; Humboldt  
 County Coastal Development Permit No. CDP-39-94;  
 Conditional Use Permit No. CUP-22-94; Major  
 Subdivision Permit No. FMS-11-94; Rezone No.  
 ZR-18-94; Draft Technical Report for the Humboldt  
 County Airports Master Plan by Hodges & Shutt,  
 dated January 25, 1985; Executive Summary of the  
 Humboldt County Airports Master Plan by Hodges &  
 Shutt, dated June 1980; Humboldt County Airport  
 Land Use Compatibility Plan by Hodges & Shutt,  
 dated March 1993; and the Arcata-Eureka Airport  
 Master Plan for Humboldt County by Hodges &  
 Shutt, dated May 1993.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The appellants raise eight appeal issues. In the most likely order of importance, the appeal issues relate to: (1) airport safety and development density, (2) seismic and erosion hazards, (3) bonus density for Planned Unit Development, (4) public access, including prescriptive rights, (5) community character and views, (6) wildlife impacts, (7) urban plan designation, and (8) hazardous materials. Staff believes the appeal does raise several issues. However, the appeal does not raise substantial issue with the standards set forth in the certified local coastal program or the public access policies of Chapter 3 of the Coastal Act.

The Motion to adopt the Staff Recommendation for finding No Substantial Issue is found on Page 3.

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STAFF NOTE:

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603.)

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because it is located between the sea and the first public road (Highway 101) paralleling the sea. The subject development is also appealable to the Coastal Commission as it is not a principal permitted use and requires a conditional use permit from Humboldt County.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If the

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Commission determines that the development does not raise a substantial issue, then the project may proceed as approved by the County. Alternatively, if the Commission determines that the development does raise a substantial issue, then the Commission would proceed to a full public hearing on the merits of the project (which is likely to occur at a subsequent meeting). If the Commission were to conduct a de novo public hearing on the proposed project, then the applicable test for the Commission to consider would be whether the development is in conformity with Humboldt County's certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

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I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeals have been filed. Staff recommends a YES vote on the following motion:

MOTION:

I move that the Commission determine that Appeal No. A-1-HUM-96-70 raises NO substantial issue with respect to the grounds on which the appeals have been filed.

To pass the motion, a majority of the Commissioners present is required. Approval of the motion means that the County permit is effective.

II. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal for this project from Patricia Hassen representing Concerned Citizens, Barbara Kelly representing the Humboldt Coastal Coalition, and Lucille Vinyard representing the Redwood Chapter of the Sierra Club.

The appellants submitted an attachment to their appeal form that provides the reasons for their appeal. The attachment is included as Exhibit No. 1 of this report. The concerns raised by the appellants in the appeal are summarized below.

In the most likely order of importance, the appellants contend the following:

1. **DEVELOPMENT DENSITY INCONSISTENT WITH AIRPORT SAFETY.** The project's density of development within the airport approach zone is inconsistent with airport safety because the project exceeds the maximum permitted land use planning and zoning code densities for the site by a factor of 6 to 7 fold.
2. **SEISMIC AND EROSION HAZARDS NOT ADEQUATELY ADDRESSED.** The proposed project does not adequately address potential hazards from the earthquake fault that runs through the property and from the erodable coastal bluffs on the property. Development setbacks appear to be inadequate.
3. **BONUS DENSITY ALLOWED BY THE PLANNED UNIT DEVELOPMENT CONCEPT IS NOT JUSTIFIED.** The project may not be a PUD. The project's 20 percent bonus density allowed by the Planned Unit Development concept is not justified because the applicants have not provided the required "extraordinary public benefits". In addition, the project does not provide for any lower income housing.
4. **PRESCRIPTIVE RIGHTS NOT RECOGNIZED and CLOSURE OF PUBLIC ACCESS.** The prescriptive rights survey of the site which was conducted by the County is inadequate. Coastal public access over the site will be lost because the proposed subdivision is a private, locked-gate community that is surrounded by a 5 to 6-foot-high fence. In addition, the failure to improve the unimproved condition of the Hammond Trail located to the west of the project is an inadequate substitute for many potential trail users.
5. **DEVELOPMENT DENSITY INCONSISTENT WITH COMMUNITY CHARACTER AND VIEW PROTECTION.** The project's density of development is inconsistent with the rural community character of the McKinleyville area. In addition, the project will block or interfere with public views of the sea.
6. **LOSS OF WILDLIFE HABITAT AND ENVIRONMENTALLY SENSITIVE VEGETATION.** The project will result in the loss of open space and wildlife habitat, including the foraging habitat for various birds of prey. There are no assurances that the environmentally sensitive, bluff top vegetation will be retained.
7. **DEVELOPMENT DENSITY EXCEEDS THE SITE'S URBAN PLAN DESIGNATION.** The project's density of development exceeds the urban plan designation for the site, which is RE, Residential Estates, 0-2 units per acre.
8. **PRESENCE OF HAZARDOUS MATERIAL.** The project site may contain a hazardous material (i.e. Arsenic Tri-Oxide) which was previously used on site during past agricultural operations to grow flowers and bulbs.

**B. LOCAL GOVERNMENT ACTION**

The Humboldt County Building and Planning Department received an application for the proposed subdivision on February 9, 1995. A draft Environmental Impact Report for the project was completed in the early part of 1996. At the Planning Commission hearings of May 30, June 27, and July 16, 1996, the applicants, County staff, and numerous property owners spoke to concerns regarding the proposed density of the Sand Pointe Subdivision in light of presently adopted plan and zoning standards, and site conditions. The concerns about the project focused primarily on the requested 20 percent bonus density increase, seismic and hydrologic forces affecting the site, compatibility of the development with the neighborhood, effects on coastal resources, and the land use compatibility with the Eureka-Arcata Airport.

In addition, the staff recommendation from the County Planning and Building Department differed with the staff recommendation from the County Public Works Department, including the Aviation Division of the Public Works Department. The Aviation Division is the assigned administrator for airport operations and the review of land development involving airport issues. The Aviation Division was very concerned about possible threats to continued airport operations from the proposed residential density. Specifically, staff at the County Public Works Department were not in favor of the project's 20 percent bonus density increase, primarily because of airport land use compatibility relating to noise and safety issues and the density of the proposed development.

On July 16, 1996 the Planning Commission deadlocked in a 3 to 3 vote (with one abstention), thus failing to act upon the Final EIR and the proposed project. The tie vote of the Planning Commission represented "no action" being taken on the project, which is a functional denial of the project. The Planning Commission's non-action and effective denial of the project was then appealed by the applicants to the Board of Supervisors.

The Board of Supervisors has the right to hear and decide all appeal matters per Section A315-26 J of the Humboldt County Coastal Zoning Ordinance. The Humboldt County Board of Supervisors held a series of public hearings on the proposed development on August 13, August 20, August 27, September 3, September 24, and November 5, 1996.

The first action of the Board of Supervisors was to sit as the Airport Land Use Commission for the Eureka-Arcata Airport. The State Aeronautics Act, as codified in the California Public Utilities Code (PUC) commencing at Section 21670, establishes the requirements for providing orderly development on and surrounding public use airports. Criteria for the formation of airport land use commissions, the formulation and adoption of airport land use plans, and procedures for the review of development projects within airport plan boundaries are detailed. PUC Section 21676(b) reads as follows:

Prior to the amendment of a general plan or specific plan, or the adoption of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes the specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

On August 20, 1996, while acting as the Airport Land Use Commission, the Board of Supervisors found, by a 3 to 2 vote, that the proposed 2.4 dwelling units per acre density for the project and site was compatible with the adopted (1980) airport master plan.

At a September 3, 1996 meeting, the Board of Supervisors approved three permits with conditions for the project, consisting of a tentative map approval, a conditional use permit, and a coastal development permit. At a September 24, 1996 meeting, the Board of Supervisors adopted County Resolution No. 96-76 to certify the Final EIR for the project and adopt findings, mitigation and monitoring measures, and a statement of overriding considerations. All of the mitigation and monitoring measures of the Final EIR are incorporated by reference into Condition No. 4 of the coastal development permit. The County's conditions of approval for the coastal development permit and the adopted mitigation and monitoring measures are included as Exhibit No. 2. Only the coastal development permit for the project is appealable to the Coastal Commission.

The Coastal Commission received notice of the County's final action on the coastal development on October 1, 1996. The Coastal Commission's ten-working-day appeal period for the project ended on October 16, 1996 at 5 pm. An appeal was received in the Commission office on October 11, 1996, within the 10 working day appeal period. The local decision was appealed to this Commission by three appellants representing three groups of people. The hearing on the appeal was opened and continued on November 12, 1996, consistent with Coastal Act Section 30625 and 14 Cal. Code of Regs. Section 13112.

C. PROJECT SETTING AND DESCRIPTION.

1. Area Location.

The project is located in the McKinleyville area of Humboldt County, about 1,200 feet west of Highway 101 intersection with Murray Road. The project is located at the westerly end of Murray Road, on the north side of the road, between the Pacific Sunset Subdivision and the old Hammond Railroad right-of-way. The project is located in the north west corner of McKinleyville's urban limit line. See Exhibits No. 3 and 4.

The western property boundary generally parallels a coastal bluff which is adjacent to the Mad River and the Pacific Ocean. An unimproved portion of the Hammond Trail, a public coastal trail, is located mid-slope on the bluff slope and within a cut bench area that was the former right of way for the Hammond Railroad. To the west of the Hammond Trail, between the Mad River and the ocean, is an undeveloped 67± acre parcel owned by the applicants that consists of beach and sand dunes. Widow White Creek is located within a ravine, just beyond the northern boundary of the project. The eastern property boundary abuts the Pacific Sunset Subdivision, and the southern property boundary fronts on Murray Road.

The areas to the west and to the north of the proposed subdivision are primarily undeveloped and provide recreational opportunities due to their proximity to the old Hammond Railroad right-of-way, the Mad River, the Pacific Ocean, and White Widow Creek. The areas to the east and to the south are developed residential subdivisions interspersed with larger undeveloped tracts of land.

## 2. Project Site.

The project site is located over a gently sloping, open coastal terrace that is about 50 to 80 feet above sea level. The property is currently developed with one residential unit which fronts Murray Road near the southeast corner of the project site. The site was previously used for agriculture, primarily to grow flowers and bulbs. The site is now used a hay field. The top of the bluffs has a series of small indentations indicating where gullying has occurred in the past. Except for the Hammond Trail, the area from the Mad River shoreline to the top of the bluffs is generally covered by dense brush and trees. Natural drainage of the site is to the west and southwest with a minor drainage area to the north to Widow White Creek.

The site has a number of natural and man-made hazards associated with it. With respect to the natural hazards, the site is within an Alquist-Priolo special studies zone. A surface trace of a primary thrust fault has been found and mapped in the southwesterly portion of the property. The project site is also situated above a 50-foot-high coastal bluff that is adjacent to the Mad River and subject to erosion. With respect to man-made hazards, the entire subdivision is located at the end of the airport approach for one of the two runways used by the Arcata-Eureka Airport. The LCP has land use regulations which limit the density in the airport approach and transition zones to maintain airport safety and to minimize risks to life and property for those who live beneath such zones.

The majority of the project site is agricultural land that is presently used for hay production. The "perennial grassland" over the open coastal terrace is dominated by European grasses. The western margin of the project site includes a coastal bluff and a native plant association known as "northern coastal scrub". This association extends from the vegetated margin of the grassland westward over the edge of the bluff, down over the bluff slope, to

end above the riparian influence zone of the Mad River. This northern coastal scrub plant community is dominated by California blackberry (*Rubus ursinus*) and a variety of other shrubby perennial species, including coast silktassel (*Carrya elliptica*), cascara (*Rhanus purshiana*), salal (*Gaultheria shallon*), twinberry (*Lonicera involucrata*), coyotebrush (*Baccharis pilularis*), arroyo willow (*Salix lasiolepis*), blueblossom (*Ceanothus thyrsiflorus*) and nootka rose (*Rosa nutkana*). Swordfern (*Polystichum munitum*) is also present. The northern coastal scrub plant community also includes numerous Sitka spruces (*Picea sitchensis*) and beach pines (*Pinus contorta*). An isolated "beach/pine forest" (including Monterey Pine (*Pinus radiata*)) is located on the coastal terrace at the north end of the subdivision. An "alder/riparian forest" is located within the coastal ravine that contains Widow White Creek. The edge of the Mad River is bordered by a "northern fore dune grassland and mat" community. See Exhibit No. 5.

### 3. Project Description.

The Sand Pointe project is the phased subdivision of a 26.5-acre site into 63 single-family residential parcels ranging in size from approximately 9,900 to 21,800 square feet in a closed (gated) community. At the August 20, 1996 meeting of the Board of Supervisors, the applicants clarified their project description to include authorization of the construction of 63 principal residences, including the construction of streets, parks, screening, utilities and other site improvements through the combined coastal development and conditional use permit provisions. Accordingly, an informational note in the approved coastal development permit indicates that: "construction of a single-family dwelling on any one lot within a given map phase will vest the coastal development permit for all dwellings under that phrase."

In addition to the creation of 63 lots and the construction of 63 houses, the project creates five other lots; four will be open-space landscaped parks and one will be used as a recreational vehicle storage area for the homeowners. See the subdivision plan in Exhibit No. 6.

The approved project also includes: (a) four open-space parks and a continuous greenway system within the boundary of the project, (b) onsite street lighting that is low-elevation, low-intensity lighting, and (c) onsite storm drainage system designed to accommodate onsite treatment of non-point source water pollution, while allowing adequate storm drainage for larger runoff events.

The approved project includes paved roadways with rolled curbs, offstreet parking, underground utilities, engineered drainage system, a homeowner's storage lot, and trailways which will provide access to a local coastal trail. Other features of the approved project include internal pocket parks and pathways for the residents of the subdivision, as well as a recreational vehicle storage area in the northeast corner of the project. All parcels will be served by public water and sewer. An outbuilding will be demolished and two cypress trees will be removed. The project does not extend Wilbur Avenue



westerly, from the Pacific Sunset Subdivision into the the Sand Pointe project site, although the proposal does include a "crashable" barrier at the end of Wilbur Avenue.

The Sand Pointe project, as a Planned Unit Development, was approved by the County to be a secured (fenced and gated) community. As approved, the project has a 5 to 6-foot-high perimeter fence with a gated access from Murray Road. See Exhibit No. 7. The approved project has a variety of development exceptions, such as reduced road widths, parking pockets, lot dimension and setback variances. The Board of Supervisors imposed a condition of approval which limits the height of the fence on east side of the project to a 5-foot-high fence with an open style (and excepting that portion of the fence by the R.V. storage area). The Board of Supervisors also directed the applicants and the County to look into the possibility of installing a fence east of the Hammond Trail on a portion of the bluffs.

Onsite detention swales have been included in the project design, in order to reduce the percentage of incident rainfall running off the site, increase infiltration, trap sediments, and provide for biological treatment of biological and some chemical wastes resulting from project site occupancy. The increased runoff exceeds the capacity of the existing storm drainage system in Murray Road. As a result, segments of the existing storm drain system in Murray Road will be augmented or replaced with larger components (i.e. increase the pipe size below the point of connection of the Sand Pointe drainage system, from 24 inches to 36 inches diameter.) The specific design elements will be approved by the County Public Works Department.

The project could result in erosion at the existing storm drain on the Mad River shoreline. Thus, an energy-dissipation device will be constructed at the end of the existing Murray Road storm drain. The device's design will be approved by the County Public Works Department.

The project could result in nonpoint source water pollution (especially sediment) from the site associated with storm drainage. As approved by the County, a construction-period sediment control plan, identifying the specific Best Management Practices to be implemented to avoid sedimentation-related impacts must be submitted for the review and approval of the County Planning Department and California Department of Fish and Game.

4. PUD Bonus Density.

The approved project includes a subdivision for 63 parcels, which represents a 20 percent density bonus with respect to existing LCP requirements of 0 to 2 units per acre and zoning requirements of the RS-20 zone, meaning residential single-family, minimum lot size of 20,000 square feet. The certified LCP authorizes up to a 20 percent density bonus when the project to which it is related provides an "extraordinary public benefit." To qualify for the density bonus, the applicants proposed the following benefits:

- (1) a fee simple dedication of 67-acre parcel (APN 511-011-05) consisting of beach and dune lands west of the project site and the Mad River to be conveyed to a suitable public agency or an appropriately qualified non-profit organization,
- (2) the creation of a 5,000-square-foot "resting park" associated with the Hammond Trail at the end of Murray Road and located near the entrance driveway to the subdivision, to be dedicated to the McKinleyville Services District,
- (3) the removal of two westerly power/telephone poles along Murray Road and the undergrounding of the above-ground wires along the west end of Murray Road,
- (4) an offer to dedicate an easement for public access from the end of Wilbur Street along the east side of the subdivision northward to the Hammond Trail,
- (5) voluntarily limiting the building height to 23 feet (from average grade to roof peak) on Lots A-1 through A-4, A-7 through A-10, B-7, and C-1 through C-24 to protect views, and
- (6) an offer to install a fence on the east side of the Hammond Trail.

See Exhibit No. 8 for a more detailed description of these benefits.

5. Summary of Applicable Land Use and Zoning Regulations.

The Sand Pointe property is subject to review under the McKinleyville Area Plan (MAP) of the Humboldt County Local Coastal Program and the Humboldt County Coastal Zoning Regulations (HCC). Under the McKinleyville Area Plan, the plan designation for the property is RE, meaning Residential Estates, 0-2 dwelling units per acre. See Exhibit No. 9. The property is principally zoned RS-20, meaning Residential Single Family, with a minimum lot size of 20,000 square feet. The following special area combining zones and associated regulations also apply to the property: AP - Airport Safety Review, G - Alquist/Priolo Fault Hazard, A - Archaeological Resource Area, N - Noise Impact, R - Streams and Riparian Corridor Protection, P - Planned Unit Development, and Q - Qualified Combining zone (to prohibit second units).

The certified LCP includes, by reference, a number of components of the McKinleyville Community Plan, including the circulation plan and the Airport Compatibility Plan. The Airport Compatibility Plan was adopted by the County for off-airport property, based on a plan prepared in 1980 by Hodges and Shutt. The Airport Land use Compatibility Plan was updated in 1993 by Hodges and Shutt, but the County but did not adopt it as an amendment into the County's certified Local Coastal Program. Both the certified 1980 plan and the uncertified 1993 plan were considered in the EIR and discussed by both the Planning Commission and the Board of Supervisors at public hearings for the project.

D. SUBSTANTIAL ISSUE ANALYSIS.

1. Grounds for an Appeal.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

The hazardous waste issue raised by the appellants is not a valid ground for an appeal because it does not allege an inconsistency with any LCP policy or applicable Coastal Act policy and because none of the LCP/Coastal Act policies specifically address this issue. In addition, whether the County's actions are legally adequate under the provisions of the California Environmental Quality Act (CEQA) are not valid grounds for appeal because they also do not allege an inconsistency with any LCP policy or with any Chapter 3 access policies of the Coastal Act.

