

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

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49th day: April 21, 1997
Staff: JL-E
Staff Report: March 28, 1997
Hearing Date: April 10, 1997
Commission Action

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: San Mateo County

LOCAL DECISION: Approved with conditions

APPEAL NUMBER: A-1-SMC-97-013

APPLICANT: PAUL GUMBINGER; OWNER: MARYANNE LUCHINI

APPELLANTS: California Coastal Commissioner Rusty Areias; California Coastal Commissioner Louis Calcagno; Lennie Roberts, Committee for Green Foothills.

PROJECT LOCATION: Along the west side of Highway 1, 800 feet south of the Half Moon Bay City limits/urban rural boundary, San Mateo County, APN 066-081-080

PROJECT DESCRIPTION: Construct a new 3,490-square-foot, two -story, single family residence and 2,033-foot-long driveway.

SUBSTANTIVE FILE DOCUMENTS: San Mateo County Coastal Development Permit File No. 96-0027; San Mateo County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION: Staff recommends that the Commission determine that the appeal raises a substantial issue regarding project's conformance with policies of the San Mateo County certified Local Coastal Program (LCP). The appeal raises a substantial issue because (1) the County acted under the mistaken assumption that the project site did not contain prime agricultural lands and thus the project as approved by the County was not evaluated for its consistency with the LCP policies that limit conversion of prime agricultural lands; (2) the project as approved by the County would allow a water connection for a non-agricultural residential use inside the rural area of the County where water connections are limited to agricultural uses; (3) the project as approved by the County would not cluster non-agricultural development in locations most protective of the agriculture on the site; and (4) the project as approved by the County would not be clustered near existing development but would instead block views from the adjacent Cowell State beach access trail.

The motion to adopt the Staff Recommendation of Substantial Issue is found on page 3.

STAFF NOTES:

1. Asterisks

Certain LCP Policies reproduced herein are denoted with an asterisk(*). Except for proposed amendments which would further restrict non-agricultural development, policies identified with an asterisk may be amended or appealed only after approval by a majority of the voters of San Mateo County.

2. Emphasis Added

Emphasis has been added to portions of policies throughout this report by bolding.

3. Appeal Procedures

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. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if they are not the designated "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 a city or county (Coastal Act Section 30603(a)).

The subject development is appealable to the Commission because (1) the approved project is located between the sea and the first public road paralleling the sea, (2) portions of the development are located within 300 feet of a beach and top of the seaward face of the coastal bluff, and (3) the development includes uses not designated the "principal permitted use" under the certified LCP.

For projects located between the sea and the first public road paralleling the sea, the grounds for appeal include not only the allegation that the approved development does not conform to the standards set forth in the certified local coastal program (Coastal Act Section 30603(b)(1)), but also the allegation that the approved development does not conform to the public access policies of the Coastal Act.

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. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will continue to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 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. Unless it is determined that there is no substantial issue, at a subsequent date, the Commission will consider the merits of the proposed project de novo. When the Commission conducts the de novo portion of the appeal hearing, the applicable test for the Commission to consider will be whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development as approved is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, when reviewing a project on appeal, the Commission is required to consider not only the certified LCP, but also the Chapter 3 access and recreation policies .

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, 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. Any person may testify during the de novo stage of an appeal.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to PRC Section 30603.

MOTION. I move that the Commission determine that Appeal No. A-1-SMC-97-013 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a NO vote on the motion. A majority of the Commissioners present is required to pass the motion.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. SUMMARY OF APPELLANT'S CONTENTIONS

Two appeals have been filed. As summarized below (please see Exhibits 9 and 10 for the full text), the appellants contend that the development as approved by the County is inconsistent with the certified LCP in four general areas:

A-1-SMC-97-013

PAUL GUMBINGER; MARYANNE LUCHINI

Page 4

1. Inconsistent with the LCP's Agriculture Policies: Both appeals contend that as approved by the County, the house, landscaping, and 2000-foot driveway would impermissibly convert agricultural land, and fail to cluster non-agricultural development in a location most protective of agriculture, inconsistent with LCP policies, including 5.8, 5.10, 5.15 and 1.8.

2. Inconsistent with the LCP's Public Works Policies: Both appeals contend that the project approved by the County would allow connection to urban services (water), for a non-agricultural use outside the urban-rural boundary contrary to LCP policies, including policies 2.14 and 2.37.

3. Inconsistent with the LCP's Visual Resources Policies: As stated by appellant Committee for Green Foothills (CGF), the approved project would "adversely affect important and inspiring coastal views from the Cowell State Beach access trail,...would degrade the open-space experience of visitors..., is not in scale with the rural character of the area, and would not be clustered near existing development..." inconsistent with Policies 8.5 and 8.15. CGF also contends that Condition 6 of the County approval is unclear and contradictory in that it requires a revised planting plan (unavailable to the public at the time of approval of the project) which provides additional shrub and tree plantings which 'reduce or eliminate views' of the proposed residence."

Appellant Commissioners Areias and Calcagno additionally cite inconsistencies with: (1) LCP Policy 8.18, which requires "that new development be located, sited, and designed to fit the physical setting, so that its presence is subordinate to the pre-existing character of the site, [and] enhances the scenic and visual qualities of the area;" (2) LCP Policy 8.20, which requires that structures relate in size and scale to adjacent buildings and landforms; and (3) LCP Policy 8.31, which specifies a variety of standards that apply to development in Scenic Corridors in rural areas.

4. Other Issues Unrelated to Specific LCP Policies: The appellant for the Committee for Green Foothills raises two additional issues:

- that requiring both the payment of an in-lieu fee and the "voluntary" dedication of a lateral easement may have created an unenforceable requirement, and
- that the 2-2 vote at the Planning Commission level was legally a denial of the project, and that it was not properly before the Board of Supervisors.

B. PROJECT SETTING AND DESCRIPTION:

The project as approved by the County of San Mateo would allow construction of a new two-story, 3,490-square-foot single-family residence (including a 448-square-foot, two car garage). The residence would be a Mediterranean-style structure, 28 feet high, 25 feet wide, and 77 feet long,

excluding terraces and patios (see Exhibits 5 and 6; note that final approval (Exhibit 8) specified additional landscaping, rotation of the garage 90 degrees to face east, and "a less formal design to blend in with the rural area including the use of earth tone colors"). The approval also includes a 2,033-foot-long driveway from Cabrillo Highway (Highway 1) to the residence, with three emergency turnouts spaced along that distance, and an additional fire engine turnaround approximately 100 feet from the residence. Total area covered by the driveway surface would be approximately 44,000 sq.ft, or slightly more than 1 acre. The plans do not show specifics, if any, regarding landscaping along the driveway. Construction of the project would require approximately 350 cubic yards of grading.

The parcel on which the project would be built is located on the west side of Highway 1 approximately 800 feet south of the Half Moon Bay city limits, on the rural side of the urban-rural boundary defined by the LCP. The approximately 4.88-acre blufftop parcel was created by deed in 1941. The parcel is a narrow strip of land 2,616 feet long, which slopes up approximately 10 feet in elevation from Highway 1 for the first 300 feet before gently sloping down to the coastal bluff edge (Exhibit A). The parcel is 100 feet wide at Highway 1, and narrows to about 65 feet at a point approximately 1000 feet seaward of Highway 1. The parcel is immediately adjacent to the new Cowell State Beach accessway and trail that runs along its entire length to the south. The lands south of the accessway are in active, productive agricultural operations. The parcel itself consists of prime agricultural lands (see section D1 below). Two larger agricultural land parcels lie to the north between the subject parcel and the Half Moon Bay urban-rural line, and a new golf course is just over the rise across the City Limit line of Half Moon Bay.

C. LOCAL GOVERNMENT ACTION:

The application for this project was submitted to the County of San Mateo on or about June 6, 1996. An application for a Planned Agricultural Permit (PAD), a Coastal Development Permit (CDP), an Architectural Review (ARC) and a finding of exemption from the California Environmental Quality Act (CEQA) were originally scheduled for hearing before the Zoning Hearing Officer of San Mateo County on September 19, 1996. Lennie Roberts, Legislative Advocate of the Committee for Green Foothills (CGF) requested postponement of action by the Zoning Hearing Officer and referral of the project to the Planning Commission for architectural and site review as provided by Policy 8.33 of the LCP.

The project was heard by the San Mateo County Planning Commission on October 9, 1996, at which time the Planning Commission continued the public hearing to November 13, 1996 to: (1) provide staff time to prepare a Negative Declaration, (2) review an alternate site location for the proposed residence, (3) provide a response to the Coastal Commission staff's letter of Oct. 3, 1996, and (4) address the Planning Commission's concern regarding whether or not a connection to the existing water service line would set a precedent in other rural areas of the County.

At its second hearing on November 27, 1997, in order to comply with LCP Policy 8.5 (Structures), the Planning Commission decided on a 4-0 vote (with one Commissioner recused) to require the proposed residence be moved to an alternate site on the parcel approximately 400 feet west of Highway One (Alternate Location "C", Exhibit 4) and to require that it be redesigned to be lower, less formal, and to blend in better with the area. The Planning Commission also considered "whether or not there was sufficient evidence to make a finding that not allowing a water connection for the proposed residence would constitute a taking of the applicant's property rights..." [but] "was not able to conclude...that 'denying the residential use would result in a taking of private property.'" (Exhibit 8, Staff Report to Board of Supervisors from Terry Burnes, Planning Administrator, February 11, 1997, pgs. 2-3.). On the question of approving the project, the Planning Commission "split two to two with one Commissioner recusing himself" (Exhibit 8).