However, the remaining seven issues raised by appellants in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with various policies of the certified LCP. Many of the Chapter 3 policies of the Coastal Act have been enacted as County policy within the LUP, and thus are policies of the certified LCP.

Public Resources Code section 30625(b) states that the Commission shall hear an appeal unless it determines:

"With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603."

The term "substantial issue" is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal.Code Regs., Title 14, Section 13115(b).)

In this instance, the Commission does not necessarily agree with all of the points raised by the appellants against the project or with all of the points raised by the applicants and their agents for the project. Many of the issues raised by the appellants do indeed address valid land use planning concerns. On balance, however, the Commission finds that no substantial issue exists with regard to the project's conformance with the certified Humboldt County LCP.

2. Analysis of Issues Raised with Relevant LCP and Coastal Act Policies.

Seven of the issues raised by the appellants are subject to various policies and regulations within the certified McKinleyville Area Land Use Plan (MAP) and within the certified Humboldt County Coastal Zoning Code (HCC). A summary citation of the applicable MAP and Coastal Act policies appears with each issue area below.

a. Airport Safety and Development Density.

(1) Applicable Policies.

MAP 3.28 G; Section A314-50 D (3) of the HCC; and by reference, the 1980 Airport/Land Use Safety Compatibility Criteria.

MAP 3.28 G applies to the Arcata-Eureka Airport Special Study Area, and it states:

1. New development within the Arcata-Eureka Airport approach and transitional zones shall be consistent with the approved off-site development guidelines contained in the adopted County Airport Master Plan. The Airport Land Use Commission will define and formally establish an airport safety zone, adopt specific noise and safety standards, and apply such standards to all new development within these zones.
2. Generally, within the airport approach and transitional zones the plan recommends an overall residential density of 1 unit per 2.5 acres. Based on this recommendation, the land use designation Residential Low Density within the transitional and approach zone is amended to include the plan density of 0-8 units per acre. As amended, the planned land uses and densities will not frustrate or prejudice the Airport Land Use Commission's task of implementing the Airport Master Plan.
3. The clustering of new development or planned unit development technique shall be encouraged for new development in these zones to mitigate health and safety concerns.

Section A314-50 D (3) of the HCC states:

- (3) The maximum density in an approach zone is one unit per three acres. A minimum of one (1) dwelling unit per lawfully created lot is permitted, even if this density is exceeded. The special permit process shall be used to retain to the maximum extent feasible the contiguous open space in the approach zone.

Exceptions to the maximum density of one unit per three acres within an approach zone may be permitted subject to approval by the Director of the Department of Public Works.

(2) County Action.

At an August 20, 1996 meeting of the Board of Supervisors acting as the Airport Land Use Commission, the Board found that the project's 2.4 unit/acre density was compatible with the adopted (1980) airport master plan. At a continued hearing of that meeting, John Murray (the Director of Public Works) stated that he was "very comfortable" with the decision that the Board of Supervisors had made (i.e. that the project's density was consistent with the density standards in the adopted 1980 Airport Master Plan). Mr. Murray orally indicated that he had telephoned the firm of Hodges & Shutt (the firm who had performed all of the studies) and explained the decision of the Board to them. In making this statement, the Director of the Public Works Department effectively exempted the proposed project from the 1 unit/3 acre density standard of the AP zone as provided in Section A314-50 D (3) of the HCC.

(3) Appellants Contentions.

The appellants contend that the project's density of 2.4 dwelling units per acre is inconsistent with airport safety because the project's density exceeds: (a) the maximum permitted density of 1 dwelling unit per 2.5 acres that is required in MAP Policy 3.28G, and (b) the maximum permitted density of 1 dwelling unit per 3 acres that is required for all new development within an airport approach zone per Section A314-50 D (3) of the HCC.

The appellants also contend that density of the proposed subdivision is inconsistent with airport safety. There are two aspects to this contention. The first aspect is concerned with the safety of people who live under an airport approach zone because of the possible risk of plane crashes. The proposed subdivision is located entirely within the approach zone for one of the two runways at the Arcata-Eureka Airport. Aircraft accidents are rare. However, when such accidents do occur, they tend to be catastrophic and are most likely to occur near the end of airport runways, during take-offs and landings. See Exhibits No. 10 and 11 for the location of the airport approach and transitional zones in relation to the project. See also the comment letter in Exhibit No. 12.

The second aspect is concerned with the continued operations of the airport. Specifically, the more people who live under an airport approach zone, the greater the number of complaints about noise and the greater the likelihood of interference with normal airport operations.

(4) Discussion.

In 1980 a document entitled: "Draft Technical Report, Humboldt County Airport Master Plan" (Hodges & Shutt), Aviation Planning Services) was adopted for use by the County. The document contains background information on airport planning issues, off-airport planning issues, and discussions of airport/land use compatibility policies (noise, airspace, and safety). The document recommended certain airport/land use compatibility policies. The criteria to

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be used to evaluate whether a land use is acceptable with respect to its airport proximity is shown in the Airport/Land Use Safety Compatibility Criteria. See Exhibit No. 13.

When the County adopted the McKinleyville Area Plan (MAP) in 1982, it incorporated the 1980 Airport Master Plan into section 3.28 G, the Arcata-Eureka Special Study Area. As noted above, MAP 3.28 G generally recommends an overall residential density of 1 unit per 2.5 acres within the airport approach and transitional zones (emphasis added). It appears that MAP 3.28 G provides some discretion on the part of the County in interpreting this maximum density limitation in such zone by using the words "generally" and "recommends".

The site is designated with several combining zones. These "overlay or combining zones" are used where special regulations apply to the property. The purpose of the combining zones is to establish regulations for land use and development in special areas that are identified in the Humboldt County General Plan and LCP. The special zone regulations apply when any of the special area combining zones are combined with a principal zone by the County Board of Supervisors. The HCC states that "the most restrictive regulation governs" where one or more of the County's regulations conflict with one another or where one or more regulations are applicable to the same matter within a zone.

The site is subject to the AP (Airport Safety Review) combining zone as identified in Section A314-50 of the HCC. The requirements of the AP zone are in addition to the requirements of the principally permitted RS-20, Residential Single Family, one unit per 20,000 square feet. The purpose of the AP zone is to establish regulations to maintain compatibility between the proposed land uses and development and Humboldt County airports and to further minimize risks to life and property under airport approach zones. The 1 unit/3 acre density of the AP zone comes from the 1980 Airport/Land Use Safety Compatibility Plan. The maximum density for unsubdivided lands within an AP zone is limited to one unit per three acres, unless an exception is made by the Director of the Public Works Department.

MAP Policy 3.28 G does not specifically indicate how a maximum density of 1 unit per 2.5 acres is to be interpreted, and the numerical analysis and assumptions used by the applicant's agent in reaching the appropriate density are not entirely clear.

There are many reasons why the appellants believe their contentions raise a substantial issue with respect to airport safety and the density of development. First, the information in the 1980 Airport Plan is the only legal standard of review under the County's LCP. Second, the project density is 6 to 7 times greater than the maximum permitted density in the LCP. Third, MAP Policy 3.28 G 3 specifically requires that clustered development or planned unit development be encouraged for new development in the airport approach and transitional zones to mitigate health and safety concerns. In this case, all of the development has been concentrated in the approach zone.

Fourth, according to the appellants, the numerical analysis used by the applicant's agent seems to take credit for the future development of land and water areas within the airport approach and transitional zones that cannot be developed and to transfer that credit to the subject property. Fifth, although the County has relied upon the information in the 1993 Airport Plan to review developments located outside of the coastal zone (see property of Stephen Dale, File No. 511-202-31, Case Nos. FMS-02-93, SP-290-93), this is the first time that the County has relied upon information in the 1993 Airport Plan for a property that is located within the coastal zone.

Sixth, according to the appellants, the information in the 1993 Airport Plan may be the most recent information available, but it is not necessarily the best information available. The people who live in McKinleyville have not had a formal opportunity to comment on the 1993 Airport Plan. The 1993 Airport Plan has a number of questionable assumptions, and it does not take into account air traffic from helicopters used by the U.S. Coast Guard Facility (located next to the airport) which also use the approach zone over the subject property. If airport safety is a significant issue, then the Coastal Commission should listen to the people who actually run and use the airport.

Seventh, according to the appellants, when the County Board of Supervisors sat as the Airport Land Use Commission, Section 21767 of the Public Utilities Code directs the County to look at airport safety in making its decisions. The federal funds which the airport receives may be jeopardized if approval of the project compromises airport safety. If the federal funds are withheld because the project jeopardizes airport safety, there is a question as to whether the County has the funds to "buy back" the approved development from the developer to eliminate the problem. McKinleyville is the fastest growing community in Humboldt County, and airport traffic is likely to expand, not contract in the future. In short, the airport is a public facility of statewide and regional importance that cannot be relocated and should not be jeopardized.

Despite the arguments raised by the appellants, as summarized above, the Commission finds that the LCP allows a certain amount of flexibility in determining the appropriate density for this project. Section A314-50 D (3) specifically allows the Director of Public Works to make exemptions to the maximum allowable density. The Director of the County Public Works Department has exempted the proposed project from the 1 unit per 3 acre density standard of the AP zone, consistent with this section. The Commission notes that the language of Section A314-50 D (3) does not indicate "how" the exception is to be made (i.e. orally or in writing). In addition, the language of Section A314-50 D (3) does not provide any specific criteria to grant an exception to the 1 unit per 3 acre density standard of the AP zone. It appears that the County technically complied with its LCP as certified. The Commission thus determines that, as approved by the County, the proposed project raises no substantial issue with regard to the project's conformity with the certified LCP policies on airport safety and development density.

b. Seismic and Erosion Hazards.

(1) Applicable Policies.

MAP Policy 3.28; Sections A314-16, A314-51, and A315-16 of the HCC; and Section 30253 of the Coastal Act.

MAP Policy 3.28 specifically incorporates Section 30253 of the Coastal Act. Section 30253 of the Coastal Act states in applicable part:

New development shall...minimize risk to life and property in areas of high geologic, flood, and fire hazard,...assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas or in any way require the construction of protective devices....

MAP Policy 3.28 A also states in applicable part:

New development shall be consistent with the adopted Humboldt County Safety and Seismic Safety Element of the General Plan.

MAP Policy 3.28(C)(3) also sets certain development standards including a standard that:

The developments permitted in the hazard areas shall be sited and designed to assure stability and structural integrity for their expected economic lifespans (emphasis added)...Bluff and cliff developments...shall not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.

In addition, Section A315-16 H (1) (b) requires:

A project as proposed will not cause or allow a structure for human occupancy to be placed within fifty (50) feet of a trace of an active fault (emphasis added).

(2) County Action.

Condition No. 1 of the coastal development permit states:

All of the recommendation set forth in the "R-1" geotechnical and geologic evaluation (SHN, 1994) shall be implemented as a condition to the issuance of permits or other grants of approval for the development or improvement of the site(s).

Condition No. 4 of the coastal development permit states:



All development pursued under the coastal development and conditional use permits is subject to the environmental impact mitigation measures adopted by the Board of Supervisors.

(3) Appellants Contentions.

The appellants contend that the development setbacks appear to be inadequate and that the proposed project does not adequately address potential hazards from the earthquake fault that runs through the property and from the erodable coastal bluffs on the property. More specifically, the appellants contend that: (a) designated house sites are less than 50 feet from the surface trace of the earthquake fault, and (b) the assumed 50-year economic lifespan for the proposed houses is too short and this results in an inadequate setback from the edge of the coastal bluffs. See Exhibit No. 14.

(4) Discussion.

(i) Seismic and Earthquake Hazards.

As previously mentioned, the surface trace of an earthquake fault (the Mad River Fault) runs through the southwesterly portion of the property. The project plans indicate that 16 lots have designated building sites that are less than 50 feet (emphasis added) from the active trace of an earthquake fault.

The Draft EIR for the project notes on page 3-6 that:

In addition to strong seismic shaking, earthquakes can be accompanied by direct changes in the land surface. The ground surface at the location of a fault may be offset by an earthquake. Any man-made structures or appurtenances built across the fault are likely to be destroyed by the surface rupture.

An Earthquake Fault Zone, Fault Evaluation Report, for the proposed project was prepared by SHN, consulting engineers and geologists, in November of 1994. Among other things, the report notes that a primary thrust fault was identified traversing the southwestern portion of the property. The report indicates that a "stratigraphic displacement in excess of the maximum trenching depth of 12 feet has occurred along the primary fault" and that "cumulative displacement of at least 6 feet has occurred along the zone of smaller faults." The report recommends that structures for human occupancy be located no closer than 50 feet east (upper plate) and 25 to 30 feet west (lower plate) of where the projected fault plane intersects the ground surface.

The Fault Evaluation Report was followed by a Preliminary R-1 Geologic and Geotechnical Report for the proposed project, which was also prepared by SHN in December of 1994. Among other things, the R-1 report incorporates the recommendations of the earlier Fault Evaluation Report.

As required by Section A315-9 B of the HCC, the adequacy of the Fault Evaluation Report was reviewed for the County by Giblin Associates, Consulting Geotechnical Engineers. Giblin Associates concluded their review of the geotechnical information with the following comments:

Based on our on-site evaluation and review of the above referenced fault investigation report by SHN Consulting Engineers, it is our professional opinion that the information presented in the report generally satisfies the policies and criteria in California Division of Mines and Geology Special Publication 42.

Opinions and conclusions regarding active faulting and/or risk are solely the responsibility of SHN Consulting Engineers. We assume no responsibility for the opinions and conclusions of the SHN Consulting Engineers.

The two geotechnical reports were then reviewed by LACO Associates, Consulting Engineers and Geologists, in March of 1996. LACO Associates were hired by one of the groups that has appealed the project to the Coastal Commission. The review by LACO Associates was limited to a study of the existing geotechnical data for the site that is found in the Draft EIR, etc. In general, LACO Associates felt that the geotechnical reports were well thought out and carefully prepared. However, they had some sharp differences of professional opinion regarding the recommendations. For example, LACO Associates stated:

...we cannot emphasize ...too strongly, that the location of the surface trace of the fault is based too heavily on the interpretation of the slope profiles, and is somewhat lacking in hard data, i.e. trenching.

LACO Associates concluded that: (1) the surface trace of the fault is speculative, (2) additional trench investigations should be considered to more accurately locate the fault, and (3) there is little basis for adjusting the standard zone for exclusion for structures for human occupancy (setbacks) of 50 feet on both sides of the fault to only 25 feet on the west side of the fault trace. LACO Associates summarized this portion of their opinion by stating: "It is our opinion that the [final EIR] does not adequately prove that the adjustment of the zone of exclusion from 50 feet to 25 feet is justified." In addition, LACO Associates also questioned the wisdom of locating the only means of ingress and egress to the proposed subdivision in a position where roadways may be destroyed by ground surface rupture.

Section A315-16 H (1)&(2) of the HCC applies to the supplemental public safety impact findings that must be made by the County for a coastal development permit regarding Alquist-Priolo Fault Hazard Areas (which includes the Mad River Fault). However, the County staff report for the project quotes the finding for the section as follows:

The project as proposed will not cause or allow a structure for human occupancy to be placed within fifty (50) feet, or such

distance as deemed appropriate by the evaluation (emphasis added),  
of a trace of an active fault.

The underlined portion of the above referenced text is not part of Section A315-16 H (1) (b) of the certified HCC.

There are several reasons the appellants contend that a setback of less than 50 feet from the trace of an active fault raises a substantial issue with respect to conformance with the LCP policies that apply to geologic hazards. First, they state that the "50 foot" standard in the County's LCP should be viewed as a minimum standard (emphasis added). If the County wants to allow a setback of less than 50 feet as provided for in the Alquist-Priolo Act, then the County should amend its LCP to specifically allow setbacks of less than 50 feet when certain criteria have been met. Second, SHN admits that the location where the fault plane intersects the ground surface is "projected", which is consistent with LACO Associates observation of relying too heavily upon interpretation. Third, the preparation of the geotechnical reports by SHN and the review of those reports by Giblin Associates both stipulate a number of disclaimers which do not inspire confidence in their recommendations. For example, SHN concludes the following on page 9 of the Fault Evaluation Report:

We cannot preclude the possibility of propagation of new faults or the lengthening of existing faults; therefore, all risks from surface fault rupture cannot be precisely determined nor avoided when developing a zone of active and potentially active faults.

In summary, the appellants contend that it is difficult to estimate what precise set-backs represent adequate margins, and that it is better to err on the side of safety if a development is to minimize risks to life and property in an area of high geologic hazards.

The applicant's agent indicates on the other hand, that it is the custom and practice of geologists to vary standards where they believe it is appropriate. The County staff also indicates that the inserted clause (i.e. or such distance as deemed appropriate by the evaluation) in the County finding is allowed by the regulations which established the Alquist-Priolo Earthquake Fault Zoning Act.

The question for the Commission is whether the recommended setback distances between designated building sites and the surface trace of an earthquake fault are supported by reasonably accurate and reliable evidence. Two of the three reviewing geologists believe that it is acceptable to have a designated building site within 25 feet of the active trace of a surface fault. The Commission defers to the weight of the geotechnical expertise and determines that, as approved by the County, the project raises no substantial issue with regard to the project's conformity with the LCP policies regarding geologic hazards and earthquake faults.

(ii) Erosion Hazards.

As previously mentioned, a line of 50-foot-high, vegetated coastal bluffs are located along the westerly side of the property. The project plans indicate that all 18 lots fronting the bluffs have designated building sites that are between 15 to 35 feet from the edge of the bluffs, with the average setback distance being about 20 to 25 feet from the edge of the bluffs.

The appellants contend that the setback distance for homes from the edge of the bluffs is inadequate because the reviewing geotechnical consultants only used a 50 year period as the economic lifespan for the proposed single-family homes. The appellants also contend that the risk of bluff erosion has been under estimated by the geotechnical consultants due to problems with gully erosion along the bluffs and the possible migration of the mouth of the Mad River.

Section A314-16 of the HCC establishes regulations for geologic hazards. Section A314-16F(3)(f) applies to the contents of geotechnical reports and it requires:

Professional conclusions as to whether the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the lifespan of the project (emphasis added).

MAP Policy 3.28(A) and 3.28(C)(1) establish a requirement that soil engineering and geological engineering investigation reports be prepared by registered geologists (or by certain kinds of engineers) for new development within certain hazardous areas, including seismic shaking hazard zones, landslide zones, and liquefaction zones. These reports must consider, describe and analyze a variety of specific information about the project site and the proposed development. Besides requiring certain specified information, these MAP policies are generally aimed at minimizing the geologic hazard impacts associated with new development.

With regard to development proposed on the tops of eroding bluffs or cliffs, such as the 18 bluff top houses proposed by applicants, the primary approach set forth in the above-described policies for minimizing the hazard of coastal erosion is to require an adequate setback for any new development. By maintaining a sufficient setback, natural erosion can continue without the need for protective devices and the development will remain safe. The setback will vary from location to location, depending on the rate of erosion, and the expected lifetime of the proposed structures. For example, if the expected lifetime of a house is 75 years, the LUP policies would require that the house be setback behind a line delineating the future bluff edge resulting from 75 years of erosion. The method depends on the establishment by qualified experts of a long term erosion rate for the specific site based on the erosional history of the site and existing geologic conditions. This approach is the same approach that the Commission has followed when reviewing bluff top development within its own permit jurisdiction.

The Coastal Commission typically uses an economic lifespan of 75 years for single-family homes. The geotechnical consultants for the project only used a 50-year economic lifespan for the 18 lots located along the edge of the bluff.

In addition, the findings in the Preliminary R-1 Geologic and Geotechnical Report for the project do not provide usable bluff retreat information. The report states on page 8 that: "Minor variations of a few 10's of feet should be expected during the economic lifespan of the project." A minor variation of a few 10's of feet does not present an actual rate from which it is possible to determine a suitable setback for the expected economic life of the project.

The LUP does not contain a policy specifying what the expected economic life of a house should be. Therefore, the Commission finds that it is appropriate for the County to use its judgement in determining what an appropriate economic lifespan is.

There is also an additional concern about erosion of the riverbank and thus erosion of the toe of the bluffs. In the 1970's, the mouth of the Mad River began to migrate north past the subject property to a point that is now about one mile north of the project site. Between 1981 and 1994, the river migrated eastward (toward the bluff of the subject property) approximately 200 feet. The river is now about 160 to 180 feet west of the top of the bluff at the project site. The consulting engineers [for the project] have opined that further migration to the east is unlikely, but it could occur.

In response to this information, LACO Associates concludes that the river may begin to meander in order to continue to increase its channel length and decrease its gradient. Should this occur, meanders in the channel could increase the rates of erosion of the east bank of the river and destabilize the bluff by undercutting at the toe of the slope. In addition, if the mouth of the Mad River were opposite the proposed site, the coastal bluffs along the west side of this subdivision would be vulnerable to direct wave attack and erosion. In light of this, LACO Associates recommended that setbacks for structures in this subdivision be reviewed and be increased to adequately protect the anticipated homes.

As with the issue of seismic stability, the County received conflicting opinions regarding appropriate setbacks from the bluff. Two of the three reviewing geologists believe that the recommended setbacks for the edge of the bluffs are adequate. The Commission defers to the weight of the geotechnical expertise and finds that the County's approval of a 50-year economic lifespan for future development does not raise a substantial issue with regard to the project's conformity with the LCP policies on geologic hazards and bluff erosion.

c. Bonus Density and Planned Unit Development Issue.

(1) Applicable policies.

MAP Policies No. 3.25 B and 3.37 D, Sections A314-29 and A314-62 of the HCC.

Certified MAP Policies 3.25 B and 3.37 D both relate to housing and both policies state:

It shall be the policy of the County to encourage the Planned Unit Development (PUD) concept. Where such utilization would provide extraordinary benefits to the community and to the County, such as: dedications of open space and public access, protection of visual resources and sensitive habitats beyond that already required in Sections 3.41 and 3.42, incentives may include increases of up to 20% over planned densities. (emphasis added)

A "Planned Unit Development" is defined in Chapter 6, page 5 of MAP as:

A development which, on an individual parcel, permits variable parcel sizes but an overall density consistent with the gross densities permitted in the area plan in order to provide development compatible with environmental, geologic, or topographic features of a parcel.

Section A314-62 of the HCC applies to the P (Planned Unit Development) combining zone. Section A314-62 states in applicable part:

A. Purpose. The purpose of these provisions is to encourage planned developments, and to allow flexibility in the administration of the development standards in this Division for the purpose of:

- (1) Permitting more flexibility to cope with difficulties due to topography and other natural or man made features;
- (2) Provide for clustered development in concert with the provision of residential amenities such as open space, recreation areas, and neighborhood commercial services;
- (3) Encourage a more creative approach to land development through waiver of development standards and application of less rigid development criteria where such flexibility can better provide for the protection and enhancement of designated sensitive habitats and cultural resources....

E. Modifications of Development Standards. The following development standard modifications may be approved by the Planning Commission reviewing the Planned Unit Development permit applications:

- (1) Residential Density Standards. Applicable residential density standards may be increased by as much as twenty (20) percent where the development incorporates extraordinary public benefits beyond the applicable requirements of the General Plan and this Division. The determination of whether a development qualifies

for the density bonus shall be at the discretion of the Planning Commission.... (emphasis added)

F. Design Guidelines. Planned Unit Developments shall be designed in accordance with the following guidelines:

- (1) Site Adaptation. To the maximum extent possible, the plan and design of the development shall assure that natural features of the land and environment are preserved.
- (2) Lot Arrangement. All lots within the development shall be designed and arranged to provide maximum feasible access to or frontage on open space or recreational areas, and to provide maximum south orientation as required by Chapter 2.5, Division 2, Title III of the Humboldt County Code.

(2) County Action.

At its meeting of September 3, 1996, the Board of Supervisors found that the amenities and dedications offered constitute "extraordinary public benefits", and the Board granted the requested density bonus. The Board also found that it was in the public interest to grant a 50 percent credit to Parkland In-Lieu fees based on the provision of private recreational facilities.

(3) Appellants' Contentions.

The appellants contend that the project may not be a Planned Unit Development, that the project's 20 percent bonus density allowed by the Planned Unit Development concept is not justified because the applicants have not provided the required "extraordinary public benefits", and that the project does not provide for any lower income housing.

(4) Discussion.

With respect to the lower income housing issue, MAP Policy 3.37 D does not require the provision of any low and moderate income housing. Therefore, no issue is raised with regard to this policy.

With respect to the P zone in Section A314-62 of the HCC, the purpose of the P zone is to:

allow flexibility in the administration of development standards to cope with difficulties due to topography and other natural or man-made features and to provide for clustered development in concert with the provision of open space, recreation areas, ..." etc.

The appellants question whether the proposed subdivision is a Planned Unit Development because very little "cluster development" is used to achieve the purposes of the P zone. Except for the project's off-street parking areas

(which are located in "clustered pods" along the internal streets of the subdivision), the appellants believe that the proposed subdivision uses very little "clustered development" to achieve the purpose of the P zone. For example, only a small amount of open space is provided within the proposed subdivision. The project's four park areas have a combined total area of 68,993 square feet (about 1.62 acres) or about 6 percent of the total site area. In short, the appellants contend that the primary difference between the proposed subdivision and a standard "cookie cutter" subdivision is that the lots in the proposed subdivision have been reduced in size to accommodate a 20 percent bonus density increase over planned residential densities.

The Commission notes, however, that the County's LCP does not define the phrase "clustered development" as that term is used in reference to PUD's. Second, the P zone has no minimum requirements regarding the provision of open space and recreation. Consequently, given this wide latitude of interpretation, the Commission determines that, as approved by the County, the proposed project raises no substantial issue with regard to the project's conformity with the LCP policies on the PUD concept.

The appellants also contend that the project's 20 percent bonus density (which is allowed by the MAP and the "P" zone is not justified because the applicants have not provided the required "extraordinary public benefits".

The project as approved by the County provides several public benefits in exchange for receiving a 20 percent bonus density increase in residential density for the project. Those benefits are:

1. An offer to dedicate fee-simple ownership to a public agency or suitable private not-for profit entity of the approximately 67.27 acre parcel known as Assessors Parcel Number (APN) 511-010-05, located west of the proposed project and west of the Hammond Trail in Section 25, Township 7 North, Range 1 East, Humboldt Base & Meridian.
2. An offer to dedicate an easement to the McKinleyville Community Services District for the creation of an Open Space Management Zone of the approximate 5,000 square foot "resting park" along the southwestern side of APN 511-011-14, and associated site improvements (split rail fencing, benches, sodded turf, etc.) as detailed within the project description.
3. The removal of two westerly combined electrical power, telephone, cable television poles along the Murray Road frontage of the project site and their replacement with undergrounded equivalents.
4. An offer to dedicate an easement for public access from the end of Wilber Street along the east side of APN 511-011-14 northward to the revised Hammond Trail alignment on APN 511-011-12. (Note: The applicants have stated their agreement to include neighboring



owners/residents of the adjacent Pacific Sunset Subdivision in the review of the final design of this access facility.)

5. A self-imposed 23-foot height limit (from average grade to roof peak) on Lots A-1 through A-4, A-7 through A-10, B-7, and C-1 through C-24.
6. An offer to install a fence located adjacent to the improved portion of the Hammond Trail.

The appellants argue, among other things, that the 67-acre sand dune and beach parcel has been used for many years by the public as if it were public open space. As a result, the public may have already acquired a right of implied dedication over that portion of the parcel. In addition, a portion of the 67-acre property is under the Mad River, and may be subject to title claims by the State Lands Commission.

The "P" zone in Section A314-62 of the HCC does not have any provisions to establish the fair market value of the benefits being offered. Since the adoption of the "P" zone in 1983, there has been no requested density increase under a Planned Unit Development until now. Thus, the determination as to whether the proposed project offers extraordinary public benefits is further complicated by a lack of a precedence.

More importantly, the decision making process is further complicated by the fact that the County's LCP does not define what is meant by the phrase "extraordinary public benefits". Similarly, there are no proportional equivalencies between the benefits offered and the degree of density increase to be allowed. Instead, Section A314-62 E of the "P" zone explicitly states that "the determination of whether a development qualifies for the density bonus shall be at the discretion of the Planning Commission." Given these circumstances, the Commission defers to the County's judgment and determines that the project raises no substantial issue with regard to the project's conformity with the LCP policies on bonus density.

d. Public Access.

(1) Applicable Policies.

MAP Policies No. 3.50, 3.52, 3.53, 3.54, 3.55, and 4.54; HCC Sections A314-6 and A314-8; and Sections 30210, 30211, 30212, and 30212.5 of the Coastal Act.

Certified MAP Policy 3.50 requires in applicable part that:

Consistent with the requirements of the California Constitution and the Coastal Act...maximum public access and recreational opportunities shall be provided for all the people. [There is] a finite set of accessways...in the County. The ability of this fixed number of accessways to meet the demand for "maximum access" will be determined by

the level of improvements required in the development of the support facilities. "Maximum access" as required by the Coastal Act, shall be provided through the identification, as shown on the Plan Maps, of the usable access corridors and the provision of support facilities adequate to use.

MAP 3.53 B states:

Where potential public prescriptive rights of access to the shoreline are affected by new developments, the applicant shall either:

1. Site and design the project to maintain the accessway, or
2. Provide an equivalent accessway to the same destination including dedication of an access easement as described in Section 3.55, or
3. Demonstrate that either the State of California has quit-claimed any interest it may have in the accessway or a court of competent jurisdiction has determined that prescriptive rights do not exist along the accessway.

MAP Section 3.55 establishes guidelines for vertical and lateral accessways. The guidelines state that vertical access: (1) may be resited along boundaries of a property, (2) shall be a minimum of 10 feet wide for pedestrian use with additional width as required for slope or construction easements and/or other uses, and (3) shall establish at least a 5-foot-wide privacy buffer between the accessway and a residence for pedestrian accessways.

The McKinleyville Access Inventory in the MAP identifies the westerly end of Murray Road (map index number 29) as a place to gain access to the Mad River. The MAP notes that prescriptive rights may have been established over the years at this point. Parking is currently limited to 4-6 cars. MAP Access Inventory Policy No. 29 for the westerly end of Murray Road recommends:

In coordination with the subdivision and development of the residential area north of Murray Road, this accessway should be dedicated, consistent with Chapter 3 policies, and include the following:  
Improvement of the roadway which leads down to the river to accommodate both pedestrian and equestrian access, and provision of limited parking near the trailhead.

The McKinleyville Access Inventory identifies the Hammond Trail (map index 33) as a coastal trail within an old railroad right of way that provides lateral access along the coast and the Mad River. A portion of the trail runs along the north bank of the Mad River and along the westerly side of the proposed development. The MAP notes that:

A coastal hiking, biking, and equestrian trail has been proposed in the California Recreation Trails Plan and the adopted Humboldt County Trails

Plan. In the McKinleyville Planning Area, this is proposed to run along the Little River and Clam Beaches and then follow the old Hammond Railroad right-of-way to the Mad River.

The MAP Access Inventory for the trail also recommends:

Development of the old Railroad Bridge and the Coastal Trail should follow the recommendation of the adopted County Trails Plan.

Section A314-6 of the HCC indicates that the applicable locations for including accessways into new development are those specifically listed within the access inventories of the Coastal Area Plans.

Under Section A314-8C of the HCC, if, during the review of a development project, there is substantial evidence of historical public use of an accessway, and the proposed development would interfere with such public use, the following shall apply:

The proposed development shall be sited and designed so as not to block or interfere with use of such accessway.

An equivalent accessway (i.e. public access of equivalent type., intensity, and area of use to the same destination) shall be provided, including dedication of an easement as described in HCC A314-6 of this Division (Coastal Public Access Dedication Requirements for New Developments), if the applicable Resource Protection Impact Findings are made.

Section 30212 provides in applicable part that:

Public access for the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where...adequate access exists nearby.

(2) County Action.

At its September 3, 1996 meeting, the Board of Supervisors found that no substantial evidence of historical prescriptive public access had been presented. As previously indicated, all of the mitigation measures for the project under the Final EIR have been incorporated by reference into Condition No. 4 of the coastal development permit. Mitigation Measure III C 1 applies to recreation and coastal access, and it states:

a. The applicant shall construct a parking lot, associated with the proposed "resting Park" near the Murray Road entrance to the Hammond Trail, to be located in line with the right-of-way of Kelly Avenue; the design for the parking area shall be approved by the County Public Works Department (added in response to a comment from the Department of Public Works).

b. The Wilbur Street right-of-way shall be posted with "no parking" signs, and may (subject to the approval of the County Public Works Department) be reduced in width consistent with allowing only emergency vehicle access to the Sand Pointe project and pedestrian/equestrian access to the Wilbur Street trailhead of the Hammond Trail (added in response to a public comment in the Final EIR).

See Exhibit No. 14 for the location of the proposed parking area near the "resting park" and the end of Murray Road.

(3) Appellants Contentions.

The appellants have several contentions regarding public access. They are:

- (a) the issue of prescriptive rights was not adequately examined by the County as their survey did not include all of the adjacent neighborhood, as a newspaper article of the survey appeared for only one day, as the subject property was not posted, and as less than 3 weeks for response time was given;
- (b) the development is not consistent with MAP 3.53 and 3.55;
- (c) the development, a gated and fenced community, precludes maximum public access from the nearest public roadway to the coast;
- (d) the Hammond Trail access is an inadequate substitute as bicycles, skating, and horseback riding are prohibited from the section of the trail west of the subject property and that the trail is wheelchair (ADA) inaccessible;
- (e) the development is inconsistent with Section 30212 of the Coastal Act; and
- (f) vehicular viewing of the sea from public ways will be obscured.

(4) Discussion.

With respect to the issue of prescriptive rights and notification as required under Section A315-9 of the HCC, Section A315-9 does not require that the site be posted. The prescriptive rights survey conducted by the County asks questions regarding: (a) the frequency of use, (b) the year the use started, (c) evidence of whether the site or area was ever posted with no access signs, (d) whether the user ever asked for permission from the property owner, and (e) whether other members of the general public were observed using the access.

The County staff report on page 40 states:

Of the 23 surveys which were returned, 18 people indicated that they had used the site. County staff found a trail on the east side of the

property, that became well worn from the end of Wilbur Avenue and continuing northward into the Widow White riparian corridor beyond the property's north boundary.

The County staff report on page 42 concludes that:

Public use of the trail was...primarily by adjacent and nearby area residents and that substantial evidence of historical use by the general public has not been demonstrated. Accordingly, requirements that the development either be redesigned to allow continued use or relocate historical accessways is not indicated.

The staff report noted that:

neighborhood use by Pacific Sunset residents and guests is significant, especially as noted along the eastern side of the Sand Pointe site. In addition, the applicant is proposing a public access corridor from the end of Wilbur Avenue to the north end of the property as part of his 'extraordinary public benefits' package for the bonus density increase under the proposed Planned Unit Development combining zone.

The Board of Supervisors found that: "no substantial evidence of historical prescriptive public access has been presented." In addition, the applicant's offer to dedicate public access from end of Wilbur Avenue and continuing north toward Widow White Creek makes moot any potential finding of the development interfering with the public's right of access where acquired through use.

With respect to gated communities, the Commission acknowledges that a gate placed over an existing or proposed coastal trail or accessway can block or interfere with coastal access by the public. In this case, however, the entry gate in the proposed subdivision is not blocking or interfering with any existing or proposed coastal access to the Hammond Trail, the Mad River, or the sea.

With respect to the adequacy of the Hammond Trail, the existing access trail and the fencing improvements on either side of the trail at the end of Murray Road to the Hammond Trail are partly located within the 50-foot-wide right-of-way of Murray Road owned by the County and partly located within an area of the subject property on the north side of Murray Road owned by the applicants. The certified EIR for the project indicates on page 5-21 of the DEIR that the applicant will dedicate to the County or to another appropriate agency a strip of approximately 25 feet wide from the end of Murray Road to the edge of the Hammond Trail right-of-way, which will improve the existing accessway at this location.

The County staff report on page 22 states:

Specific to the project site, public access enhancements (i.e. roadway improvements and limited parking facilities) adjacent to the subject

property at the end of Murray Road has been included in the access inventory recommendations. ... As part of the roadway improvements, the applicant shall be required to construct a bicycle lane and sidewalk along the north side of the Murray Road right-of-way. Also, the design of the "resting park" includes five parking spaces (4 standard, one handicapped) consistent with standards developed by the California Coastal Commission and Coastal Conservancy for this type of coastal access facility.

The portion of the Hammond Trail west of the subject property has not yet been paved. This portion of the trail has been cleared of encroaching vegetation and roughly graded. The unimproved portion of the Hammond Trail that is west of the subject property is maintained by the County Public Works Department. The Department, not the applicant, has decided that this portion of the trail is not open to bicycle and equestrian use. Instead of offering a dedication of parkland as required under Section A314-6 of the HCC, the applicant has made an offer of an in lieu fee. The fee goes into a special account which is managed by the McKinleyville Community Services District, which at some point, may take over maintenance of this portion of the Hammond Trail. In short, the limitations on the mode of public access along that portion of the Hammond Trail has nothing to do with the applicants and the proposed development and more to do with County policy.