The San Mateo County Board of Supervisors held a public hearing to review the project on February 11, 1997 and voted 3 to 0 to approve the project with conditions (Exhibit 8). The principal substantive conditions do the following:

- (1) Reverse the Planning Commission's decision on the siting and design of the project, and require that (a) the residence be located at "Alternate Location A," approximately 2000 feet from Cabrillo Highway (Highway 1), (b) the garage be rotated 90 degrees to face the garage door towards the east, and (c) the residence be redesigned to incorporate "a less formal design to blend in with the rural area including the use of earth tone colors (Exhibit 8, pg. 3, Condition 1);
- (2) Require a revised planting plan to provide additional plantings to "reduce or eliminate views of the proposed residence" as seen from Highway 1 and the Covell State Beach access trail (Condition 6);
- (3) Require all utilities to be constructed underground (Condition 11);
- (4) Require recordation of the following statement on the subject property.

This parcel is adjacent to property utilized for agricultural purposes. Residents of the parcel may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including plowing, spraying, pruning and harvesting, which occasionally generate dust, smoke, noise and odor. San Mateo County has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations; and

- (5) Require the applicant to pay in-lieu fees "based on the equivalent value of a viewing easement from the existing access trail to a viewing point on the coastal bluff,..." not to exceed \$5,000, and specifying that the

applicant "agrees to grant a lateral easement...along the blufftop located in a manner that would provide for an eventual connection with trails to the North and South of the property." (Exhibit 8, pgs. 6-7, Condition 14),

The Board found that the project as conditioned conforms to the LCP, (making the following specific findings (see Exhibit 8, pgs. 2-3):

- #4. The project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements, and standards of the San Mateo County Local Coastal Program.
- #5. The project conforms to the specific findings required by policies of the San Mateo County Local Coastal Program, particularly those findings relating to the conversion of lands suitable for agriculture.
- #6. The project is located between the sea and the first public road, and that the project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code).
- #8. Denying the residential use would result in the taking of private property as it is (a) unlikely that a viable commercial agricultural operation could be maintained on the property, even with the water connection, due to the size and irregular shape of the parcel, (b) no other economic viable use other than agriculture could be made of the property without a water connection, (c) all the types of uses identified in the Planned Agricultural District (PAD) zoning district, for the types of soils on this project site (lands suitable for agriculture), would require water to be a viable use, and (d) the possibility of purchase of the subject parcel by the adjoining parcels to the north and south has been explored and no interest has been shown.
- #9. The agricultural viability study of the project identifies artichokes and Brussels sprouts as the only viable crops, based on the soil conditions and climate of this location, that these types of crops are heavily water dependent, and that the probable net operating annual income would be approximately \$600.00.
- #10. The proposed structure, as conditioned, conforms to the specific San Mateo County Local Coastal Program Policy 8.5 requiring the structure to be designed in scale with the rural character of the region and clustered with the existing natural or manmade vertical features.

On February 14, 1997, the Commission received notice of the County's final local action. The County's approval of the project was then appealed to the Coastal Commission by the Committee for Green Foothills (CGF), and by Commissioners Areias and Calcagno on March 3, 1997, within 10 working days of the receipt of the notice of final local action (see Exhibits 9 and 10).

D. SUBSTANTIAL ISSUE ANALYSIS.

Valid 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.

Most of the contentions raised in the appeal present valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. As summarized above and included in Exhibits 9 and 10, the appellants' appeals include discussion of how they believe their concerns about the project establish inconsistencies with the cited LCP policies.

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."

In this case, for the reasons identified herein, the Commission finds that a substantial issue exists with regard to the project's conformance with the certified San Mateo County LCP. Each of the areas of concern raised by the appellants is specifically discussed below.

1. Inconsistency with Agriculture Policies

The appellants contend that the house, landscaping and 2000-foot driveway as approved would impermissibly convert agricultural land, and fail to cluster non-agricultural development in a location most protective of agriculture, inconsistent with LCP policies, including 5.8, 5.10, 5.15 and 1.8.

Local Coastal Program Policies

The LCP Agriculture Policies state in part:

***5.1 Definition of Prime Agricultural Lands**

Define prime agricultural lands as:

- (1) All land which qualifies for rating as Class I or Class II in the U.S. Department of Agriculture Soil Conservation Service Land Use Capability Classification, as well as all Class III lands capable of growing artichokes or Brussels sprouts...

***5.2 Designation of Prime Agricultural Lands**

Designate any parcel which contains prime agricultural lands as Agriculture on the Local Coastal Program Land Use Plan Map, subject to the following exceptions: State Park Lands existing as of the date of Local Coastal Program certification, urban areas, rural service centers, and solid waste disposal sites necessary for the health, safety, and welfare of the County.

***5.8 Conversion of Prime Agricultural Land Designated as Agriculture**

- a. Prohibit conversion of prime agricultural land within a parcel to a conditionally permitted use unless it can be demonstrated:

- (1) That no alternative site exists for the use,...
- (2) Clearly defined buffer areas are provided between agricultural and non-agricultural uses,
- (3) The productivity of any adjacent agricultural land will not be diminished, and
- (4) Public service and facility expansions and permitted uses will not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

***5.5 Permitted Uses on Prime Agricultural Lands Designated as Agriculture**

- a. Permit agricultural and agriculturally related development on prime agricultural lands. Specifically, allow only the following uses: (1) agriculture including, but not limited to, the cultivation of food, fiber or flowers, and the grazing, growing, or pasturing of livestock; (2) non-residential development customarily considered accessory to agricultural uses including barns, storage/equipment sheds, stables for farm animals, fences, water wells, well covers, pump houses, and water storage tanks, water impoundments, water pollution control facilities for agricultural purposes, and temporary roadstands for seasonal sale of produce grown in San Mateo County; (3) soil dependent greenhouses and nurseries; and (4) repairs, alterations, and additions to existing single-family residences.
- b. Conditionally permit the following uses: (1) single-family residences, (2) farm labor housing, (3) public recreation and shoreline access trails, (4) non-soil dependent greenhouses and nurseries, and (5) onshore oil and gas exploration, production, and minimum necessary related storage, (6) uses ancillary to agriculture, (7) permanent roadstands for the sale of produce, provided the amount of prime agricultural land converted does not

exceed one-quarter (1/4) acre, (8) facilities for the processing, storing, packaging and shipping of agricultural products, and (9) commercial wood lots and temporary storage of logs.

***5.15 Mitigation of Land Use Conflicts...**

- b. Require the clustering of all non-agricultural development in locations most protective of existing or potential agricultural uses.
- c. Require that clearly defined buffer areas be provided between agricultural and non-agricultural uses.

5.33 Lease-Back of State Parks and Recreation Lands

- a. As a condition of permit approval, require the State, where legally feasible, to lease prime agricultural lands, and other land suitable to agriculture, determined to be feasible for agricultural use, would not endanger an existing sensitive habitat, to active farm operators on terms compatible with recreational and any adjacent habitat use.

Discussion

Contrary to findings #5 and #8 of the approved permit, the parcel is Prime Agricultural Land, as that term is defined in Policy 5.1 of the certified LCP. The project was approved in part on the basis of findings that the parcel falls under the definition "lands suitable for agriculture," (findings #5 and #8) and that the "parcel consists of entirely non-prime agricultural land." According to the U.S. Department of Agriculture Soil Survey, San Mateo Area, however, the parcel, consists of the two soil types WmB2 and WmC2, which the Survey lists as Class III soils. These same soil types make up large parts of the Giusti Farms agricultural lands immediately to the south currently being farmed with artichokes and brussel sprouts (Jack Olsen Farm Bureau, oral communication, Mar. 12, 1997). Thus, contrary to the County's findings, factual evidence establishes that the land of the Luchini parcel meets the definition of prime agricultural lands under Policy 5.1, as "Class III lands capable of growing artichokes or Brussels sprouts."

The parcel was not evaluated for conversion of prime agricultural lands as required by LCP Policy 5.8. The LCP designates and zones the parcel as agricultural land with related agricultural uses. The project as approved by the County is strictly for residential use. No agricultural use of the property is proposed and the development would preclude any possible agricultural use by displacing agricultural lands for the house, landscaping and particularly the extensive 2,033-foot-long driveway. The project as approved therefore must be viewed as converting agricultural land to a non-agricultural use. Policy 5.8 establishes four criteria which must be met before prime agricultural land can be built upon ("converted"), in this case,

for a single-family residence which is a conditionally permitted use under Policy 5.5. Failure to meet any one of these criteria requires that the proposed conversion be prohibited. Because the County did not evaluate the parcel as prime agricultural land, the project as approved by the County fails to demonstrate that it has satisfied any of the four criteria necessary for conversion.

The first criteria to be evaluated is **"That no alternative site exists for the use,..."** A site design which entails a shorter driveway, hence less coverage of the soil, is an alternative that exists. In fact, the project design approved by the Planning Commission on a 4-0 vote specified a site for the residence that would only require 400 feet of driveway, rather than the nearly one-half mile of soil coverage subsequently approved by the Board of Supervisors. The second conversion criteria to be evaluated is that **"Clearly defined buffer areas are provided between agricultural and non-agricultural uses."** The conditions and findings approved by the County do not require or address the establishment of clearly defined buffer areas between the approved residential use and either the existing agricultural uses to the south or the adjacent agricultural lands to the north. Although the Cowell Beach access trail runs between the proposed residence in the location approved by the County and the agricultural fields to the south, the narrow 10-20-foot-wide trail is not sufficiently wide to buffer the proposed residence from the effects of herbicide and pesticide spraying and other agricultural activities that can adversely affect residential use. As discussed below, a 300-foot buffer zone is recommended by the Farm Bureau to be established between residences and fields where spraying occurs.