The MAP Access Inventory indicates that prescriptive rights may exist at the end of Murray Road, and the public regularly uses it as an access point to the Hammond Trail and the Mad River. As previously mentioned, the County Public Works Department has required that the applicant make an offer to dedicate access for that portion of the access trail area which has most likely been acquired through prescriptive use. In addition, the County Building and Planning Department has required that the applicant provide certain facilities at the end of Murray Road to improve public access, including four ordinary parking spaces and one parking space for handicapped access. See Exhibit No. 15. In short, with the applicant's offer to dedicate vertical access from the end of Murray Road to the Hammond Trail, and with the improvements to add parking spaces, etc. at the end of Murray Road for users of the Hammond Trail, the Commission finds the project is consistent with Section 30212 as adequate access exists nearby at the end of Murray Road.

The proposed public access trail from the end of Wilbur Avenue and continuing north towards Widow White Creek is a vertical accessway that is 20 feet wide which meets the requirements of MAP 3.55.

Finally, regarding issues of viewing access, the appellants do not say where vehicular viewing will be obscured. Vehicular viewing of the sea from the end of Murray Road will not be impacted since no homes are located at the end of Murray Road. Vehicular viewing of the sea as one approaches the end of Murray Road will only be partially obstructed to the north by the construction of new homes within the subdivision. In addition, vehicular viewing of the sea from the end of Wilber Avenue will also be partly obstructed. Finally, this issue

is related more to community character than to access policies of MAP and the Coastal Act. (See discussion below.)

The Commission thus determines that, as approved by the County, the proposed project raises no substantial issue with regard to the project's conformity with the LCP policies or the Coastal Act policies on coastal access.

e. Community Character and View Protection.

(1) Applicable Policies.

MAP Policy 3.42; MAP Text 4.23; and Section 30251 of the Coastal Act.

MAP Policy 3.42 incorporates Section 30251 of the Coastal Act, which provides in applicable part that:

The scenic and visual qualities of coastal area shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of the surrounding areas...

MAP Policy 3.42 A applies to the physical scale and visual compatibility of proposed development. MAP Policy 3.42 A provides in applicable part that:

No development shall be approved that is not compatible with the physical scale of development as designated in the Area Plan and zoning for the subject parcel; and the following criteria shall be determinative in establishing the compatibility of the proposed development:

- c. for proposed development that is not the principal permitted use...that the proposed development is compatible with the principal permitted use, and in addition, is...:

- (1) No greater in height or bulk than is permitted for the principle use, and is otherwise compatible with the styles and visible materials of existing development...

MAP text Section 4.23 also applies to proposed uses within the coastal area of McKinleyville. Among other things, the text states:

Residents emphasized the importance of retaining the rural community character and the concentration of commercial and high density development around the community core area with less dense development radiating westwardly...

(2) County Action.

At its September 3, 1996 meeting, the Board of Supervisors certified the Final EIR for the project and concluded that the proposed project: (i) was consistent with the requirements of the McKinleyville Area Plan for viewshed protection, (ii) incorporated a lighting design which has the express purpose of protecting nighttime views in the project vicinity, and (iii) incorporated a number of voluntary restrictions in the project expressly designed for the purpose of minimizing viewshed effects, including the removal of telephone poles and above-ground wiring along Murray Road, a 23-foot-high building height restriction for 33 of the 63 single-family residences, and the provision of east-west view corridors across the project site. The Board found that:

the project design and the features voluntarily incorporated into the project by the applicant avoid significant impacts to the project-site viewshed. However, despite these features, there may be unavoidable effects on the aesthetic perceptions of residents in or visitors to the project vicinity which cannot be reduced to a level of insignificance. A statement of Overriding Considerations is adopted for these unavoidable aesthetic effects.

In adopting a Statement of Overriding Considerations for the Final EIR, the Board found some effects of the project could not be fully mitigated, including the viewshed along the westernmost section of Murray Road and the viewshed at the western end of Wilbur Avenue. See Exhibit No. 16. As mitigation to these visual impacts, the Board directed that the fence on the east side of the project site be changed from a 6-foot-high, solid board fence to a 5-foot-high fence with open style (except for the portion fencing the RV storage area). In addition, Condition No. 2 of the coastal development permit requires that all exterior lighting be shielded such that it is not directed off of the parcel.

(3) Appellants' Contentions.

The appellants contend that the project's small lot sizes and density of development is inconsistent with the character of the McKinleyville area, and that the project will block or interfere with public views of the sea.

(4) Discussion.

The conversion of the project site from open space to developed area is part of the pattern of change represented by development in McKinleyville. MAP text Section 4.23 indicates that the residents of McKinleyville emphasized the importance of "retaining the rural community character" of McKinleyville at the time that the LUP was adopted. Notwithstanding this sentiment, however, the subject property is earmarked for residential development, not open space.



The subject property has an urban land use designation of RE, Residential Estates. The RE density of 0 to 2 units per acre is a low density, urban land use designation. The subject property is also located within the urban/rural boundary where public water and sewer services will be provided by the McKinleyville Community Services District. A more "urbanized" character for the subject property is allowed under the property's existing land use plan and zoning district designations.

With respect to MAP Policy 3.42 A regarding the physical scale and visual compatibility of the proposed development, lots to the east of this development (i.e. toward the high density, commercial core of McKinleyville) are generally one-half acre in size, including the one-half acre lots of the adjacent Pacific Sunset Subdivision. Lots to the north and to the south of the development range from 1 to 5 acres in size. The subject property has lots as small as one-quarter acre in size and a development density that exceeds the density of development in the surrounding area.

However, the proposed project does not raise a substantial issue with respect to MAP Policy 3.42A because the development is visually compatible with the physical scale of the principally permitted use for the area; namely, the construction of single-family residences on private lots where the bulk and height of those residences will be no greater than what is allowed for the principle use of the property under the RS-20 zone. For example, single-family residences in the RS-20 zone cannot be more than 35 feet high. With respect to the proposed subdivision, 30 of the 63 homes will have a height no greater than 23 feet, as measured from average grade to the top of the roof. Although the front, rear, and sideyard setbacks will be reduced, the project still must comply with the other requirements of the RS zone, such as a maximum ground coverage of 35 percent for single-family residences. In short, the project is visually compatible with the physical scale of the surrounding developed area.

Finally, the project does not raise a substantial issue with respect to MAP Policy 3.42 and Section 30251 of the Coastal Act as incorporated into the LCP because the project is visually compatible with the scale of the surrounding developed area, as the development minimizes the alteration of natural landforms, and as the development has been sited and designed to protect views to and along the ocean. For instance, the 23 foot height of many of the homes will not exceed the height of the vegetation growing on the bluffs. Therefore, the height of the vegetation along the bluffs will screen the development behind it, and views along the ocean side of the development will be protected. Similarly, views along Murray Road towards the Mad River and the blue water areas of the ocean should not be significantly impacted where the development is no higher than the height of the vegetation along the bluffs. The Commission thus determines that, as approved by the County, the project raises no substantial issue with regard to the project's conformity with the LCP policies on visual resources.

f. Wildlife and Environmentally Sensitive Habitat Areas

(1) Applicable Policies.

MAP Policy 3.41, MAP Text in Section 4.53 B, and Definition of Environmentally Sensitive Area, Section A314-63 of the HCC, and Section 30240 of the Coastal Act.

MAP Policy 3.41 identifies the associated riparian habitats along rivers as environmentally sensitive. MAP Policy 3.41F limits new development within riparian areas to where there is no less environmentally damaging feasible alternative, where the best mitigation measures feasible have been provided, and where the new development is limited to seven specific activities, including timber management activities, timber harvests, maintenance of flood control and drainage channels, wells in rural areas, road and bridge replacement or construction, removal of trees for disease or public safety purposes, and removal of firewood for personal use.

The MAP text in Section 4.53 applies to riparian systems and coastal streams. The purpose of this policy is to protect significant habitat values that are associated with streamside vegetation and to protect the water quality of these streams.

"Environmentally Sensitive Areas" are defined in the definition section of the MAP. The definition includes in applicable part:

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

Section A314-63 of the HCC applies to protection of streams and riparian corridors. The purpose of Section A314-63 is to provide for the maintenance, enhancement, and, where feasible, restoration of water resources by restricting development, and by minimizing adverse effects of runoff, interference with surface waterflow, and the alteration of natural streams by protecting riparian vegetation. Pursuant to Section A314-63G(3(f)), new fences are allowed within riparian corridors as long as they do not impede natural drainage or would not adversely affect the stream environment or wildlife.

Lastly, MAP Policy 3.41 incorporates by reference Section 30240 of the Coastal Act. Section 30240 requires, in applicable part, that environmentally sensitive habitat areas be protected against any significant disruption of habitat values.

(2) County Action.

At a September 3, 1996 meeting, the Board of Supervisors approved a coastal development permit for the project. At a September 24, 1996 meeting, the

Board of Supervisors certified the Final EIR for the project, and adopted certain findings and mitigation measures. Mitigation Measure I B 1 b regarding soils stability along the bluffs states:

The roots of the vegetation growing in the "high" and "moderate" bluff slope failure hazard areas shall be protected from disturbance. Vegetation removal on the bluff face shall not occur as part of this project, for any reason.

The above referenced mitigation measure will be incorporated as deed restrictions into the title documents for all parcels along the western margin of the project site and the County Planning Division will verify the presence of the restrictions in the title documents prior to recordation of the Final Map for the project.

The Board of Supervisors also adopted one mitigation measure for plants, animals, biological associations and biological diversity. Mitigation measure II A 1 states:

Cats owned by residents in and visitors to the Sand Pointe project site shall not be permitted to roam freely outside of their owners' yards under any circumstances. In addition, owners and visitors shall not provide food for free-roaming domesticated or feral cats.

This last mitigation measure is intended to be incorporated as a restriction into the deed for any parcel created by the project, and be incorporated into the CC&R's for each parcel created, and the Planning Division will verify its inclusion prior to recordation of the Final Map.

(3) Appellants Contentions.

The appellants contend that the project will result in the loss of open space and wildlife habitat, including the foraging habitat for various birds of prey. In addition, there are no assurances that the environmentally sensitive, bluff top vegetation will be retained.

(4) Discussion.

The vegetation on and near the bluffs is considered to be environmentally sensitive for two reasons. First, some of the vegetation is riparian in nature and this vegetation is especially good at providing habitat for many birds and small mammals. Second, all of the vegetation on and near the bluffs plays a special role in maintaining soils stability and the structural integrity of the bluffs, and this vegetation can be easily damaged by various human activities.

With respect to the issue of whether this environmentally sensitive vegetation will be retained on or near the bluffs, the mitigation measure for soils stability along the bluffs requires that vegetation removal on the bluff face shall not occur as part of this project, for any reason.

With respect to the loss of wildlife habitat, the Draft EIR concludes that the vegetation along the bluffs (i.e. coastal bluff scrub with scattered spruce, beach, and pine trees) has the highest value for birds. As previously indicated, the vegetation on or near the coastal bluffs will be retained. Thus, this use of this area as a wildlife habitat area should not be adversely impacted by the project. The Draft EIR indicates that the grassland area of the project site is used for foraging purposes by several birds of prey which live in the vicinity. This grassland area will be lost as the project develops and the foraging area for these birds of prey will be reduced. However, the foraging area for many birds of prey is quite large, sometimes on the order of square miles. Consequently, the loss of foraging area is not a significant adverse impact. The Commission thus determines that, as approved by the County, the proposed project raises no substantial issue with regard to the project's conformity with the LCP policies on wildlife and environmentally sensitive habitat areas.

g. Urban Plan Designation

(1) Applicable Policy.

MAP Policy 5.20 and MAP Text in Section 4.41. MAP Policy 5.20 states in applicable part:

RE: RESIDENTIAL ESTATES

Purpose: To allow residential development of areas within Urban Limits where community objectives, including resource protection, limit density of potential development, but where urban services are required.

Principle Use: Detached single family residences

Conditional Use: Same as RL (Residential/Low Density)

Gross Density: 0-2 units per acre.

The text in MAP Section 4.41 applies to the McKinleyville Urban Limit Line. The text states in applicable part:

Outside of the Humboldt Bay Area, McKinleyville is the only truly urban and urbanizing area within Humboldt County's Coastal Zone.... The McKinleyville Community Services District provides both water and sewer services to the majority of the rarea included within the Urban Limit Line.... The three general areas where services (water and sewer) are not now available but could be feasibly extended and would support a stable urban/rural boundary, constitute the Urban Reserve... [Land] west of Highway 101 and north of Murray Road is an area not currently serviced but planned to be developed when services are available to urban densities within the next five years. The inclusion of this area

within the Urban Limit Line will establish a firm urban/rural boundary for the northwest portion of the community.... The majority of the area within this urban reserve is planned Residential Estates with a density of 0-2 units per acre.

(2) County Action.

At its meeting of September 3, 1996, the Board of Supervisors approved the project's coastal development and found that the project was consistent with the a General Plan density of 0 to 2 units per acre.

(3) Appellants' Contentions.

The appellants contend that the project's density of development exceeds the urban plan designation for the site, which is RE, Residential Estates, 0-2 units per acre.

(4) Discussion.

The appellants' contention is correct. However, as previously discussed under the bonus density and PUD section, MAP Policies 3.25 and 3.37 specifically allow "increases of up to 20 percent over planned densities". Consequently, under the certified local coastal program, it is permissible for the project's density to exceed the density of the General Plan if the project is a PUD.

4. Conclusion.

In summary, for the reasons stated above, the Commission finds that the project as approved and conditioned by the County of Humboldt raises no substantial issue with regard to the project's conformance with the certified LCP and the grounds on which the appeal has been filed.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

REASONS FOR COASTAL APPEAL

1. CLOSURE OF COASTAL PUBLIC ACCESS: 30212 & 30603(a)(1), (b)(1)  
30211 LCP: 3.50

This development, with its gate and 6 ft. board fence, west, east and north (building heights 23 to 35 ft.) precludes maximum public access from the nearest public roadway to the coast.

The Hammond trail access is an inadequate substitute as bicycles, skating, horseback riding, are prohibited and this section of the trail is wheelchair (ADA) inaccessible. Vehicular viewing will also be obscured.

Inadequate protection of vegetation. Department of Public works was against a fence along the west property line.

2. PRESCRIPTIVE RIGHTS: LCP 3.53 & 3.55

Public Survey conducted inadequate. Survey did not include all of adjacent neighborhood. Newspaper article survey 1 day printing. No public area posting. Less than 3 weeks for response time given.

Lack of graffiti, vandalism and trash cited as evidence of low public use. Trails through the development were designated as "used by neighbors only" without any basis for the conclusion, (adjacent neighborhood people do pick up trash and keep this area clean).

3. AIRPORT SAFETY: LCP: 3.28(g)(chp. 3 pg. 12)  
HUMBOLDT COUNTY COASTAL ZONING ORDINANCE: A314-50(d)(3)  
DENSITY BONUS: LCP: 3.37(d)(chp. 3 pg.22)

Non support of density bonus-due to location secondary airport approach zone & lack of Extraordinary Benefits.

(a) A314.50(d)(3)

Maximum density in an approach zone is one unit per three acres. A minimum of one (1) dwelling unit per lawfully created lot is permitted, even if this density is exceeded. The special permit process shall be used to retain to the maximum extent feasible the contiguous open space in the approach zone.

EXHIBIT NO. 1
APPLICATION NO. A-1-HUM-96-70
Appellants' reasons for the appeal

Director of the Department of Public Works: Directors John Murray and Harless McKinley of public works and airport manager Ray Beeninga in letter dated October 6, 1995 stated they were unable to support this project and were against the density bonus.

(b) 3.28 G: LCP (see attached B) (1-2)

Generally, within the airport approach and transitional zones the plan recommends an overall residential density of 1 unit permit 2-1/2 acres.

(c) 3.37 - 30252 (D)

This development does not qualify for a 20 % bonus density. Public testimony and 4 of 6 voting Planning Commissioners concurred that the benefits offered by the developers are neither Extraordinary, nor beyond that required in section 3.41 and 3.42; and are of greater benefit to the developers than the public.

Requirement in state mandate re bonuses to developers who allow for a number of lower income dwellings in plans. Developer made no offer of proof about that. Supervisor Paul Kirk's statement that Sand Pointe is a good project because of its diversity is a patent contradiction of the proposed plan. No proof that developers are planning lower income housing on planned project. Each parcel of land developed must stand on its own. Developer is selling lots, not building homes.

4. 4.23 LCP (chp. 4 pg. 2-3) MCKINLEYVILLE PLANNING AREA

Development is inconsistent with the McKinleyville Community Plan which emphasized the "importance of the retaining of the rural community character" and the concentration of commercial and high density development around the community core with less dense development radiating westwardly. Lots to the east of this development (toward the core) are 1/2 acre, to the north & south (equidistant from the core as the development) lots range from 1 to 5 acres. This development has lots as small as 1/4 acre and double the density as currently zoned.

5. LCP 5.20 (chp.5 pg. 1 - 4) URBAN PLAN DESIGNATIONS

Development is inconsistent with the current zoning designation of Residential Estates (0-2 units per acre). The purpose of RE zoning is to allow residential development of areas within urban limits where community objectives, including resource protection, limit density of potential development, but where urban services are required. This

development has a density of 63 units as well as a RV/BOAT storage area. Under current zoning the maximum number of units that could be built (by planning board estimates) is 30 - 32 units.

6. LCP 3.28 30253 (chp.3 pg.9 - 11) HAZARDS/SEISMIC/EROSION  
Attachment: (C) (1-2)-(Cathryn Tobin-report)

Contradictory reports on Seismic, Potential Erodibility of of site. Mad River Fault runs through the 26.5 acre parcel, which is comprised of unstable sandy soil.

(Note: the only road going in and out of proposed planned project is to be built on the earthquake fault line).

In 1992 the Mad River threatened to wash out U. S. Highway 101. The Mad River and its fast movement and the loss of bluff stability have been documented by Humboldt County and California Department of Transportation.

(Final Project Evaluation Report: Mad River Mouth Migration Prepared for the California Department of Transportation District 1, Eureka, Ca: July 1993)

LCP requires setback for 75 year period.

The three (3) different reports were completed by:

1. GIBLIN Associates
2. SHN Consulting Engineers & Geologists
3. LACO Associates

7. HAZARDOUS MATERIALS:

Arsenic Tri-Oxide:

Was used on the project area when it was still used as a bulb farm as late as 1990. This chemical was not in the list of chemical tested in the Final EIR.

8. WILD LIFE HABITAT:

Existing open space will be lost. Photographic evidence of bird life includes: Great Blue Herons, Bald Eagles, Marsh Hawks, Red-tail Hawks, White-tail Kites, Ospreys and Turkey Vultures.

There is no assurance that bluff-top vegetation will be retained.



**Airport Safety  
LCP 3.28(g) (chp. 3 pg. 12)**

**3.28 G Arcata Eureka Airport Special Study Area**

1. "New development within the Arcata Eureka airport approach and transitional zones shall be consistent with the approved off-site development guidelines contained in the adopted County Airport Master Plan. The Airport Land Use Commission will define and formally establish an airport safety zone, adopt specific noise and safety standards, and apply such standards to all new development within these zones."

It is acknowledged by all involved that the proposed Sand Pointe development is within this zone.

The adopted Airport Land Use Compatibility Plan (ALUCP) is dated 1980. The Airport Land Use Planning Commission has provided the Humboldt County Board of Supervisors an Updated (1993) ALUCP. This 1993 plan is composed of two divisions; The On-Airport Plan and the Off-Site Plan.

The Humboldt County Board of Supervisors has adopted only the On-Airport portion of this plan.

The Airport Land Use Commission (the Board of Supervisors in this case) met concerning the zoning change for this project. This commission was fully aware that the 1993 plan has not been reviewed in accordance with established law and that it has not been adopted. They were aware of Public Works recommendation that this proposed zoning change not be allowed. They voted 3 to 2 to recommend the proposed project zoning to the Board of Supervisors.

In the hearings before the Board of Supervisors it was acknowledged by the Sand Pointe Developers and the Planning Department that the Off-site portion of this 1993 Plan has not been adopted. This is extremely important because the Off-Site portion of the plan has yet to go thorough the scrutiny which is required before it can be adopted.

Sand Pointe CC Appeal

**Mr. John Murray, Director of Public Works of Humboldt County, testified that his department does not agree with portions of the proposed Off-Site Plan (Safety concerns), has not had the opportunity to challenge the assumptions used by the engineering firm which drafted this proposed plan because hearings have not been conducted on this matter.**

**Mr. Harless McKinley, an Associate Engineer in the Public Works Department of Humboldt County, has likewise testified to the same matter.**

**Mr. Ray Beeninga, the Director of Aviation for Humboldt County, expressed his dissatisfaction with the proposed plan and its negative impact on aviation safety.**

**Several members of the community also expressed their concerns about the proposed Off-Site Plan.**

**The Board of Supervisors voted 4 to 1 to allow the requested zoning.**

**The Humboldt County Board of Supervisors has had several years during which time they could and should have initiated the process to have the Off-Site portion of the plan adopted. Had they done this, they would have complied with the LCP, specifically paragraph 3.28(g). They are not in compliance with the letter nor spirit and intent of the LCP. They have, for many years now, simply approved zoning changes in the Off-Site portion of the LCP.**

**Before considering this change of zoning in the Off-Site portion of the ALUCP, you, the Coastal Commission, should direct the Humboldt County Board of Supervisors to complete the full required review of this proposed plan, adopt the plan and then if necessary, approve a rezoning request. We are talking about aviation safety and since there has been strong non-concurrence with the draft plan by County Departments these issues need to be resolved before you are asked to concur with any requested zoning change.**

Cathryn A. Tobin  
2338 Mather Road  
McKinleyville Ca. 95519

October 6, 1996

add to # 6

3.28(A) of LCP states:

" ...when siting new development, the Natural Hazards/Land Use Risk Rating Matrix in Ch.3 vol 1 should be used in conjunction with plates I and II." (These plates show seismic zone delineation and land stability.)

This project certainly does not seem to have adequately addressed the potential hazards shown on these plates regarding seismic activity nor the liquefaction potential in this area.

#### 3.42 VISUAL RESOURCE PROTECTION

This project does not conform to LCP codes as follows:

3.42 30251 states:

"Permitted development SHALL be sited and designed to protect views to and along the ocean and scenic coastal areas... and be visually compatible with the character of surrounding areas...

3.42 (A)(1)(c)

"for proposed development that is not the principal permitted use...(1) No greater in height or bulk that is permitted for principal use, and is otherwise compatible with the styles and visible materials of existing development or land forms in the immediate neighborhood, where such development is visible from the nearest road."

The density of the housing (1/4 acre lots), and multitude of two story homes with accompanying R U storage area and fences, destroy views and is not visually compatible with

adjacent neighboring communities.

**3.37 (D)(1) (Ch3 pg 22) Housing Planned Unit Development**  
"It shall be the policy of the County to encourage the Planned Unit Development concept. Where such utilization would provide extraordinary benefits to the community , and to the county, such as: dedication of open space and public access, protection of visual resources and sensitive habitats..."

Clearly, this project does not give what is required to obtain a PUD permit. Additionally, a PUD is not a principally permitted use in Calif. coastal areas.



PLANNING DIVISION  
OF THE PLANNING AND BUILDING DEPARTMENT  
**COUNTY OF HUMBOLDT**

3016 H STREET  
EUREKA CA 95501-4484 PHONE (707) 445-7541 FAX (707) 445-7446

RECEIVED

OCT 01 1996

CALIFORNIA  
COASTAL COMMISSION

September 25, 1996

CALIFORNIA COASTAL COMMISSION  
Attn. North Coast District  
45 Sansome Street Suite 2000  
San Francisco, CA 94105-2219

SUBJECT: Zoning Reclassification, Tentative Subdivision Map, Coastal Development  
Permit, Conditional Use Permit

**NOTICE OF ACTION TAKEN**

CONTACT: Jim Baskin, Planner II

Applicants: Steve Moser, Brian Hunt, Cindi Hunt

Address: 1836 Central Avenue  
McKinleyville, CA 95519

Case Nos. ZR-18-94  
FMS-11-94  
CDP-39-94  
CUP-22-94

File No. APN 511-011-14

Following a noticed hearing, the Humboldt County Board of Supervisors approved the referenced application on September 3, 1996.


Sincerely,

HUMBOLDT COUNTY PLANNING & BUILDING DEPARTMENT  
Thomas D. Conlon, Planning Director

  
\_\_\_\_\_  
Jim Baskin, Planner II

Attachments: Board Order No. N-1 + N-1(a)  
Staff Report  
Exhibit "A" - Conditions of Approval  
Tentative Subdivision Map  
Location Map  
Coastal Access Surveys

(PLAN40 C:\JRB\NOTICING\SANDPT.NLA) TDC:JRB/jrb Date: 9/18/96

EXHIBIT NO. 2
APPLICATION NO. A-1-HUM-96-70
County action on the coastal development permit & mitigation measures
 California Coastal Commission

**EXHIBIT "A-2"****APPROVAL OF THE COASTAL DEVELOPMENT IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS:**

1. All recommendations set forth in the "R-1" geotechnical and geologic evaluation (SHN, 1994) shall be implemented as a condition to the issuance of permits or other grants of approval for the development or improvement of the site(s).
2. All exterior lighting shall be shielded such that it is not directed off of the parcel.
3. Connection to McKinleyville Community Services District water and sewer service shall be required before the building permit is finalized.
4. All development pursued under the coastal development and conditional use permits is subject to the environmental impact mitigation measures adopted by the Board of Supervisors.

**Informational Notes:**

1. The Coastal Development Permit (CDP) for development of a single family dwelling on each of Lots 1 through 63, inclusive, of this subdivision shall be valid for 24 60 months following the recordation of the final map for that each phase. Construction of a single dwelling on any one lot within a given map phase shall vest the CDP for all dwellings under that phase. If construction of a residence in reliance upon the permit has not commenced within this period, the CDP for that ~~lot~~ phase shall expire and become null and void; provided, however, that the period within which such construction or use must be commenced may be extended as provided by H.C.C. Section A315-24.
  2. The applicant shall be responsible for all staff costs involved in carrying out responsibilities for mitigation monitoring set forth in Exhibit "E", "Mitigation Monitoring and Reporting Program." These costs shall be charged using the most current County burdened hourly rate. A deposit may be collected to cover anticipated costs, if required by the Planning Director.
  3. This permit does not authorize the development of second dwelling units on any lot in the subdivision.
- \* **These Exhibits reflect changes made to the conditions of project approval made by the Board of Supervisors on September 3, 1996. Added text is underlined, deleted text is shown in ~~strikethrough~~.**

RESOLUTION NO. 96-76

ATTACHMENT C

STATEMENT OF MITIGATION MEASURES AND MONITORING PROGRAMS

SAND POINTE DEVELOPMENT PROJECT

SCH No. 95033058

The following mitigation measures are adopted by the County of Humboldt (County) as conditions of approval for this project, together with the monitoring programs specified. These measures were identified, or are based on measures identified, in the Final Environmental Impact Report for the project, and are within the jurisdiction of Humboldt County for implementation.

The measures identified in this statement reflect the interests of the County in ensuring a project which meets the legal obligations of the County. Other mitigation measures may legitimately be required for this project by other responsible agencies with regulatory or trustee authority for the proposed project; any such measures are not within the jurisdiction of the County for implementation, but such measures can be, and should be, implemented by the responsible agencies.

The proposed project incorporates a number of voluntarily included features which have the effect of reducing potential environmental effects. These voluntary features are described fully in the Final EIR, and are specifically identified here as functioning in the manner of mitigation measures, by allowing the project to avoid or reduce significant environmental effects. Should any of those voluntarily included features not be reflected in the Final Map for the project, then the County shall, prior to approving the recordation of the Final Map, incorporate alternative or additional measures (and monitoring programs) which have the same degree of effectiveness in reducing environmental effects as do the voluntarily proposed project components described in the Final EIR.

**I. PHYSICAL ENVIRONMENT**

**A. Geology, Seismicity, and Tsunami**

**I. Mitigation Measures**

- a. The consulting geologists' recommendations for foundation design and grading in preparation for project roadways, buildings, and other components shall be implemented as part of any grading and building permits issued by the County for this project.
- b. The major utility systems to be placed under the jurisdiction of the McKinleyville Community Services District (water and sewer) shall be designed so that the pipelines which cross the fault are capable of being

isolated following rupture by fault movement. (This measure was modified in the Final EIR, in response to a comment, to include the natural gas pipelines in the project site.)

**2. Monitoring Program**

- a. The County Department of Planning and Building Services shall monitor construction documents and subsequent building and grading permit applications to verify that the requirements of the mitigation measures are incorporated into project construction plans; the requirements of the mitigation measures also shall be incorporated into all subsequent building and grading permits.

**B. Soils, Stability, and Erosion**

**1. Mitigation Measures**

- a. No grading shall occur in the "high" or "moderate" bluff slope failure hazard areas.
- b. The roots of the vegetation growing in the "high" and "moderate" bluff slope failure hazard areas shall be protected from disturbance. Vegetation removal on the bluff face shall not occur as part of this project, for any reason.
- c. Runoff on the project site shall not be concentrated in a manner which would cause it to be directed onto the "high" or "moderate" bluff slope failure hazard areas. Runoff which might be concentrated to flow over the bluff edge and down the bluff face shall not occur.

**2. Monitoring Program**

- a. The requirements of the mitigation measures shall be incorporated as deed restrictions into the title documents for all parcels along the western margin of the project site; the County Planning Division shall verify the presence of the restrictions in the title documents prior to recordation of the Final Map for the project.
- b. The County Department of Planning and Building Services shall monitor construction documents and subsequent building and grading permit applications to verify that the requirements of the mitigation measures are incorporated into project construction plans; the requirements of the



mitigation measures also shall be incorporated into all subsequent building and grading permits.

- c. County building inspectors shall inspect the project construction phases as necessary to verify that the requirements of the mitigation measures are enacted when the project's construction phase is carried out.

**C. Air Quality (PM10)**

**1. Mitigation Measures**

- a. Water shall be applied to disturbed land surfaces during construction, at a frequency high enough to maintain soil cohesion and to reduce blowing dust to the extent practicable.
- b. Construction waste or debris, or vegetation waste, shall not be burned except on "permissive burn days" designated by the North Coast Unified Air Quality Management District.
- c. Wood-burning appliances (such as stoves) installed on this site shall meet EPA and/or State of California requirements for particulate emissions. (This measure was modified in the Final EIR to incorporate a definition of "wood-burning appliances," as defined in the comment letter from the North Coast Unified Air Quality Management District in the Final EIR.)

**2. Monitoring Program**

- a. The applicant's construction manager shall include the first and second mitigation measures into the contract with the construction contractor. The construction manager shall verify contractor compliance with these measures.
- b. The third mitigation measure shall be included in the CC&Rs for each parcel created by the project; this inclusion shall be verified before recordation of the Final Map.
- c. The County Building Division shall verify that all three mitigation measures are reflected in any building or grading permits issued for the project.

**D. Hydrology, Drainage, and Water Quality**

**1. Mitigation Measures**

- a. The applicant shall provide for approval by the County Planning Department and the Department of Fish & Game a construction-period sediment control plan, identifying the specific Best Management Practices to be implemented to avoid sedimentation-related impacts. The plan shall be revised no less frequently than once per year, and may be revised sooner if changes in circumstances indicate a need for alternative BMPs.
- b. The applicant shall submit erosion and sediment control monitoring reports, no less frequently than once per quarter during the active construction season, to the County Planning Department and the (California) Department of Fish & Game. These reports shall identify any failures to control erosion and sedimentation which occurred during the previous quarter, shall identify remedial actions taken, and shall indicate steps which are being included in the project construction process to avoid future failures. The construction process may be halted by the County if satisfactory reports are not provided, or if suitable measures are not implemented.
- c. Onsite detention swales shall be included in the project design, in order to reduce the percentage of incident rainfall running off the site, increase infiltration, trap sediments mobilized during site occupancy, and provide for biological treatment of biological and some chemical wastes resulting from project site occupancy.
- d. An energy-dissipation device shall be constructed at the end of the existing Murray Road storm drain. The device's design shall be approved by the County Public Works Department.
- e. Segments of the existing storm drain system in Murray Road near the project site shall be augmented or replaced with larger components. Specific design elements shall be approved by the County Public Works Department.

**2. Monitoring Program**

- a. The Building Division shall not issue any grading or building permits for the project until an acceptable sediment control plan is submitted for the project; initially, the state-required Storm Water Pollution Prevention Plan may be accepted. The Building Division shall verify that the submitted plan is

acceptable to the Planning Division. If the submitted plan is not acceptable, no permits shall be issued. If necessary updates and revisions are not provided, the Building Division may suspend any issued permits and shall not issue additional permits until a satisfactorily updated plan is submitted.

- b. The satisfactory completion of the quarterly monitoring reports shall be verified by Planning Division personnel, who shall request that the Building Department issue a notice to suspend construction activities on the project site if adequate reports are not submitted. In addition, the Building Division shall refrain from issuing any new permits until quarterly reports satisfactory to the Planning Division are provided.
- c. The design for a system of onsite detention swales shall be submitted to the Planning Division, which shall verify its inclusion into the project design and construction documents. The Planning Division shall verify the inclusion of the third mitigation measure into the project design prior to recordation of the Final Map. The Building Division shall issue no grading or building permit which does not specifically include the onsite detention swale system, pursuant to the approved design.
- d. The Public Works Department shall approve the specific design for the storm drain facilities constructed with the project, including the design for the Murray Road drainage facilities and the energy dissipation device to be constructed at the Murray Road storm drain outfall.
- e. Construction of the Murray Road facilities shall be verified as complying with the mitigation measures by inspection by Public Works Department personnel, prior to acceptance by the County. No Final Map shall be recorded prior to the acceptance of these facilities by the County.

## II. BIOLOGICAL ENVIRONMENT

### A. Plants, Animals, Biological Associations, and Biodiversity

#### 1. Mitigation Measure

- a. Cats owned by residents in and visitors to the Sand Pointe project site shall not be permitted to roam freely outside of their owners' yards under any circumstances. In addition, owners and visitors shall not provide food for free-roaming domesticated or feral cats.

**2. Monitoring Program**

- a. This mitigation measure shall be incorporated as a restriction into the deed for any parcel created by the project, and it shall also be incorporated into the CC&Rs for each parcel created, and the Planning Division shall verify its inclusion prior to recordation of the Final Map.
- b. The Compliance Division of the Planning and Building Department shall promptly notify both the Planning Division and the Building Division upon receiving any valid complaints that the mitigation measure is not being met. The Planning and Building Department shall act promptly to suspend any active grading or building permits, and shall refrain from issuing new permits, until compliance with the mitigation measure is achieved.

**B. Aquatic Resources, Wetlands, and Water Quality**

**1. Mitigation Measures**

- a. The applicant shall provide for approval by the County Planning Department and the Department of Fish & Game a construction-period sediment control plan, identifying the specific Best Management Practices to be implemented to avoid sedimentation-related impacts. The plan shall be revised no less frequently than once per year, and may be revised sooner if changes in circumstances indicate a need for alternative BMPs. (This is the same mitigation measure as measure 3.4.4.1.)
- b. The applicant shall submit erosion and sediment control monitoring reports, no less frequently than once per quarter during the active construction season, to the County Planning Department and the Department of Fish & Game. These reports shall identify any failures to control erosion and sedimentation which occurred during the previous quarter, shall identify remedial actions taken, and shall indicate steps which are being included in the project construction process to avoid future failures. The construction process may be halted by the County if satisfactory reports are not provided, or if suitable measures are not implemented. (This is the same mitigation measure as measure 3.4.4.2.)
- c. Onsite detention swales shall be included in the project design, in order to reduce the percentage of incident rainfall running off the site, (to) increase infiltration, (to) trap sediments mobilized during site occupancy, and (to) provide for biological treatment of biological and some chemical wastes

resulting from project site occupancy. (This is the same mitigation measure as measure 3.4.4.3.)

**2. Monitoring Program**

- a. The Building Division shall not issue any grading or building permits for the project until an acceptable sediment control plan is submitted for the project; initially, the state-required Storm Water Pollution Prevention Plan may be accepted. The Building Division shall verify that the submitted plan is acceptable to the Planning Division. If the submitted plan is not acceptable, no permits shall be issued. If necessary updates and revisions are not provided, the Building Division may suspend any issued permits and shall not issue additional permits until a satisfactorily updated plan is submitted.
- b. The satisfactory completion of the quarterly monitoring reports shall be verified by Planning Division personnel, who shall request that the Building Department issue a notice to suspend construction activities on the project site if adequate reports are not submitted. In addition, the Building Division shall refrain from issuing any new permits until quarterly reports satisfactory to the Planning Division are provided.
- c. The design for a system of onsite detention swales shall be submitted to the Planning Division, which shall verify its inclusion into the project design and construction documents. The Planning Division shall verify the inclusion of the third mitigation measure into the project design prior to recordation of the Final Map. The Building Division shall issue no grading or building permit which does not specifically include the onsite detention swale system, pursuant to the approved design.

**III. HUMAN ENVIRONMENT**

**A. Utilities and Public Services**

**1. Mitigation Measures**

- a. An energy-dissipation device shall be constructed at the end of the existing Murray Road storm drain. The device's design shall be approved by the County Public Works Department. (This is the same mitigation measure as measure 3.4.4.4.)