The third conversion criteria of Policy 5.8 is that the **productivity of any adjacent agricultural land will not be diminished.** The project as approved would diminish the productivity of adjacent agricultural land contrary to LCP Policy 5.8(a)(3) because it is not clustered in the location most protective of existing or potential agricultural uses contrary to LCP Policy 5.15(b). Locating a new residential use in the midst of what is now an open field of agricultural soils would require a very long driveway which greatly increases the amount of agricultural land being converted. Moreover, the final approval would not cluster the new residence next to the existing residential farmhouses at the eastern end of the two adjacent parcels to the north as required by Policy 5.15. Permit condition 1 (Exhibit 8) requires the applicant to "relocate the proposed residence to a location referred to in this report as 'Alternative Location A,' located approximately 2,000 feet (+/- 50 feet) from Cabrillo Highway." The permit's findings do not specifically describe why this changed location for the house was required, but as described to staff by both the applicant's representative J. R. Rodine and San Mateo Farm Bureau Executive Administrator Jack Olsen (on March 12, 1997, the decision was based substantially on testimony provided to the Board by Mr. Olsen.

According to Mr. Olsen, he testified that the cultivation of Brussel sprouts in the area relies on the application of the soil fumigant pesticide

Tellone*II (the brand name for the chlorocarbon 1,3-dichloropropene); that the state's Department of Pesticide Regulation does not permit the application of Tellone*II within a 200-foot (which Mr. Olsen subsequently corrected to a 300-foot) buffer zone; that placing the residence in the eastern part of the property as originally specified by the Planning Commission would not allow Giusti Farms to cultivate the portion of their lands within the 300-foot buffer area, and would thus be less desirable than locating the house at the western end of the property as originally proposed by the applicant.

However, as stated above, the adjacent residential farm houses are already clustered at the eastern end of the adjacent parcel and the eastern end of the adjacent parcel is not currently in production. Even so, the County chose to instead site the approved development on the western end of the parcel where the required 300-foot buffer around the approved house would extend over farm lands that are currently in production.

The County's requirement that the applicant move the house to the western end of the property also calls into question the efficacy of the "right to farm" condition applied. The County apparently sought to resolve land use conflicts between this residence and the agricultural land to the south by requiring the owner of the property to record the following statement with the County Records Office as a condition of approval (Condition 13, Findings, Feb. 19, 1997, pg. 6):

This parcel is adjacent to property utilized for agricultural purposes. Residents of the parcel may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including plowing, spraying, pruning and harvesting, which occasionally generate dust, smoke, noise and odor. San Mateo County has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations. (emphasis added)

However, this condition does not require a clearly defined buffer area and protection against diminishing the productivity of adjacent agricultural land consistent with LCP Policies 5.8 and 5.15.

3. Conclusion

In summary, the appeal raises substantial issues of conformity with certified LCP policies regarding the protection of agricultural lands. In its review of the project, the County acted under the assumption that the project site did not contain prime agricultural lands. However, the U.S. Department of Agriculture soil survey for the area indicates the site contains Class III soils, and as the soils on the site are capable of growing artichokes or Brussels sprouts, the parcel meets the definition of prime agricultural lands contained in Policy 5.1 of the certified LUP. Thus, the project as approved

by the County was not even evaluated for its consistency with the certified LCP policies that address the limited circumstances under which prime agricultural lands may be converted to other uses, such as the residential development approved by the County. Contrary to Policy 5.8(a)(1), no demonstration has been made that there are not alternative sites for the use, such as locating the house closer to the highway to shorten the proposed driveway and thereby convert less agricultural land. Contrary to Policy 5.8(a)(2), no provision has been made for establishing a clearly defined buffer between the proposed residence and the agricultural use of the adjoining property. As approved by the County, the proposed house would be located well within the 300-foot buffer zone required by state pesticide regulations for the application of necessary soil fumigants on the Brussels sprouts field. Thus, the adjoining farmer may be forced to cease use of the necessary fumigant over a portion of his field. No demonstration has been made how such a result and other potential effects of the development would not diminish the productivity of any adjacent agricultural land, as required by Policy 5.8(a)(3). Furthermore, no demonstration has been made that the project as approved by the County would cluster all non-agricultural development in locations most protective of existing or potential agricultural uses, as required by Policy 5.15(b). Finally, the proposed residence, as approved by the County, would be located in the midst of an open field more than one-third of a mile west of the highway, requiring the installation of a long driveway that results in the conversion of more prime agricultural land than development of the residence at a location clustered around existing development near the highway. Therefore, for each of the reasons discussed above, the Commission finds that with respect to the grounds on which the appeal was filed, the County's approval raises a substantial issue of conformity with the certified LCP.

B. Inconsistency with Public Works policies

The appellants contend that the approved project would allow connection to urban water services for a non-agricultural use outside the urban-rural boundary contrary to the LCP's policies, including policies 2.14 and 2.37.

1. Local Coastal Program Policies

The LCP Public Works Policies state in part:

2.14 Establishing Service Area Boundaries

- *a. Confine urban level services provided by governmental agencies, special districts and public utilities to urban areas, rural service centers and rural residential areas as designated by the Local Coastal Program on March 25, 1986.**
- *b. Redraft the boundaries of special districts or public utilities providing urban level services to correspond to the boundaries of urban areas, rural service centers and rural residential areas established by the Local Coastal Program.**

- *c. Allow exceptions to a. and b. when all alternatives have been fully explored and a special district or public utility is required to maintain some rural land within its boundaries in order to continue a service to its customers which is (1) otherwise consistent with the policies of the Local Coastal Program, (2) maintains the rural nature of undeveloped areas, particularly the use and productivity of agricultural land, (3) maintains the present level of service to existing users in undeveloped areas, and (4) where an illegal situation or great hardship would be created by detachment from a special district or public utility.
- d. Require, when a special district or public agencies maintains rural lands within their boundaries that the special district or public agency divide the districts into rural and urban zones. Make boundaries of the urban zone, where urban level services are provided, correspond to the boundaries of urban areas and rural service centers established by the Local Coastal Program. Include the rest of the district in the rural zone. Restrict the activities in rural zones to those which are consistent with the maintenance of the rural nature of the area and all other policies of the Local Coastal Program. Lower the user costs in the rural zone to reflect the lower level of service and minimize growth inducement.

2.37 Service Area Boundaries

As a condition of expansion of water facilities, require water service providers to:

- a. Revise district boundaries to include within those boundaries only those areas proposed for urban development by the LCP and rural areas within the existing Coastside County Water District Service Area which have existing water connections for floriculturalists.
- b. Permit new connections to the water system only within district boundaries.
- c. Divide the district into rural and urban zones.
 - (1) Make the boundaries of the urban zone correspond to the urban boundary and the boundary of rural residential areas established by the LCP.
 - (2) Allow water connections for all types of users within urban zone.

- (3) Designate the parts of the district outside the urban zone as the rural zone.
- (4) Permit new water connections to only floriculturalist and agriculture within the rural zone...

2. Discussion

Policy 2.14(a.) confines urban level services provided by public utilities only to urban areas, designated rural service centers and designated rural residential areas, and does not allow extension of such service to rural areas. Policy 2.14(d) requires special districts or public agencies to restrict activities in rural zones to those which are consistent with the maintenance of the rural nature of the area and all other policies of the Local Coastal Program. Policy 2.37(c)(4) restricts new water connections to only floriculturalist and agriculture and designated historical structures, not new residential development, within the rural zone.

The approval authorizes connection to water service provided by the Coastsides County Water District, contrary to policies 2.14(a), 2.14(d) and 2.37(c)(4). The approved residential development is in the rural area outside the urban boundary on a parcel that does not have onsite (well) water. The parcel is also outside the current boundary of the Coastsides County Water District. The appellants contend that project as approved is not consistent with the LCP, specifically Policy 2.14 (a), and does not fall within the exceptions specified in 2.14(c)

Policy 2.14(c) provides limited exceptions to policy 2.14(a) only when: [A] "all alternatives have been fully explored and" [B] "a special district or public utility is required to maintain some rural land within its boundaries in order to continue a service to its customers." The County concluded that the project qualified for an exception under Policy 2.14(c) since a Coastsides County Water District water main which provides service to existing customers on either side of the Luchini property, actually crosses the applicant's property, thereby making unnecessary any extension of existing service facility. However, no service is currently provided to the Luchini property even though the District's waterline crosses the property, and the County did not demonstrate that the approval satisfied any of the criteria required for an exception.

The Coastal Commission's historic interpretation of Policy 2.14(c) would allow water service in the rural area only to "continue a service" which already existed. This approach would disallow any new service connections in the rural area, even in situations where a water main extension is not required. Support for this reading of Policy 2.14(c) can be found in Policy 2.37(c), a more specific policy which authorizes "new water connections" in the rural zone of the Coastsides County Water District only for agricultural and floricultural uses, and designated historical structures. While allowing new connections for these specified uses in the rural zone, Policy 2.37(c) can be read to prohibit any new connections for residential uses.

The project as approved also raises significant issues regarding the stability of the urban/rural boundary, a key component to preserving coastal agriculture, sensitive habitats, and the rural character of the San Mateo County coastline. Policy 2.14 and 2.37 are key components of the certified LCP that incorporate the provisions of Section 30250 of the Coastal Act calling for new residential, commercial, and industrial development to be located in existing developed areas. Although the subject property is near the City of Half Moon Bay, the property is separated from the City limits and the LCP designated urban/rural boundary line by several parcels that are zoned for agricultural use and to varying extents are used for agricultural (see Exhibit 7). Allowing water connections outside of the urban boundary to serve non-agricultural related residential development could undermine the urban/rural boundary policies of the LCP by increasing municipal development within rural coastal areas in the County contrary to the intent of Policies 2.14 and 2.37 of the LCP and Section 30250 of the Coastal Act.