- b. Segments of the existing storm drain system in Murray Road near the project site shall be augmented or replaced with larger components. Specific design elements shall be approved by the County Public Works Department. (This is the same mitigation measure as measure 3.4.4.5.)
- c. The project owners/developers shall provide access cards, access codes, or appropriate devices necessary to provide access to each emergency service (fire, sheriff, and ambulance) serving the project site; the access codes or devices shall be kept current, and if the means of gaining ingress should change, the revised codes or devices shall be provided to emergency service providers.

**2. Monitoring Program**

- a. The Public Works Department shall approve the specific design for the storm drain facilities constructed with the project, including the design for the Murray Road facilities and the energy dissipation device to be constructed at the Murray Road storm drain outfall.
- b. Construction of the Murray Road facilities shall be verified as complying with the mitigation measures by inspection by Public Works Department personnel, prior to acceptance by the County. No Final Map shall be recorded prior to the acceptance of these facilities by the County.
- c. The County Planning Division shall verify the inclusion of the third measure as a CC&R prior to recordation of the Final Map for the project. In addition, the Planning Division shall verify the construction of the access provisions called for by this measure prior to the acceptance of the County-required improvements. The Planning and Building Department shall verify the provision of updated access codes or devices for emergency service providers throughout the life of the project, and shall withhold building permits for individual parcels until updated codes or devices are provided.

**B. Transportation and Circulation**

**1. Mitigation Measures**

- a. The applicant shall construct a parking lot, associated with the proposed "resting park" near the Murray Road entrance to the Hammond Trail, to be located in line with the right-of-way of Kelly Avenue; the design for the

parking area shall be approved by the County Public Works Department (Added in response to a comment from the Department of Public Works.)

- b. The Wilbur Street right-of-way shall be posted with "no parking" signs, and may (subject to the approval of the County Public Works Department) be reduced in width consistent with allowing only emergency vehicle access to the Sand Pointe project site and pedestrian/equestrian access to the Wilbur Street trailhead of the Hammond Trail (Added in response to a public comment in the Final EIR.)

## 2. Monitoring Program

- a. The Planning Division shall verify the inclusion of the Murray Road parking lot in the approved design prior to the recordation of the Final Map. The parking lot design shall be approved by the Department of Public Works, and the constructed lot shall be inspected by Department of Public Works staff prior to acceptance of project improvements by the County.
- b. The sign posting in the second measure shall be completed prior to the acceptance of project improvements by the County. The design to carry out the right-of-way reduction (if this is approved by decision-makers) shall be approved by the Department of Public Works, and any construction needed to carry out the width reduction shall be inspected by Department of Public Works staff prior to acceptance of the Sand Pointe improvements by the County.

## **C. Recreation and Coastal Access**

### 1. Mitigation Measures

- a. The applicant shall construct a parking lot, associated with the proposed "resting park" near the Murray Road entrance to the Hammond Trail, to be located in line with the right-of-way of Kelly Avenue; the design for the parking area shall be approved by the County Public Works Department (added in response to a comment from the Department of Public Works).
- b. The Wilbur Street right-of-way shall be posted with "no parking" signs, and may (subject to the approval of the County Public Works Department) be reduced in width consistent with allowing only emergency vehicle access to the Sand Pointe project site and pedestrian/equestrian access to the Wilbur

Street trailhead of the Hammond Trail (added in response to a public comment in the Final EIR).

**2. Monitoring Program**

- a. The Planning Division shall verify the inclusion of the Murray Road parking lot in the approved design prior to the recordation of the Final Map. The parking lot design shall be approved by the Department of Public Works, and the constructed lot shall be inspected by Department of Public Works staff prior to acceptance of project improvements by the County.
- b. The sign posting in the second measure shall be completed prior to the acceptance of project improvements by the County. The design to carry out the right-of-way reduction (if this is approved by decision-makers) shall be approved by the Department of Public Works, and any construction needed to carry out the width reduction shall be inspected by Department of Public Works staff prior to acceptance of the Sand Pointe improvements by the County.

**D. Construction Noise**

**1. Mitigation Measures**

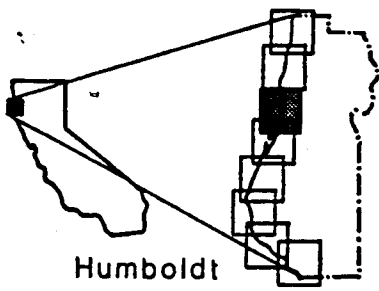
- a. Limit the period during which construction equipment may be operated to daytime hours (7:00 AM to 5:00 PM), weekdays.
- b. Construction personnel shall conduct their work activities in a manner which minimizes noise generation.
- c. Notify neighbors adjacent to the parts of the project site subject to heavy equipment use prior to initiating such use.

**2. Monitoring Program**

- a. The owner's construction supervisor shall verify compliance with these measures during the construction process. If the Building Division receives evidence that the measures are not being complied with, the Division shall suspend issued permits until contractor compliance with the measures is verified.



A B C D E F G H I J K L M N O



Humboldt

Approximate location of the project site

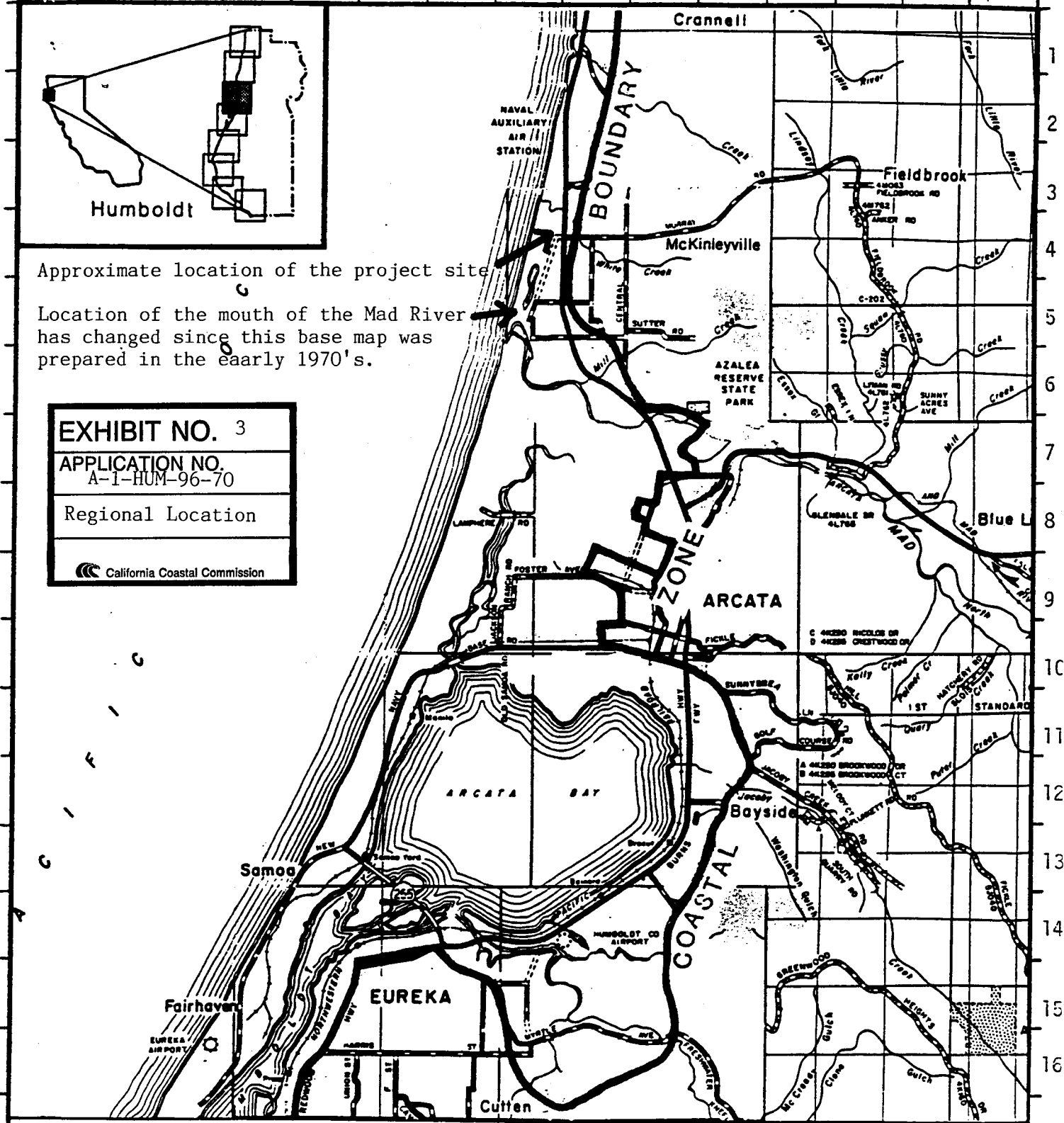
Location of the mouth of the Mad River has changed since this base map was prepared in the early 1970's.

**EXHIBIT NO. 3**

**APPLICATION NO.**  
A-1-HUM-96-70

**Regional Location**

California Coastal Commission

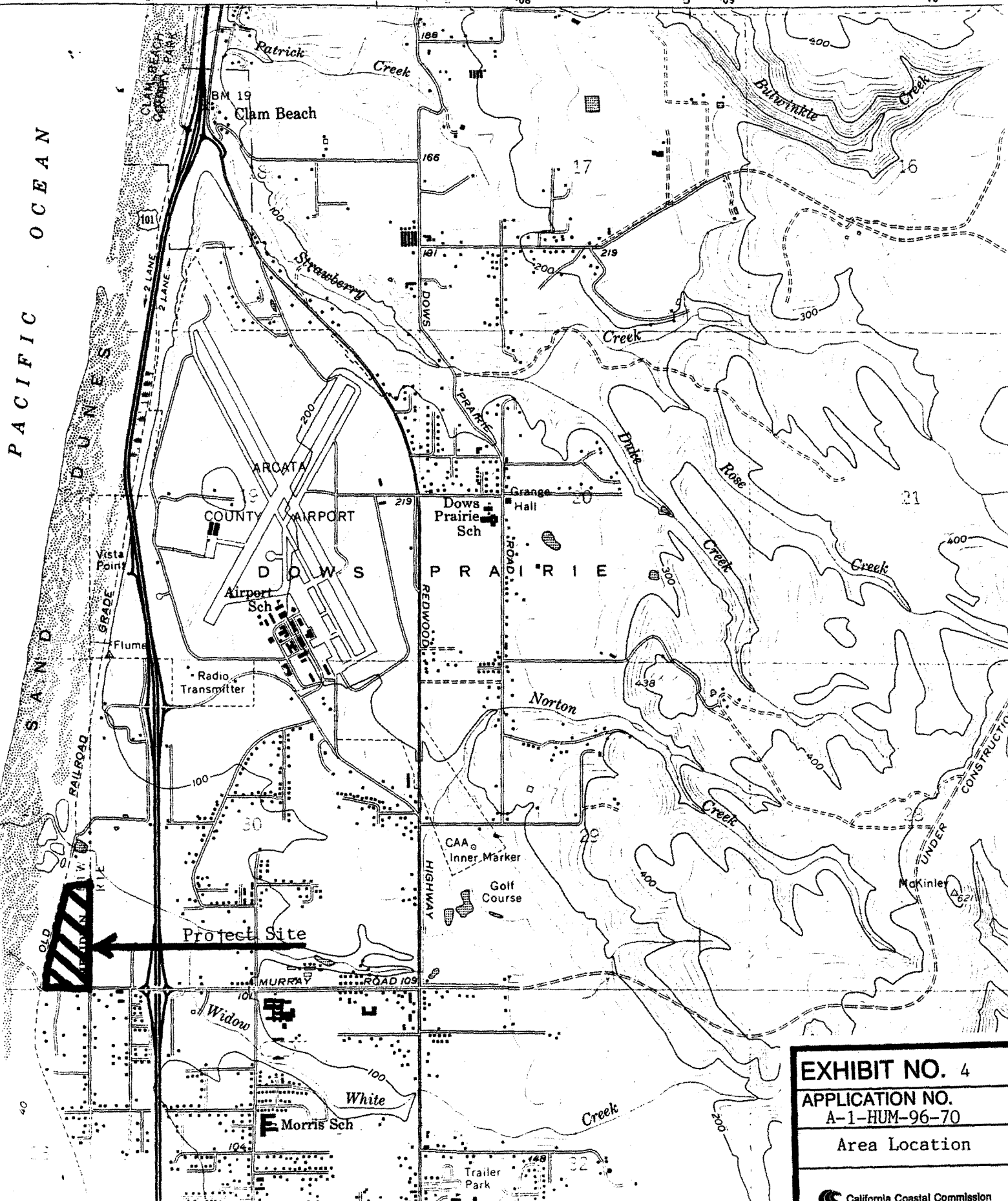


California Coastal Commission

# LOCATION MAP



30" R 1 W. 406000m.E. 408 5' 409 410



<b>EXHIBIT NO. 4</b>
<b>APPLICATION NO.</b> A-1-HUM-96-70
Area Location
California Coastal Commission

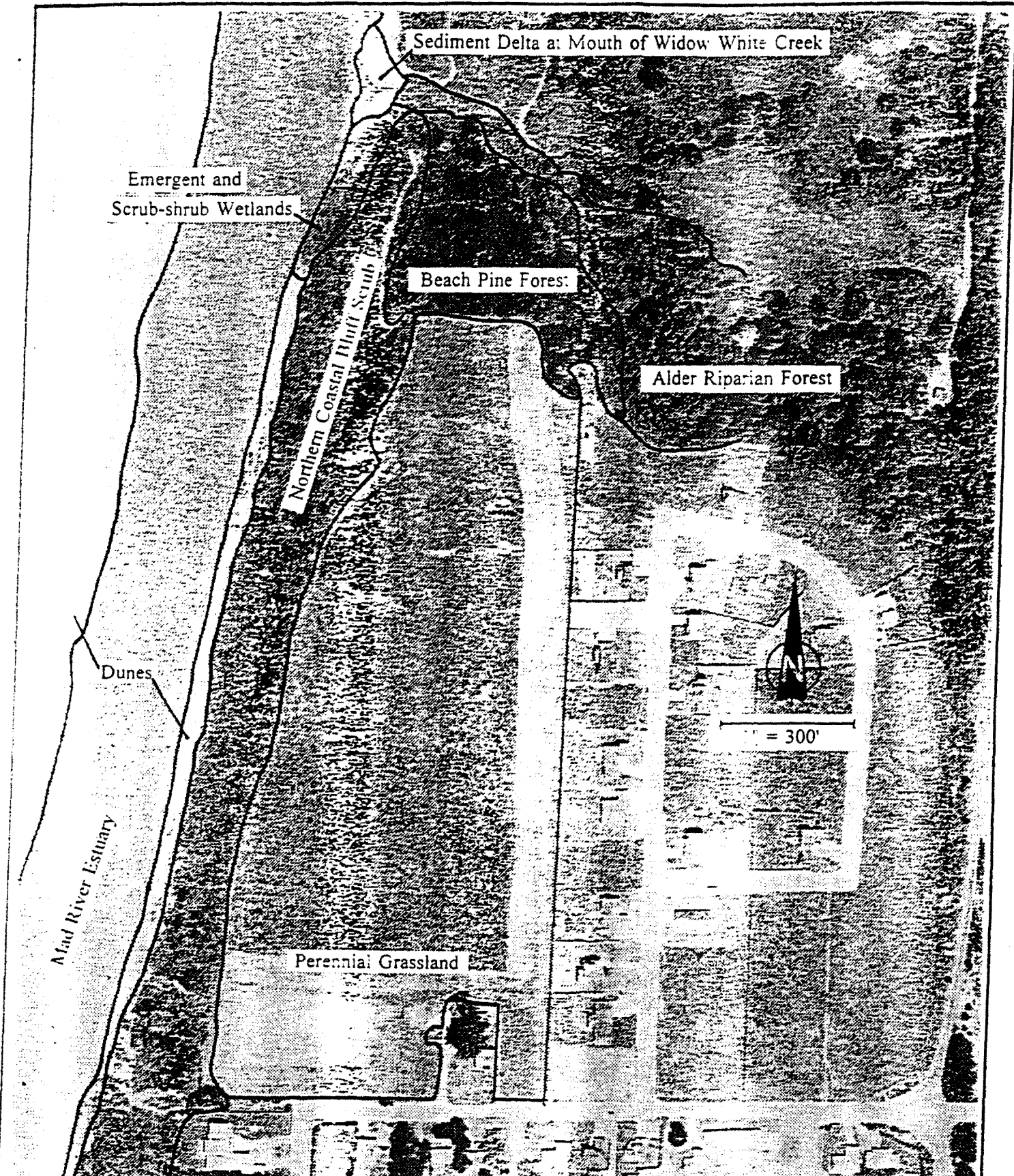


Figure 4-1. Plant Associations and Other Biological Features, Sand Pointe Project Vicinity. See Text for Explanation.