3. Conclusion

In summary, the appeal raises substantial issues of conformity with certified LCP policies regarding the provision of municipal water supplies. Contrary to policies 2.14(a), 2.14(d), and 2.37(c)(4), the approval authorizes the provision of urban level water services to a non-agricultural residential use in the rural area. Water connections are limited in the designated rural area by Policy 2.37(c)(4) to agricultural and floricultural uses and designated historical structures. Policy 2.14(c) does provide limited exceptions to the restrictions against providing urban level water services outside the urban area, but only when all alternatives have been fully explored and the district or utility is required to maintain some rural land within its boundaries in order to continue a service to its customers. As no such service is currently provided to the subject property, the County did not demonstrate that the approval satisfied the criteria required for an exception. Allowing water connections outside of the urban boundary to serve non-agricultural related residential development also raises serious concerns about the stability of the urban/rural boundary, a key component under the certified LCP to preserve coastal agriculture, sensitive habitats, and the rural character of the San Mateo County coastline.

Therefore, for each of the reasons described above, the Commission finds that with respect to the grounds on which the appeal was filed, the County's approval raises a substantial issue of conformity with the certified LCP.

C. Inconsistency with Visual Resources Policies

The appellants contend that the project would substantially block important coastal views from the Cowell State Beach access trail, is not in scale with the rural character of the area, and would not be clustered near existing development inconsistent with policies 8.5 and 8.15. Additionally appellants contend that the project as located, sited, and designed does not fit the physical setting, is not subordinate to the pre-existing character of the

site, and does not enhance the scenic and visual qualities of the area contrary to LCP Policy 8.18; does not relate in size and scale to adjacent buildings contrary to LCP Policy 8.20; and does not meet standards that apply to development in Scenic Corridors in rural areas referenced by LCP Policy 8.31.

The Committee for Green Foothills also contends that Condition 6 of the County approval "is unclear and contradictory in that it requires a revised planting plan (unavailable to the public at the time of approval of the project) which provides additional shrub and tree plantings which 'reduce or eliminate views' of the proposed residence."

1. Local Coastal Program Policies

The LCP Visual Resources policies state in part:

***8.5 Minimize the number of structures located in open fields and grassland areas; require that structures be designed in scale with the rural character of the region, and that they be clustered near existing natural or man-made vertical features.**

***8.15 Coastal Views**

Prevent development (including buildings, structures, fences, un-natural obstructions, signs, and landscaping) from substantially blocking views to or along the shoreline from coastal roads, roadside rests and vista points, recreation areas, and beaches.

***8.18 Location of New Development**

Require:

- a. That new development be located, sited, and designed to fit the physical setting, so that its presence is subordinate to the pre-existing character of the site, enhances the scenic and visual qualities of the area, or maintains the natural characteristics of existing major water courses, established and mature trees, or dominant vegetative communities...
- c. That private roads and driveways be shared, where feasible, to reduce the amount of grading, cutting and filling required to provide access.

8.20 Scale

Relate structures in size and scale to adjacent buildings and landforms.

8.31 Regulation of Scenic Corridors in Rural Areas

- a. Apply the policies of the Scenic Road Element of the County General Plan.
- b. Apply Section 6325.1 (Primary Scenic Resources Areas Criteria) of the Resource Management (RM) Zoning District as specific regulations protecting Scenic Corridors in the Coastal Zone.
- c. Apply the Rural Design Policies of the LCP.
- d. Apply the Policies for Landforms and Vegetative Forms of the LCP.
- e. Require a minimum setback of 100 feet from the right-of-way line, and greater where possible; however, permit a 50-foot setback when sufficient screening is provided to shield the structure from public view.
- f. Continue applying special regulations for the Skyline Boulevard and Cabrillo Highway State Scenic Corridors.

SECTION 6325. SUPPLEMENTARY REVIEW CRITERIA FOR PRIMARY RESOURCE AREAS.

These supplementary review criteria shall apply to developments that fall within Primary Resource Areas as designated or defined in the Conservation and Open Space Element of the San Mateo County General Plan. These criteria are in addition to all other Development Permit Review Criteria.

SECTION 6325.1 PRIMARY SCENIC RESOURCES AREAS CRITERIA.

The following criteria shall apply within Scenic Corridors and other Primary Scenic Resource Areas as defined or designated in the Open Space and Conservation Element of the San Mateo County General Plan:

- (a) Public views within and from Scenic Corridors shall be protected and enhanced, and development shall not be allowed to significantly obscure, detract from, or negatively affect the quality of these views. Vegetative screening or setbacks may be used to mitigate such impacts...
- (c) Within a corridor, pathway pavements should be colored or selected to blend in with the surrounding landscape...
- (e) Curved approaches to Scenic Corridors shall be used in conjunction with native planting to screen access roads from view. Additional planting may be required where existing planting is considered insufficient. Planting shall be placed so that it does not constitute a safety hazard.
- (f) The number of access roads to a Scenic Corridor shall be minimized wherever possible. Development access roads shall be combined with the

intent of minimizing intersections with scenic roads, prior to junction with a Scenic Corridor unless severely constrained by topography. Traffic loops shall be used to the maximum extent possible so that dead-end roads may be minimized...

- (g) Colors and plant materials shall be selected as necessary to minimize visual impact of development upon Scenic Corridors...
- (h) Selective clearing of vegetation which allows the display of important public views may be permitted.
- (i) Scenic Corridor development should include vista points and roadside rests which provide an opportunity to view scenic amenities and natural features...
- (k) No development, with the exception of agricultural uses, shall be permitted on grass and/or brush land in Scenic Areas unless such development will be screened effectively from existing or proposed public viewing areas of Scenic Corridors...
- (m) No development shall be permitted to obstruct or significantly detract from views of any Scenic Area or Landscape Feature from a Scenic Corridor.
- (n) Screening as required under this section should not consist of solid fencing, rather it should be of natural materials of the area, preferably natural vegetation in conjunction with low earth berms.

2. Discussion:

The project as approved by the County raises a substantial issue with regard to LCP Policy 8.5. Adopted finding #10 states:

That the proposed structure, as conditioned, conforms to the specific San Mateo County Local Coastal Program Policy 8.5 requiring the structure to be designed in scale with the rural character of the region and clustered with the existing natural or manmade vertical feature (Exhibit 8, pgs. 2-3).

Policy 8.5 calls for minimizing the number of structures in open fields and grassland areas and the clustering of structures near existing natural or man-made features. Support for the adopted finding in the written record is contradictory. The staff report to the Board (Exhibit 8, staff report to Board, pgs. 4-5) notes that:

During the Planning Commission's public hearing, the Commissioners considered three site locations for the proposed residence (Attachment A). These included: (1) the applicant's proposal, "Alternative Location A," the most westerly location, approximately 2,000 feet from Cabrillo

Highway, (2) the applicant's alternative location, "Alternative Location B," located approximately 1,000 feet from Cabrillo Highway, and (3) the Planning Commission's preferred and recommended location, "Alternative Location C," located approximately 400 feet from Cabrillo Highway.

The Planning Commission reviewed the proposed building locations relative to: (1) the State Scenic Corridor (Cabrillo Highway), (2) existing vegetation in the vicinity of the proposed building sites, and (3) existing structures on the parcel north of the project site. The Commission determined that by moving the proposed residence to Alternative Location C and redesigning the residence to be lower, less formal, and designed to blend in with the area, this relocation would comply with LCP Policy 8.5 (Structures). Policy 8.5 requires that the number of structures located in open fields and grassland areas be minimized, that structures be designed in scale with the rural character of the region, and that they be clustered near existing natural or manmade vertical features.

The County instead chose Alternative Location A but the findings do not explain how the project as approved would conform with Policy 8.5. Instead, the approved structure would be located in an open grassland field, and would not be clustered with the predominant "vertical features" of the site (i.e. the house on the immediately adjacent property). Instead of being silhouetted against an existing structure, the house will rise up in isolation in the middle of a field in full view of Highway One from a southerly approach. In addition, contrary to Policy 8.15, the approved project would substantially block views to and along the coastline from the adjacent recreation area, the Cowell State beach access trail. Finally, the approved house would be in the direct line of sight of users of that trail for almost its entire length, progressively looming up to block a greater part of their field of vision as people approach the shoreline...

The approved project site is also located within the LCP-designated State Scenic Highway Corridor, subject to Policy 8.31 and the referenced regulations therein. As approved the project would not conform to several of these certified standards, including the following:

SECTION 6325.1

- (f) The number of access roads to a Scenic Corridor shall be minimized wherever possible. Development access roads shall be combined.

The unusually long 2033-foot driveway planned to serve the house will have its own access to Highway 1 in the Scenic Corridor, and, contrary to Sect. 6325.1(f), will not, as approved by the County, be combined with either of the two existing driveways that flank the proposed new driveway less than 50 feet away on each side (see Exhibit 7).

- (k) No development, with the exception of agricultural uses, shall be permitted on grass and/or brush land in Scenic Areas unless such development will be screened effectively from existing or proposed public viewing areas of Scenic Corridors....

Condition 6 of the permit approved by the County acknowledges that the submitted screening plan was not adequate, and requires the applicant to submit a revised plan "to reduce or eliminate views of the proposed residence as seen from the State Scenic Highway and as seen from the Cowell State Beach access trail...for review and approval of the Planning Director." However, the condition does not set specific requirements (such as the number and types of shrubs and trees) that would be adequate to effectively screen the development as required by LCP Sect. 6325.1(k).

Policy 8.20 requires that structures relate in size and scale to adjacent buildings and landforms. Additionally, Policy 8.18 requires that "new development be located, sited, and designed to fit the physical setting, so that its presence is subordinate to the pre-existing character of the site, [and] enhances the scenic and visual qualities of the area." The character of the area can be described as coastal rural and agricultural with occasional county farm houses of modest size and scale sited close to the highway near the inland edge of the broad coastal terrace that supports and follows agricultural fields. The farmhouse design of the residence and barn to the north of the subject parcel are typical of the design of development in the area. The proposed structure's elongated shape, resulting in part, from the decision to site the house in the narrow portion of the lot, is out of scale with the farm-compound appearance of the adjacent buildings. The project's Mediterranean design style, its landscaping, and the unusually long 2033-foot driveway would add a strong urban element out of scale and character with its surroundings. Its presence would dominate, rather than be subordinate, to the distinct rural character of the area, and would diminish, rather than enhance the areas' important scenic and visual qualities.

3. Conclusion

In summary, the proposed development raises substantial issues of conformity with certified LCP policies regarding the protection of visual resources. Contrary to Policy 8.5 of the certified LUP, the proposed house as approved by the County, would be located in an open grassland field, well away from existing buildings on the adjoining property to the north. The County did not identify in its findings how the project as approved would conform with Policy 8.5, which calls for, among other things, minimizing the number of structures located in open fields and grasslands and clustering structures near existing natural or manmade vertical features. In addition, given the County did not indicate how the approved project is consistent with Policy 8.15 which requires that development not substantially block views to or along the shoreline from coastal roads, recreational areas, and similar public vantage points. The approved project would block views from the adjacent Cowell State beach access trail. Furthermore, the County did not identify how the project,

which includes a new 2,033-foot-long driveway separate from existing driveways on the adjacent two parcels is consistent with the requirements of Section 6235.1(f) of the zoning code which requires the number of access roads within a Scenic Corridor to be minimized and combined. Nor has the County indicated how its condition requiring the submittal of a revised plan "to reduce or eliminate views of the proposed residence would be adequate to effectively screen the development from the Cowell State Beach access trail as required by Section 6325.1(k). Finally, the County findings do not identify how the 3,490-square-foot house located in the middle of the open field and its 2,033-foot driveway would relate in size and scale to the smaller adjacent buildings located close to Highway 1 and be subordinate the pre-existing character of the site as required by Policies 8.20 and 8.18 of the LCP. Therefore, Therefore, for each of the reasons described above, the Commission finds that with respect to the grounds on which the appeal was filed, the County's approval raises a substantial issue of conformity with the certified LCP.

D. Inconsistency with Locating and Planning New Development policies

The appellants contend the project would have significant adverse impacts on coastal resources, including impacts on scenic and visual resources and agriculture inconsistent with LCP Policy 1.8

1. Local Coastal Program Policies

The LCP Locating and Planning New Development Policies state in part:

***1.8 Land Uses and Development Densities in Rural Areas**

- a. Allow new development (as defined in Section 30106 of the California Coastal Act of 1976) in rural areas only if it is demonstrated that it will not: (1) have significant adverse impacts, either individually or cumulatively, on coastal resources and (2) diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural production.

2. Discussion

This parcel is designated as both Agriculture and rural land consistent with LCP policy 1.7 and is outside the urban/rural boundary.

Policy 1.8(a) allows new development in rural areas only if it is demonstrated that it will not: (1) have significant adverse impacts, either individually or cumulatively, on coastal resources and (2) diminish the ability to keep all prime agricultural land and other land suitable for agriculture in agricultural production.

Contrary to Policy 1.8(a)(2), the approved locations of the house, landscaping and extensive driveway as permitted would take up and convert much more agricultural land than an alternate location closer to the road. Moreover, by locating the house in the middle of the lot, it limits the potential of combining at least portions of the lot with the agricultural land on adjacent parcels to facilitate renewed agricultural use of the soils. As described above, the approved project would also have adverse impacts on coastal visual resources contrary to Policy 1.8(a)(1).

3. Conclusion

For each of the reasons described above, the Commission finds that with respect to the grounds on which the appeal was filed, the County's approval raises a substantial issue of conformity with the certified LCP.

E. Appellants Contentions That Are Not Valid Grounds for Appeal

The Committee for Green Foothills raised the following two issues:

1. that requiring both the payment of an in-lieu fee and the "voluntary" dedication of a lateral easement may have created a legally unenforceable requirement, and
2. that the 2-2 vote at the Planning Commission level was legally a denial of the project, and that it was not properly before the Board of Supervisors.

The appellant's contentions are not valid grounds for appeal under Coastal Act section 30603, however, as they do not allege that the approval is inconsistent with the certified LCP or Chapter 3 access policies, but rather that the Planning Commission action is improper and that the Board's action may not have created a legally enforceable requirement. A challenge based on ground unrelated to the certified LCP or the Chapter 3 access policies is outside the scope of the Commission's appellate review.

F. Information Needed for de Novo Review of Application

As stated above, Section 30625(b) of the Coastal Act requires that the Commission shall hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a de novo public hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the de novo portion of the appeal hearing to a subsequent date. The de novo portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine what, if any, development can or must be approved, consistent with the certified LCP, Chapter 3 access policies and Section 30010 of the Coastal Act.

In this case, the County based its approval of the single family residence, in part, on a finding:

That denying the residential use would result in the taking of private property as it is (a) unlikely that a viable commercial agricultural operation could be maintained on the property, even with the water connection, due to the size and irregular shape of the parcel, (b) no other economic viable use other than agriculture could be made of the property without a water connection, (c) all the types of uses identified in the Planned Agricultural District (PAD) zoning district, for the types of soils on this project site (lands suitable for agriculture), would require water to be a viable use, and (d) the possibility of purchase of the subject parcel by the adjoining parcels to the north and south has been explored and no interest has been shown.

Given the above referenced basis for approval by the County, de novo analysis of the coastal development permit application by the Commission may involve consideration of constitutional issues in addition to the access policies of the Coastal Act and the certified policies of the County's LCP. Where, as here, based on contentions made by the applicant and/or owner, the County found that denying the residential use would result in the taking of private property, section 30010 of the Coastal Act authorizes the Commission to evaluate such a claim and implement all applicable LCP and Coastal Act policies in manner that will avoid a taking.

The Commission interprets section 30010 to mean that if the owner of a parcel demonstrates that Commission denial of a project on that parcel would result in a taking, the Commission may be required to allow some development even where a Coastal Act policy would prohibit it. However, the application of 30010 would only be appropriate where the Commission has determined that the property may not otherwise be developed consistent with the certified LCP and Chapter 3 access policies. In addition, in complying with section 30010, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approvable, and thus assure the property of some economically viable use.

Given that the project that the Commission will be considering de novo has come to the Commission after an appeal of a local government action, the Commission has not previously been in a position to request information from both the applicant and property owner needed to determine whether application of the governing resource protection policies would result in a taking of private property. Without this information, the Commission cannot reach a final determination concerning the uses that might be made of the property.

Moreover, any approved project would be located between the nearest public road and the sea. Section 30604 of the Coastal Act instructs that for such development, the Commission must include a specific finding that the development is in conformity with the public access and public recreation

A-1-SMC-97-013

PAUL GUMBINGER; MARYANNE LUCHINI

Page 25

policies of the Coastal Act in addition to finding such development consistent with the certified LCP. In this case, the County's approval stated that "the applicant agrees to grant a lateral access easement meeting the requirements of [the] Local Coastal Program, along the bluff top located in a manner that would provide for an eventual connection with trails to the North and South of the property." However, staff is unable to locate any evidence of such a proposed offer by the property owner in the record submitted by the County. Consequently, before the Commission reviews any application for consistency with the access policies of Chapter 3 and the certified LCP, it will be necessary for the owner of the property to clarify the extent of their application in writing as well as provide evidence of the clarified project's consistency with the certified LCP and the Chapter 3 access policies of the Coastal Act.