<b>EXHIBIT NO.</b> 5
<b>APPLICATION NO.</b> A-1-HUM-96-70
Plant Associations
California Coastal Commission

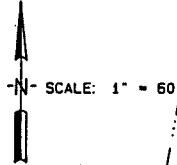
**LEGEND**

- \* BLUFF EDGE SETBACK MARKER PER GEOLOGIST
- DIRT OR GRAVEL ROAD OR EXISTING TRAIL
- PROPERTY LINE
- FENCE
- PROPOSED TRAIL
- EDGE OF BLUFF
- BLUFF EDGE SETBACK
- PROPOSED EASEMENT
- CONTOUR LINES
- LIMITS OF EXCLUSION ZONE FOR STRUCTURES FOR HUMAN OCCUPANCY
- LIMITS OF BUILDABLE AREA ON LOT
- PARKING POOLS

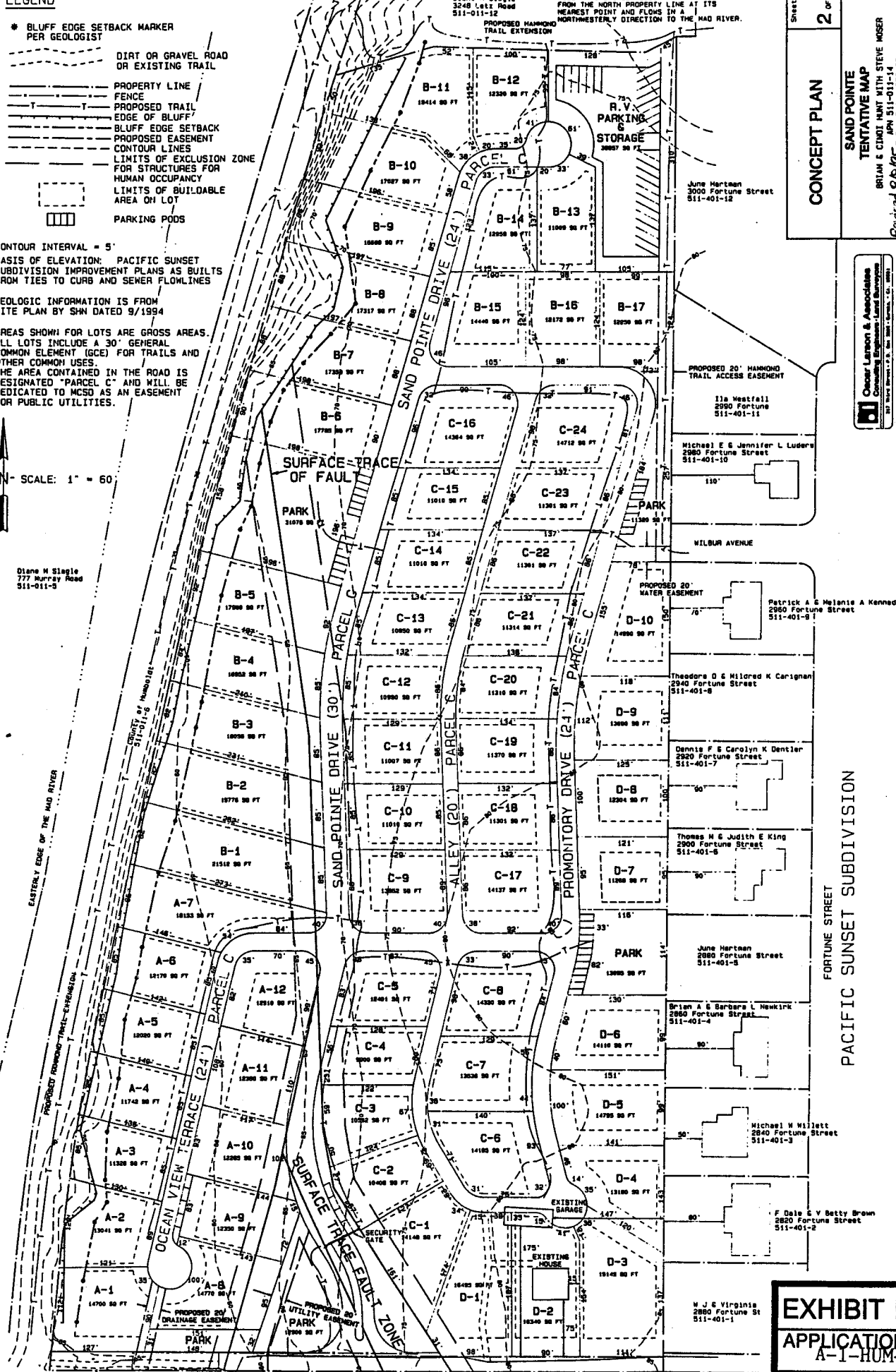
CONTOUR INTERVAL = 5'  
 BASIS OF ELEVATION: PACIFIC SUNSET SUBDIVISION IMPROVEMENT PLANS AS BUILTS FROM TIES TO CURB AND SEWER FLOWLINES

GEOLOGIC INFORMATION IS FROM SITE PLAN BY SHN DATED 9/1994

AREAS SHOWN FOR LOTS ARE GROSS AREAS. ALL LOTS INCLUDE A 30' GENERAL COMMON ELEMENT (GCE) FOR TRAILS AND OTHER COMMON USES. THE AREA CONTAINED IN THE ROAD IS DESIGNATED "PARCEL C" AND WILL BE DEDICATED TO MCDSD AS AN EASEMENT FOR PUBLIC UTILITIES.



Diane M Siegle  
 777 Murray Road  
 511-011-5




Sheet **2** of **2**  
**CONCEPT PLAN**  
**SAND POINTE TENTATIVE MAP**  
 BRIAN & CIMOI HUNT WITH STEVE MOSER  
 APR 511-011-14  
 APR 511-011-14  
 Revised 8/8/95 T.N. R. 14, SEC. 36

**Clear Lorton & Associates**  
 Consulting Engineers/Urban Planners  
 207 North Broadway, Suite 200, San Mateo, CA 94401

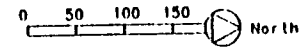
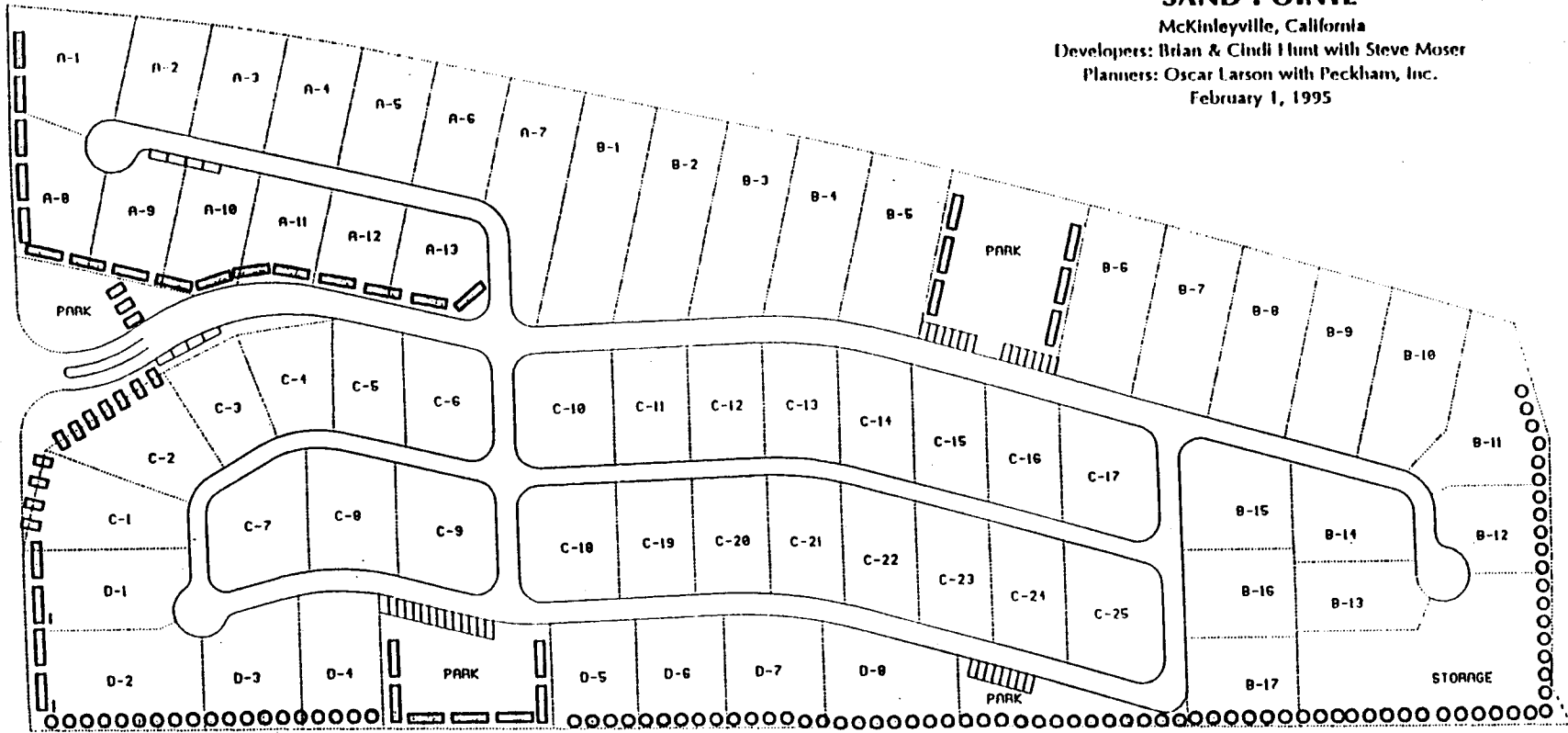
**EXHIBIT NO. 6**  
**APPLICATION NO.**  
 A-1-HUM-96-70  
**Subdivision Plan**




EXISTING HAMMOND TRAIL CONNECTION  
 Ted J & Mary M Mosier  
 2785 Kelly Avenue  
 510-371-42  
 30' EASEMENT PER 643 OR 234  
 Thomas B & Jane Parkerson  
 2737 Kelly Avenue  
 510-371-30  
 Genevieve M Nikkel  
 775 W Murray Road  
 510-371-28  
 W J & Virginia  
 2850 Fortune St  
 511-401-1  
 Donald W & Lujan  
 804 Murray Road  
 511-261-17  
 F Dale & V Betty Brown  
 2820 Fortune Street  
 511-401-2  
 Michael W Willlett  
 2840 Fortune Street  
 511-401-3  
 Brian A & Barbara L Newkirk  
 2860 Fortune Street  
 511-401-4  
 June Hartman  
 2880 Fortune Street  
 511-401-5  
 Thomas M & Judith E King  
 2900 Fortune Street  
 511-401-6  
 Dennis F & Carolyn K Dentler  
 2920 Fortune Street  
 511-401-7  
 Theodore D & Mildred K Carignan  
 2940 Fortune Street  
 511-401-8  
 Patrick A & Melanie A Kennedy  
 2960 Fortune Street  
 511-401-9  
 Michael E & Jennifer L Luders  
 2980 Fortune Street  
 511-401-10  
 Ila Westfall  
 2990 Fortune Street  
 511-401-11  
 PROPOSED 20' HAMMOND TRAIL ACCESS EASEMENT  
 June Hartman  
 3000 Fortune Street  
 511-401-12  
 WIDIA WHITE CREEK LIES APPX 260' FROM THE NORTH PROPERTY LINE AT ITS NEAREST POINT AND FLOWS IN A NORTHWESTERLY DIRECTION TO THE MAD RIVER.  
 PROPOSED HAMMOND TRAIL EXTENSION  
 Olan H Siegle  
 3248 Kelly Road  
 511-011-12  
 EASTERLY EDGE OF THE MAD RIVER  
 MURRAY ROAD (C3030)  
 KELLY AVENUE  
 FORTUNE STREET  
 PACIFIC SUNSET SUBDIVISION  
 PLAN BY SHN 9/1994

 California Coastal Commission	<b>EXHIBIT NO. 7</b>
	<b>APPLICATION NO.</b> A-1-HUM-96-70
	<b>Fence and Security Plan</b>

**SECURITY PLAN**  
**SAND POINT**  
 McKinleyville, California  
 Developers: Brian & Cindi Hunt with Steve Moser  
 Planners: Oscar Larson with Peckham, Inc.  
 February 1, 1995

DRAFT



-  OPAQUE FENCE
-  SEMI-TRANSPARENT FENCE
-  TRANSPARENT FENCE

## SAND POINTE

The following items are offered by the Applicant to create Extraordinary Public Benefits:

### Resting Park

The Applicant will construct a resting park ( $\pm 5,000$  square feet) at the west end of Murray Road, which will include lawns, an underground sprinkler system, two (2) picnic tables, two (2) sitting benches, and shrubbery to block the view of vehicles from Murray Road. The Applicant will offer to dedicate this park to the McKinleyville Community Services District as an Open Space Maintenance Zone. Maintenance and liability insurance will be provided by the Homeowners Association, estimated at \$100.00 to \$130.00 per month. The value of approximately 5,000 square feet of land at \$8.00 per square foot is \$40,000.00. The cost to develop approximately 5,000 feet of landscaping is \$20,000.00.

### Beach Dedication

The Applicant will offer to dedicate APN 511-011-05 (approximately 67.27 acres) to the State Coastal Conservancy, or to another suitable entity which will manage the land for conservation purposes. The Applicant will be required to deposit approximately \$20,000.00 into a Trust Account to allow the recipient to pay liability insurance from the interest proceeds. The value of the 67.27 acres is approximately \$100,000.00.

### Telephone Poles and Lines


Aboveground power and telephone lines from the two westernmost poles along Murray Road will be placed underground, and the poles removed, at an estimated cost of \$45,000.00 to \$65,000.00.

### Fences

Approximately 700 lineal feet of 6-foot high board-on-board (all heart redwood) fence with 6-inch by 6-inch pressure-treated posts and horizontal pressure-treated bases will be built adjacent to the Hammond Trail on the north and south sides of Sand Pointe. The fence will cost approximately \$20.00 per lineal foot, for a total cost of approximately \$14,000.00. The cost of monthly maintenance (and reserve for replacement) will be approximately \$150.00 per month.

### View Easement

Residences on the southwest portion of the property will be restricted to the height of the existing vegetation, 23 feet. This restricts lots A-1, A-2, A-3, A-4, A-8, A-9, and A-10.

<b>EXHIBIT NO.</b> 8
<b>APPLICATION NO.</b> A-1-HUM-96-70
Extraordinary Public Benefits offered by the applicants
 California Coastal Commission

### **Coastal Access**

An access easement will be offered to the County, from the west end of Wilbur Avenue to the proposed Hammond Trail north of the Sand Pointe site.

### **Hammond Trail Easement**

An easement will be offered for maintenance of the Hammond Trail west of the Sand Pointe project, across all lands east of the existing Trail which are classified as moderate and high bluff slope failure hazard, as depicted on the site map prepared by SHN, December 1994.

### **Lower Costs to the County**

The project will minimize the financial effect to County Public Works by minimizing operation and maintenance costs for roads and other facilities which would otherwise have to be maintained by the County.


### **Reduced Need for Services**

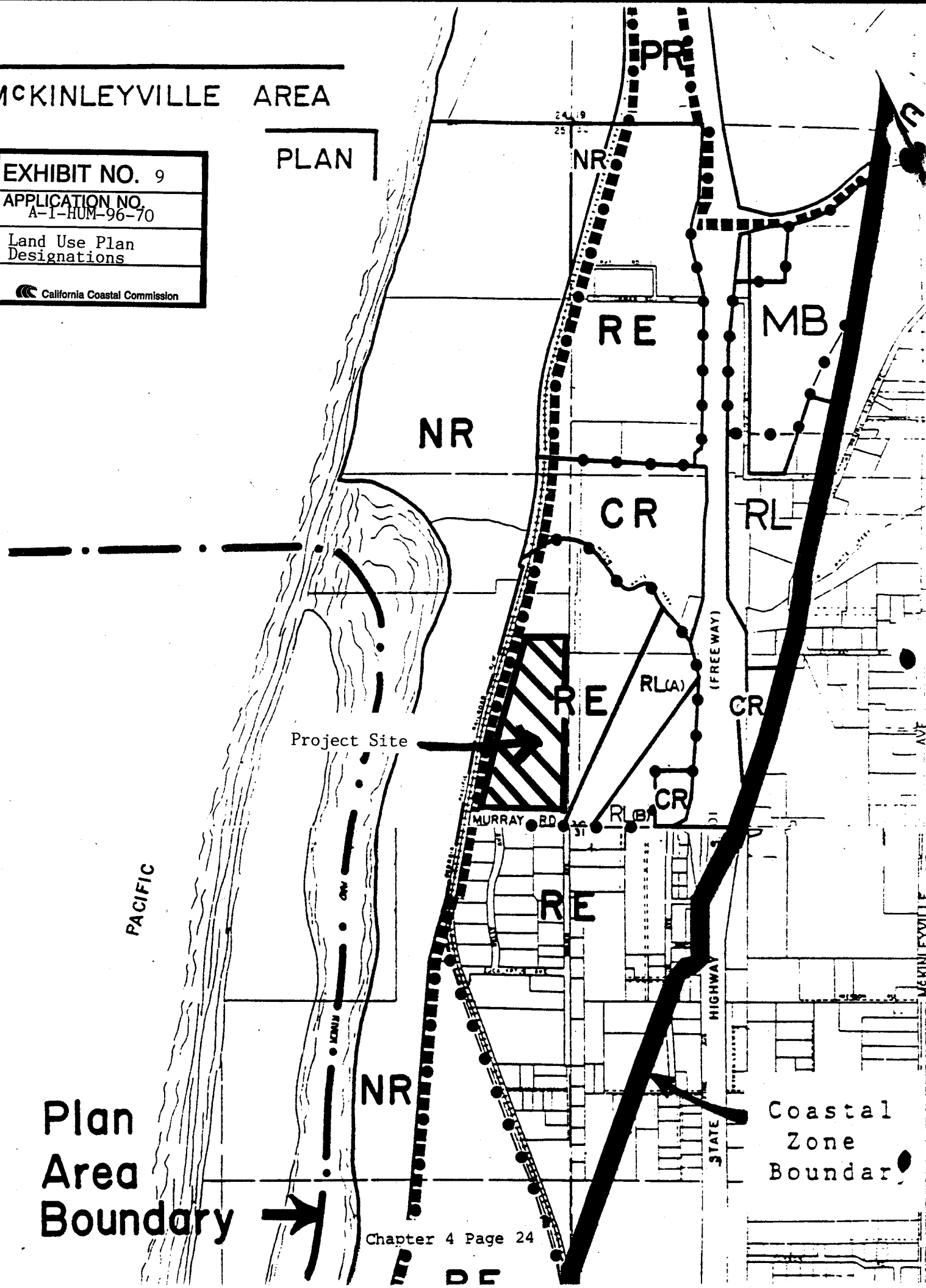
The project will result in a reduced impact on publicly maintained improvements; roadway maintenance, park maintenance, and landscape maintenance will be provided by a Homeowners Association.

The fenced and gated community will result in less need for law enforcement services than would a non-gated community.

# MCKINLEYVILLE AREA

## PLAN

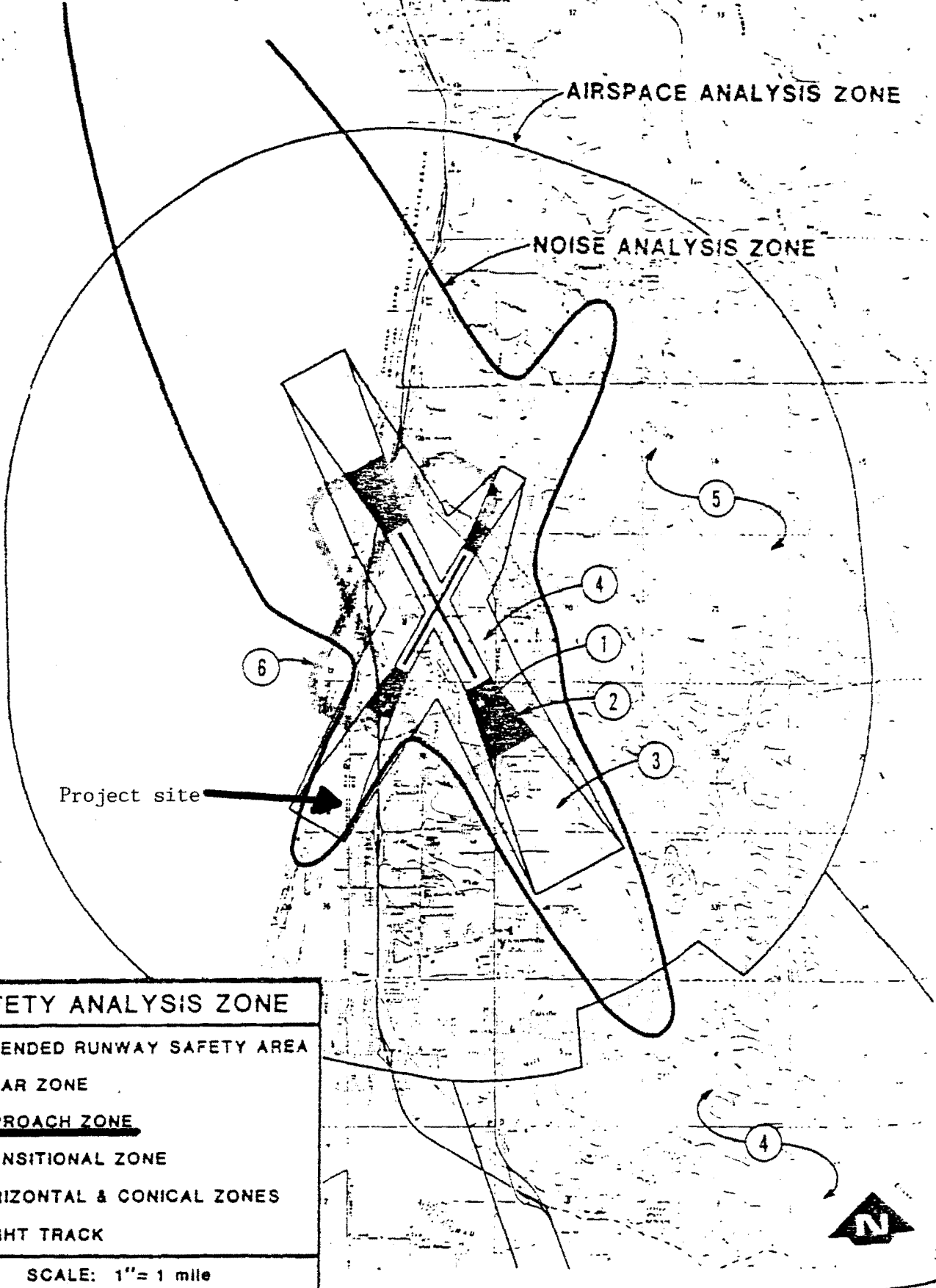
EXHIBIT NO. 9
APPLICATION NO. A-1-HUM-96-70
Land Use Plan Designations
 California Coastal Commission



Plan  
Area  
Boundary

Coastal  
Zone  
Boundary





**SAFETY ANALYSIS ZONE**

- 1-EXTENDED RUNWAY SAFETY AREA
- 2-CLEAR ZONE
- 3-APPROACH ZONE
- 4-TRANSITIONAL ZONE
- 5-HORIZONTAL & CONICAL ZONES
- 6-FLIGHT TRACK

SCALE: 1" = 1 mile

- SAF
- 1-EX
- 2-CL
- 3-AP
- 4-TR
- 5-HO
- 6-FLI

**AREA OF INFLUENCE - ARCATA AIRPORT**

**EXHIBIT NO. 10**  
 APPLICATION NO.  
 A-1-HUM-96-70  
 Airport Safety Zones

23  
 -144-

PACIFIC OCEAN

AIRPORT

PR

PR

Approximate Boundary of the Airport Special Study Area.

24 19  
25

NR

RE

Airport Transition Zone

NR

CR

Airport Transition Zone

Airport Approach Zone

8-2 units  
acre

10-8  
units

Project Site

(FREEWAY)

CR

CR

<b>EXHIBIT NO.</b> 11
<b>APPLICATION NO.</b> A-1-HUM-96-70
Airport approach and transition zones

**RECEIVED**  
JAN 21 1997  
CALIFORNIA  
COASTAL COMMISSION

**Richard C. Tobin**  
2650 Buttermilk Lane  
Arcata, CA, 95521  
707-825-8424

**January 19, 1997**

**Dear Commissioners,**

**It would be a shame if you approved the Sand Pointe Project before the Humboldt County Board of Supervisors properly adopts the Off Airport portion of the Arcata Airport Land Use Compatibility Plan (ALUCP).**

**They use the old plan when it is convenient then use the Draft, unapproved, 1993 Plan when it is convenient.**

**The Board has publicly admitted the 1993 Draft ALUCP needs to be properly reviewed, however, they have refused to allow it to come up for review. The Board also agrees that the Sand Pointe Project is in the area covered by the ALUCP.**

**This is extremely important because the number of dwelling units per acre is significantly increased in the plan which has not been approved.**

**I respectfully request that you:**

- 1. Send the appeal back to the Humboldt County Board of Supervisors and tell them the appeal is premature. or**
- 2. Remove consideration of the Sand Pointe appeal off the docket until the Humboldt County Board of Supervisors submits a legally approved Airport Land Use Compatibility Plan. or**
- 3. Deny the appeal.**

**Sincerely,**

*Signed*


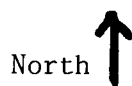
<b>EXHIBIT NO.</b> 12
<b>APPLICATION NO.</b> A-1-HUM-96-70
Comment Letter
 California Coastal Commission

Table 5-4. Airport/Land Use Safety Compatibility Criteria (Based on Hodges & Shutt 1980).

SAFETY ZONES <sup>1/</sup>					
CRITERIA or LAND USE CHARACTERISTICS	Clear Zone	Approach Zone <sup>2/ 3/</sup>	Transitional Zone <sup>3/</sup>	Beneath Flight Track	Horizontal and Conical Zones
Distracting Lights and Glare	--	-	-	-	0
Source of Smoke	--	-	-	-	0
Source of Electronic Interference	--	-	-	--	--
Attractor of Birds	--	-	-	-	-
Low-Density Residential	--	o <sub>4</sub> /	+ <sub>5</sub> /	+ <sub>5</sub> /	++
High-Density Residential	--	-	o <sub>5</sub> /	o <sub>5</sub> /	+
High-Occupancy Uses	--	-	o <sub>6</sub> /	+	+
Assemblage of People	--	o <sub>6</sub> /	+	+	++
Permanent Structures	--	+	++	++	++
INTERPRETATION					
++	<b>CLEARLY ACCEPTABLE:</b> No hazards result when the land use characteristic occurs within the specified zone.				
+	<b>NORMALLY ACCEPTABLE:</b> Safety is a consideration but, unless unusual conditions are involved, no hazards will result.				
o	<b>CONDITIONALLY ACCEPTABLE:</b> Hazards are associated with the location of the land use characteristics in the given zone, but mitigation measures are available which may make the relationship between them acceptable.				
-	<b>NORMALLY UNACCEPTABLE:</b> The land use characteristic should generally be avoided in the specified zone because of the significant hazards which will result.				
--	<b>CLEARLY UNACCEPTABLE:</b> Unless strong overriding circumstances prevail, the land use characteristic should not be permitted within the indicated safety zone. Within the extended runway safety area of a clear zone, exceptions are not permissible under any circumstances.				
DEFINITIONS					
<ul style="list-style-type: none"> <li><b>Distracting Lights and Glare:</b> Any nonairport light which can be mistaken for airport lights. Any source of glare directed toward an operating aircraft.</li> <li><b>Source of Smoke:</b> Any substantial generator of smoke whether from a permanent use or temporary source.</li> <li><b>Source of Electronic Interference:</b> Any source which disrupts radio communications or navigational signals.</li> <li><b>Attractor of Birds:</b> Any land use characteristic, especially including sanitary landfills, which increases the likelihood of aircraft colliding with birds.</li> <li><b>Low-Density Residential:</b> Residential uses, including duplexes and mobile homes, having an average density of less than 10 units per acre.</li> <li><b>High-Density Residential:</b> Residential uses having an average density greater than 10 units per acre.</li> <li><b>High-Occupancy Uses:</b> Uses which typically are confined to a structure and which regularly involve densities exceeding 25 person per acre (excluding streets).</li> <li><b>Assemblage of People:</b> Any circumstances, whether permanent or temporary and whether in or out of a structure, which result in assemblages of more than 25 persons per acre (excluding streets).</li> <li><b>Permanent Structures:</b> Any building, sign, or other structure not required for airport operations. (Note: the height of structures must meet the criteria set forth in the airspace policies.)</li> </ul>					
NOTES AND CONDITIONS					
<sup>1/</sup>	Where zones overlap, the more restrictive criterion applies.				
<sup>2/</sup>	For the purpose of assessing safety compatibility, only the inner 10,000 feet of a precision instrument runway approach zone need be considered.				
<sup>3/</sup>	Where the affected land is lower than the runway elevation, less restrictive criteria may be acceptable.				
<sup>4/</sup>	The use may be acceptable if the average density does not exceed one dwelling unit per approximately 3 acres (agricultural, rural residential, or similar zoning designation). This criterion assumes that it is possible to adjust building sites within the approach zone so as to maximize the extent of contiguous open space. Where this is not the case, residential use is normally unacceptable.				
<sup>5/</sup>	Acceptability is contingent upon the reasonable availability of large, contiguous open spaces in the immediate vicinity and consideration for the added margin of aeronautical safety which such spaces provide.				
<sup>6/</sup>	The use may be acceptable if it does not regularly result in a concentration of more than 50 persons per (streets) when averaged over a 2-hour period.				

**EXHIBIT NO. 13**  
**APPLICATION NO.**  
 A-1-HUM-96-70  
**Airport/Land Use Safety Compatibility Criteria**  
 California Coastal Commission

BLUFFS ARE GROSS AREAS.  
 DE A 30' GENERAL  
 (GCE) FOR TRAILS AND  
 USES.  
 INED IN THE ROAD IS  
 RCEL "C" AND WILL BE  
 ICSD AS AN EASEMENT  
 ILITIES.



Scale: 1 inch = 60 feet

Bluff edge

**SURFACE TRACE  
 OF FAULT**

**PARK**  
 31078 SQ FT

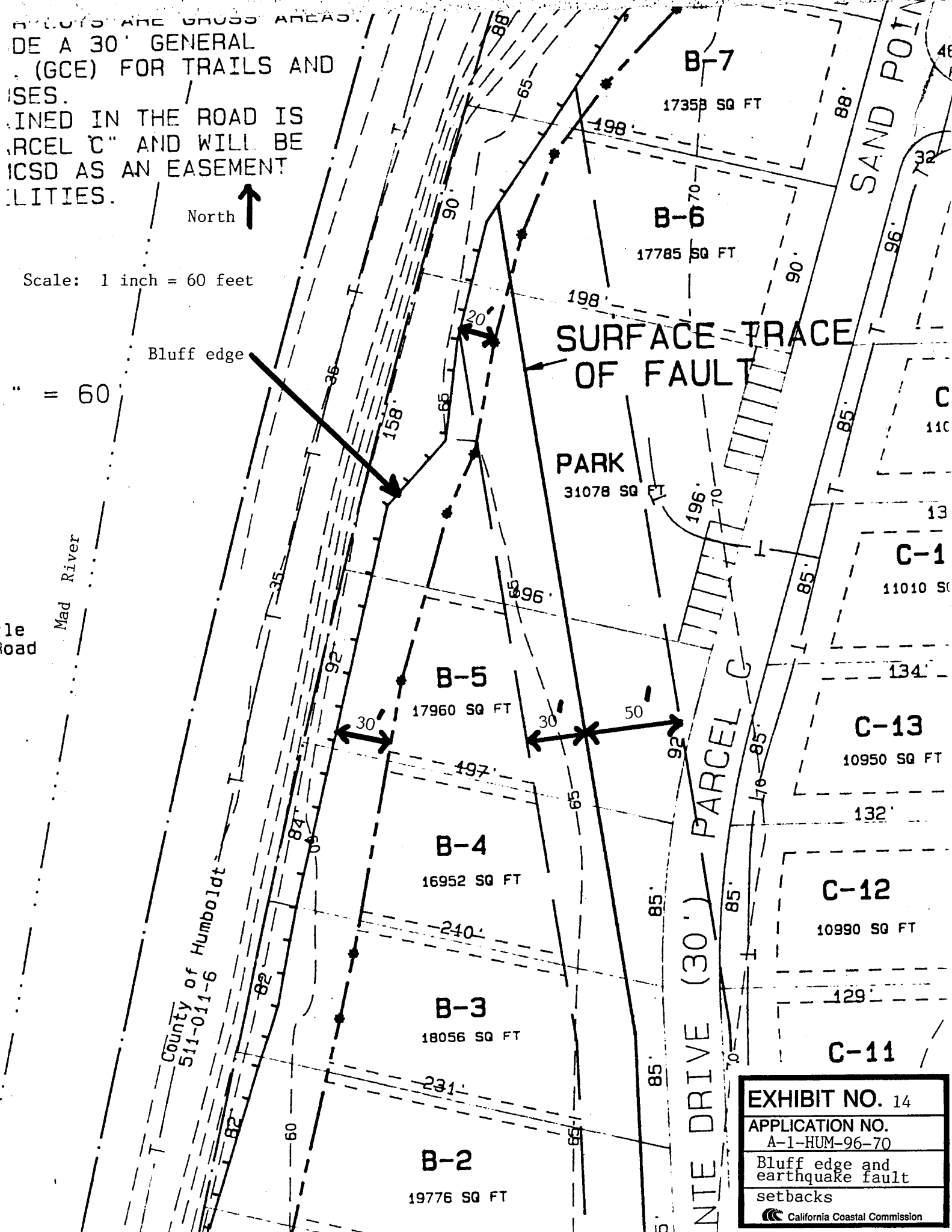
**PARCEL C**  
**INTE DRIVE (30')**

**SAND POINT**

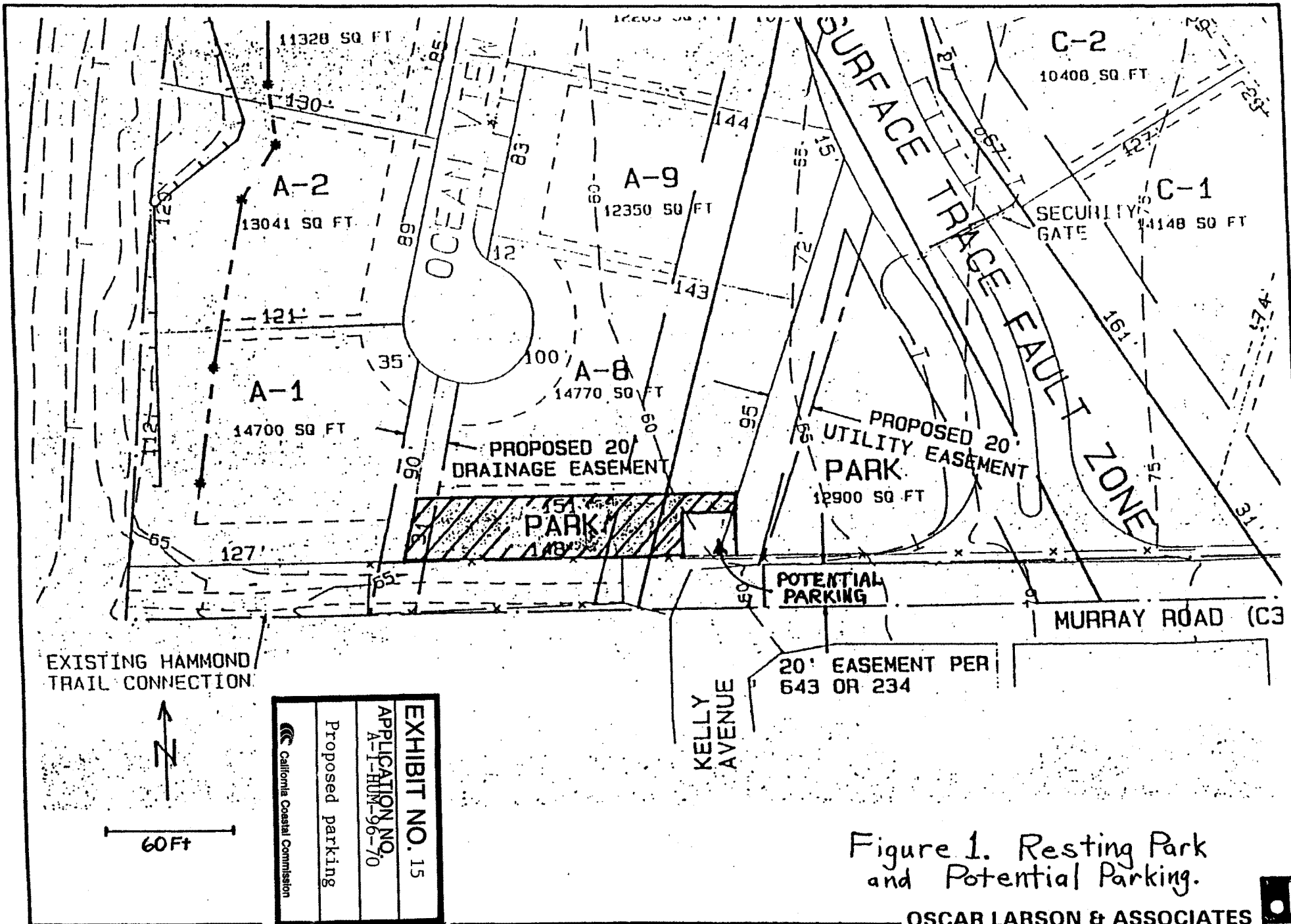
Mad River  
 le Road

County of Humboldt  
 511-011-6

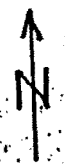
" = 60




<b>EXHIBIT NO. 14</b>
APPLICATION NO. A-1-HUM-96-70
Bluff edge and earthquake fault setbacks
California Coastal Commission



EXISTING HAMMOND TRAIL CONNECTION



60 Ft

 California Coastal Commission	Proposed parking
	APPLICATION NO. A-1-HM-96-70
	EXHIBIT NO. 15

POTENTIAL PARKING

20' EASEMENT PER 643 OR 234

Figure 1. Resting Park and Potential Parking.



Note: The 5-foot-high, open style fence and the crashable gate at the end of Wilbur Avenue is not shown.



Figure 5-8B Simulated Viewshed, West End of Wilbur Street, Illustrating Building Height and Bulk as Allowed in McKinleyville Area Plan (Looking West).

015/11/2012 2

5-29

EXHIBIT NO. 16

APPLICATION NO.  
A-1-HUM-96-70

Simulated view from  
the end of Wilbur  
Avenue

California Coastal Commission

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