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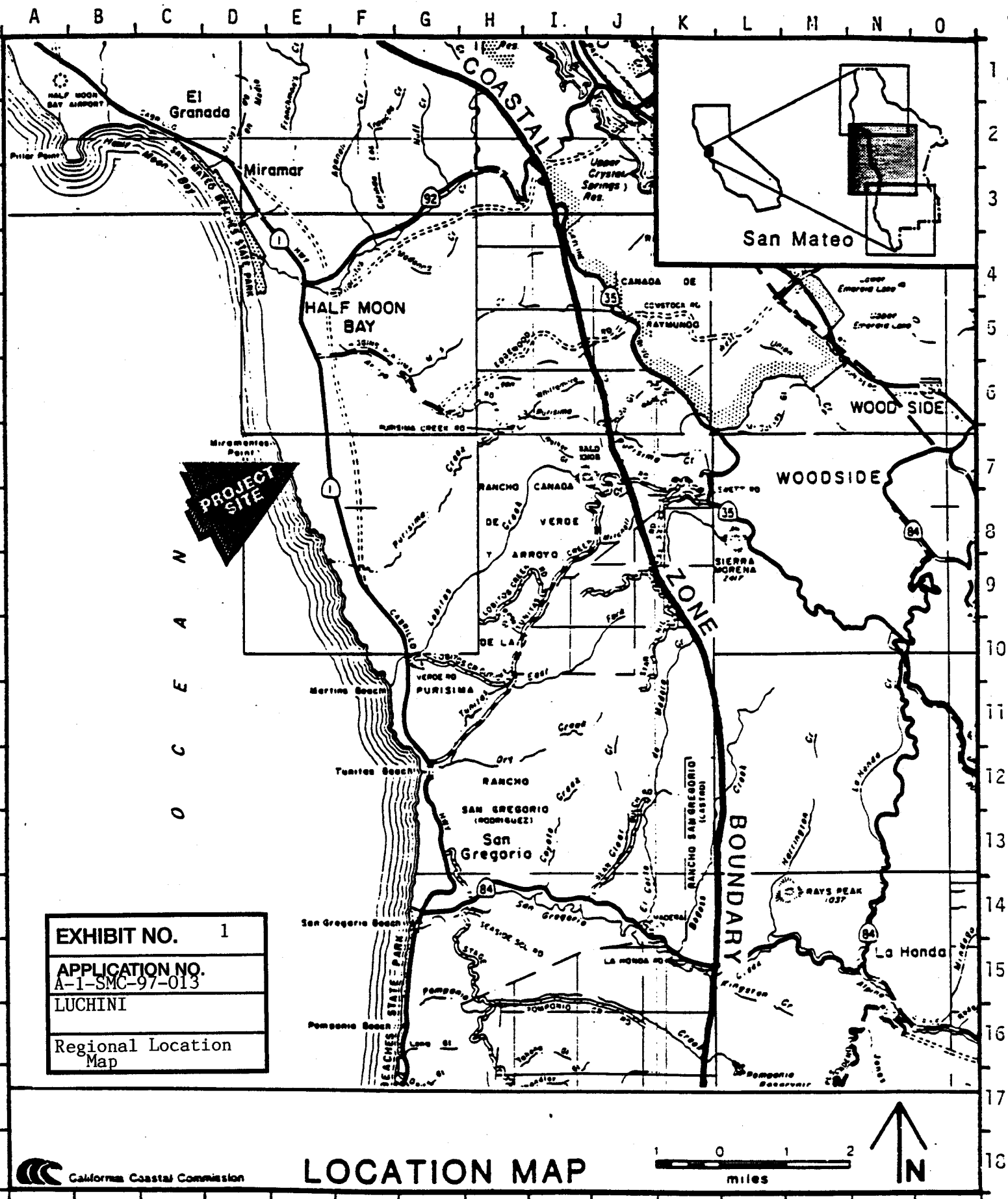
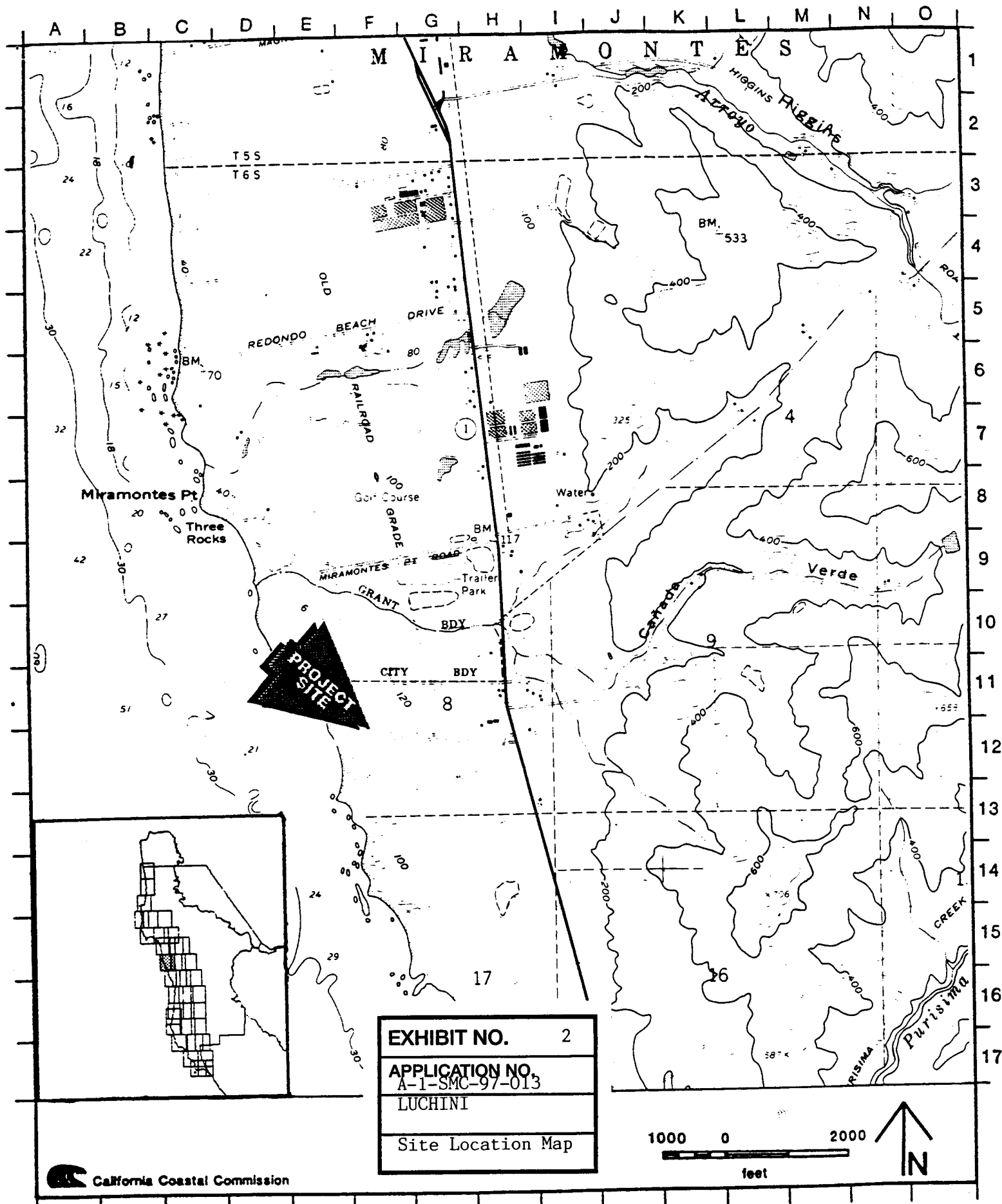


EXHIBIT NO.	1
APPLICATION NO.	A-1-SMC-97-013
LUCHINI	
Regional Location Map	

LOCATION MAP

California Coastal Commission



MIRAMONTES
POINT

340,000 N

EXHIBIT NO. 3

APPLICATION NO.
A-1-SMC-97-013

LUCHINI

Parcel Map



EEL ROCK

State Access Trail

Potential View Shied

San Mateo County Zoning Hearing Officer Meeting

Applicant: Gombiner / Luchini

File Numbers: PAD 96-0010

Attachment: C



Alternative Site Plan Locations

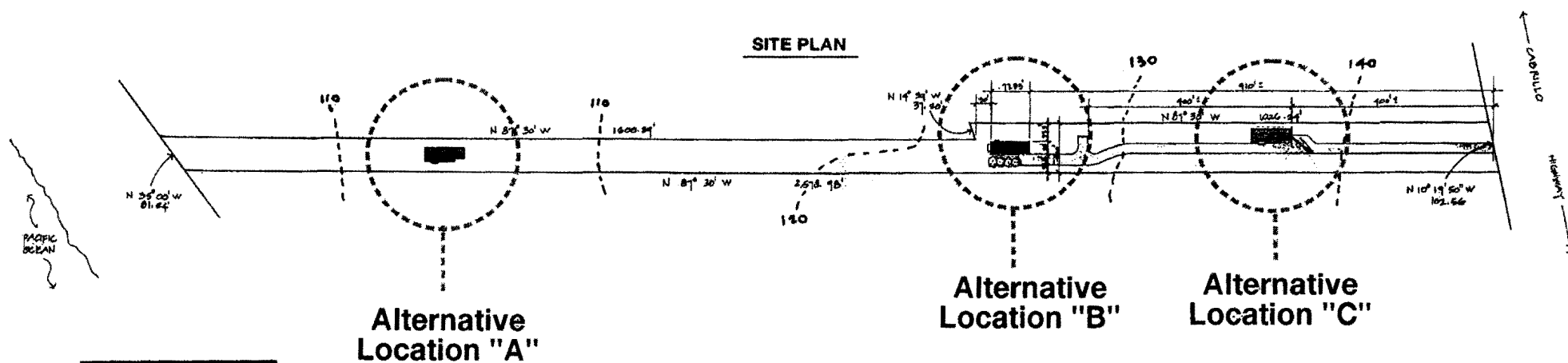
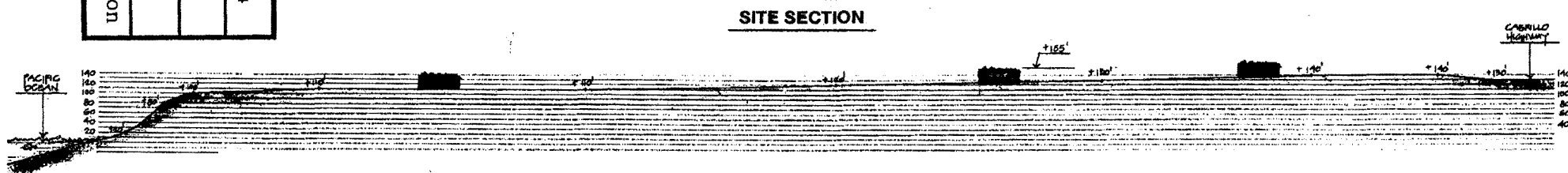
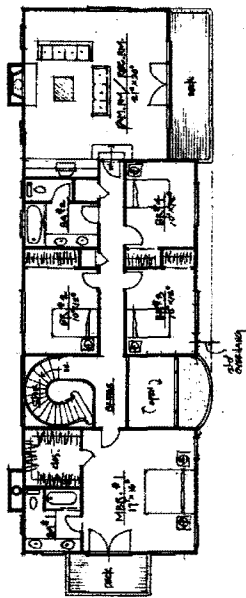


EXHIBIT NO.	4
APPLICATION NO.	A-1-SMC-97-013
LUCHINI	
Site Plan & Section	





2ND FLOOR PLAN
 15'-0" x 15'-0"

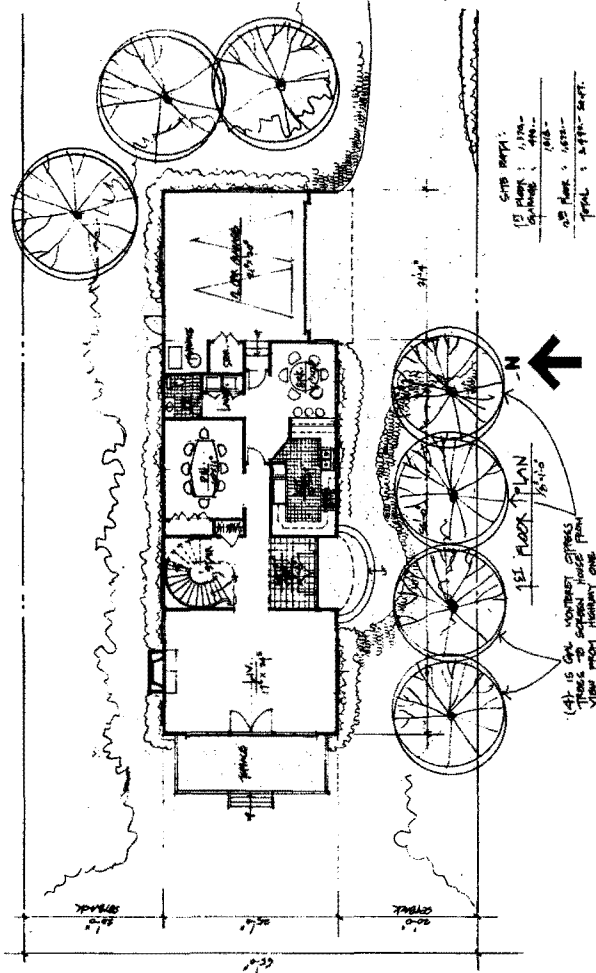


EXHIBIT NO.	5
APPLICATION NO.	A-1-SMC-97-013
LUCHINI	
Residence Area	

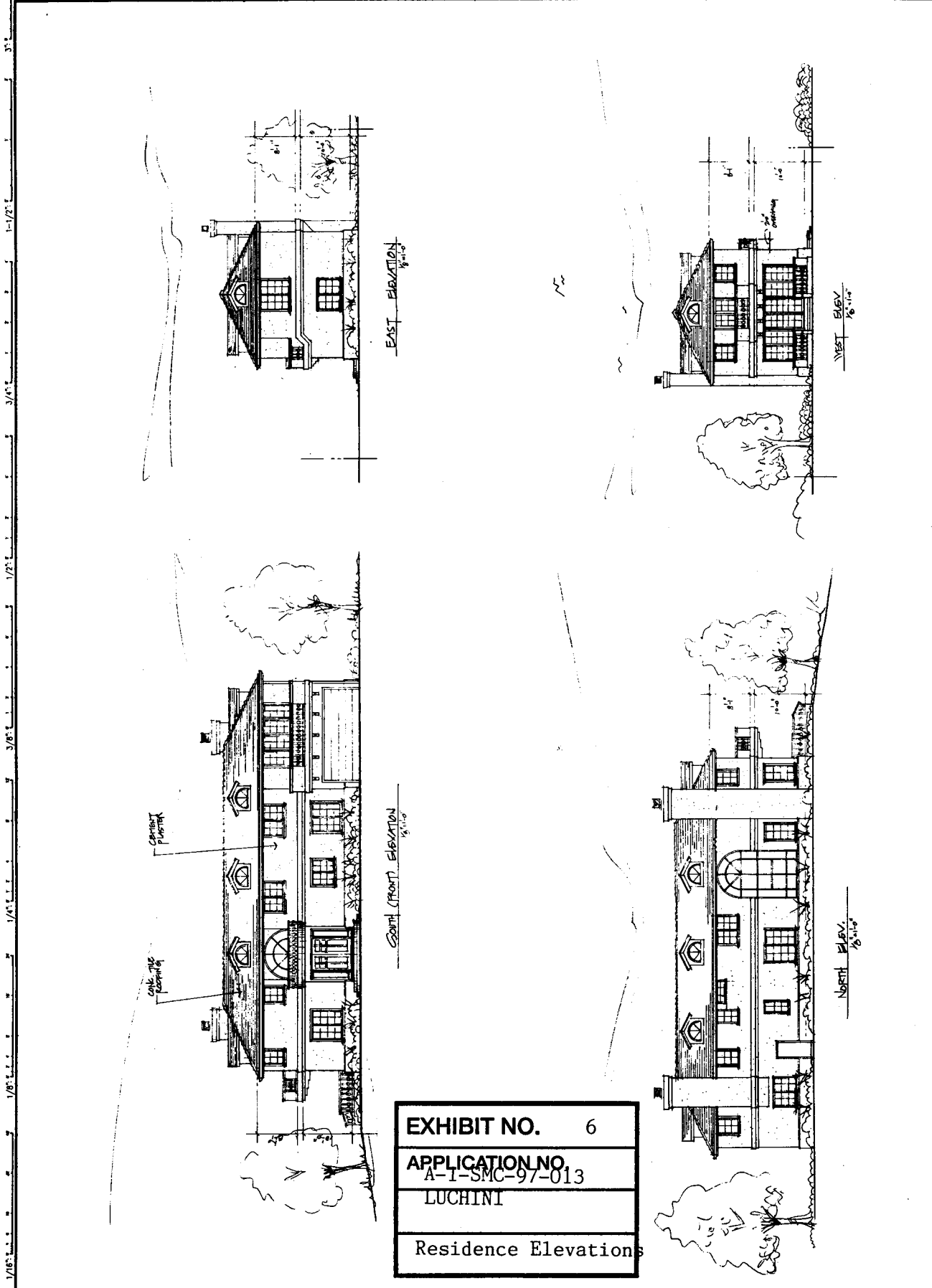


EXHIBIT NO. 6
APPLICATION NO. A-1-SMC-97-013
LUCHINI
 Residence Elevations

A-1-97-13 (Gumbinger and Luchini), San Mateo County

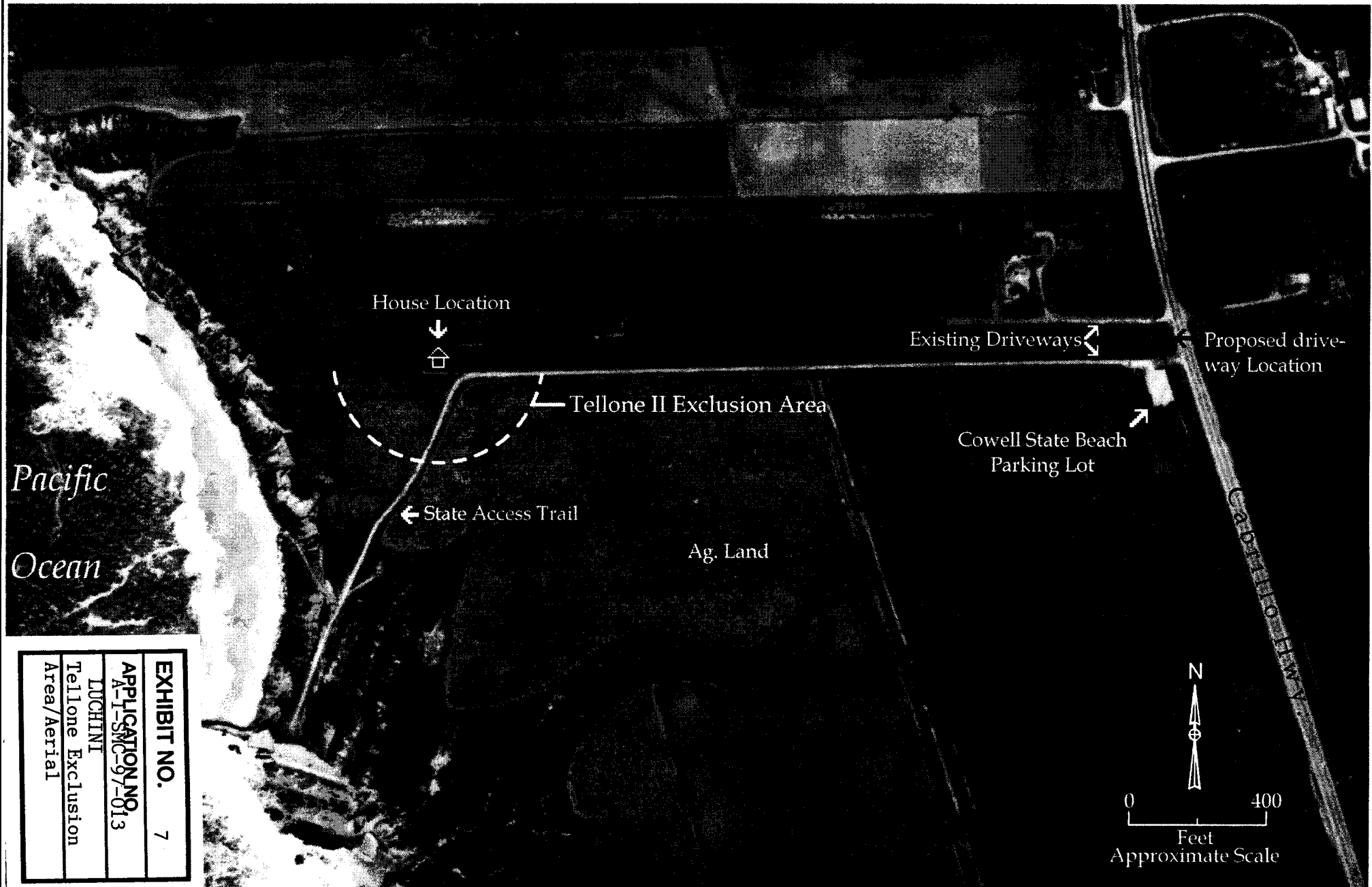


EXHIBIT NO.	7
APPLICATION NO.	A-1-SMC-97-013
LUCHINI	
Tellone Exclusion	
Area/Aerial	



Planning and Building Division

County of San Mateo

Mail Drop PLN122 · 590 Hamilton Street · 2nd Floor · Redwood City
California 94063 · Telephone 415/363-4161 · Fax 415/363-4849

Board of Supervisors
Ruben Barrales
Mary Griffin
Tom Huening
Ted Lempert
Michael D. Nevin

Director of
Environmental Services
Paul M. Koenig

Planning Administrator
Terry L. Burr

Please reply to:

Jim Eggemeyer
(415) 363-1930

February 19, 1997

Joe and MaryAnne Luchini
#1 Nob Hill Circle
San Francisco, CA 94108

Subject: Request for: Planned Agricultural Permit, File #PAD 96-0010
Coastal Development Permit, File #CDP 96-0027
Architectural Review, File #ARC 96-0011
Location: Half Moon Bay (Unincorporated)
APN: 066-081-080

Dear Mr. and Mrs. Luchini:

On February 11, 1997, the San Mateo County Board of Supervisors considered your request of: (1) a Planned Agricultural Permit and a Coastal Development Permit, pursuant to Section 6353 and 6328.4 of the Zoning Regulations; and (2) Architectural Review pursuant to the State Streets and Highways code Section 261, to construct a single-family residence at a site west of Cabrillo Highway.

Based on the information provided by staff and evidence presented at this hearing, the Board of Supervisors approved your request, made the following findings, and adopted conditions of approval as follows:

FINDINGS

That the Board of Supervisors:

Regarding the Negative Declaration, Found:

1. That the Negative Declaration is complete, correct, adequate, and prepared in accordance with the California Environmental Quality Act and applicable State and County Guidelines.

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To	From	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

EXHIBIT NO.	8
APPLICATION NO.	A-1-SMC-97-013
	LUCHINI
Board of Supervisors Findings	

Joe and MaryAnne Luchini

Subject: Request for Planned Agricultural Permit, File #PAD 96-0010, Coastal Development Permit, File #CDP 96-0027, Architectural Review, File #ARC 96-0011

February 19, 1997

Page 2

2. That, on the basis of the Initial Study and comments received thereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the project, if subject to the mitigation measures contained in this Negative Declaration, will have a significant effect on the environment.
3. That the Negative Declaration reflects the independent judgment of San Mateo County.

Regarding the Coastal Development Permit. Found:

4. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.
5. That the project conforms to the specific findings required by policies of the San Mateo County Local Coastal Program, particularly those findings relating to the conversion of lands suitable for agriculture.
6. That the project is located between the sea and the first public road, and that the project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code).
7. That the number of building permits for construction of single-family residences issued this year does not exceed 125.
8. That denying the residential use would result in the taking of private property as it is (a) unlikely that a viable commercial agricultural operation could be maintained on the property, even with the water connection, due to the size and irregular shape of the parcel, (b) no other economic viable use other than agriculture could be made of the property without a water connection, (c) all the types of uses identified in the Planned Agricultural District (PAD) zoning district, for the types of soils on this project site (lands suitable for agriculture), would require water to be a viable use, and (d) the possibility of purchase of the subject parcel by the adjoining parcels to the north and south has been explored and no interest has been shown.

Joe and MaryAnne Luchini

Subject: Request for Planned Agricultural Permit, File #PAD 96-0010, Coastal Development Permit, File #CDP 96-0027, Architectural Review, File #ARC 96-0011

February 19, 1997

Page 3

9. That the agricultural viability study for the project identifies artichokes and Brussels sprouts as the only viable crops, based on the soil conditions and climate of this location, that these types of crops are heavily water dependent, and that the probable net operating annual income would be approximately \$600.00.
10. That the proposed structure, as conditioned, conforms to the specific San Mateo County Local Coastal Program Policy 8.5 requiring the structure to be designed in scale with the rural character of the region and clustered with the existing natural or manmade vertical features.

Regarding the Planned Agricultural District Permit. Found:

11. That, on the basis of information contained in the staff report and as conditioned, the project conforms with the plans, policies, requirements and substantive criteria for issuance of a Planned Agricultural Permit in Section 6355 of the Zoning Regulations.

Regarding Architectural Review. Found:

12. That the proposed structures are in compliance with the standards for Architectural and Site Control within the Cabrillo Highway Scenic Corridor.

CONDITIONS OF APPROVAL

Planning Division

1. The applicant shall relocate the proposed residence to a location referred to in this report as "Alternative Location A," located approximately 2,000 feet (+/- 50 feet) from Cabrillo Highway. The applicant shall redesign the proposed residence to: (a) rotate the proposed garage location 90 degrees to have the garage door facing East, and (b) provide a less formal design to blend in with the rural area, including the use of earth tone colors. The applicant shall submit the revised site plan to the Planning Director for review and approval prior to issuance of the building permit.
2. This Coastal Development Permit shall be valid for one year from the date of final approval.

Joe and MaryAnne Luchini

Subject: Request for Planned Agricultural Permit, File #PAD 96-0010, Coastal Development Permit, File #CDP 96-0027, Architectural Review, File #ARC 96-0011

February 19, 1997

Page 4

3. The applicant shall apply for and be issued a building permit prior to the start of construction.
4. This approval applies only to the proposal as described in this report and materials submitted for review on June 17, 1996, December 18, 1996, and as amended by Condition of Approval #1 above. Minor adjustments to the project may be approved by the Planning Director if they are consistent with the intent of and in substantial conformance with this approval.
5. The applicant shall paint the structure with colors which blend with the surrounding natural grasslands. Exterior color samples, including roof material samples (no larger than approximately 4 square inch samples for walls and trim), shall be submitted to the Planning Counter for review and approval by the Planning Director prior to the issuance of the building permit. The applicant shall include the file/case number with all color samples. Color verification by a building inspector shall occur in the field after the applicant has painted the structure an approved color but before the applicant schedules a final inspection.
6. The applicant shall submit a revised planting plan to provide additional shrub and tree plantings to ~~reduce or eliminate views of~~ the proposed residence as seen from the State Scenic Highway and as seen from the Cowell State Beach access trail. The applicant shall submit the landscape plan in accordance with the "Landscape Plan Guidelines - Minimum Standards" for review and approval by the Planning Director. The plan shall also address minimizing the disturbance of soil and vegetation during construction of the house and driveway and the restoration of all disturbed areas through revegetation with plant materials which are compatible with the surrounding vegetation. The plan shall include an irrigation plan. Plans for landscape areas equal to or greater than 5,000 sq. ft. must be in compliance with the "Landscape Documentation Guidelines." Upon submittal of the landscape plan, the applicant shall pay a review fee based on the fee schedule in effect at that time.
7. A performance surety deposit shall be required of the applicant to guarantee installation of the approved landscape plan. The amount of the surety will be determined as part of the landscape plan review. The surety shall be either a letter of assignment or a certificate of deposit. The surety will be released upon faithful completion of the landscaping installation to the satisfaction of the Planning Director. To release the surety, the applicant shall arrange with Planning staff for a site visit.

Joe and MaryAnne Luchini

Subject: Request for Planned Agricultural Permit, File #PAD 96-0010, Coastal Development Permit, File #CDP 96-0027, Architectural Review, File #ARC 96-0011

February 19, 1997

Page 5

8. The applicant shall install the approved landscaping prior to requesting a final inspection for the building permit.
9. Upon release of the performance surety, a maintenance surety shall be posted by the applicant with the Planning and Building Division for a period of two (2) years. The amount of the surety will be determined as part of the landscape plan review. The surety will be released upon inspection of the landscaping to the satisfaction of the Planning Director. To release the surety, the applicant shall arrange with Planning staff for a site visit.
10. If the proposed structure is designed within 18 inches of the maximum allowable height, height verification shall be required as indicated below.

Height Verification

- a. The applicant shall provide "finished floor elevation verification" to certify that the structure is actually constructed at the height shown on the submitted plans. The applicant shall have a licensed land surveyor or engineer establish a baseline elevation datum point in the vicinity of the construction site. The applicant shall maintain the datum point so that it will not be disturbed by the proposed construction activities until final approval of the building permit.
- b. This datum point and its elevation shall be shown on the submitted site plan. This datum point shall be used during construction to verify the elevation of the finished floors relative to the existing natural grade or to the grade of the site (finished grade).
- c. Prior to Planning approval of the building permit application, the applicant shall also have the licensed land surveyor or engineer indicate on the construction plans: (1) the natural grade elevations at the significant corners (at least four) of the footprint of the proposed structure on the submitted site plan, and (2) the elevations of proposed finished grades.
- d. In addition, (1) the natural grade elevations at the significant corners of the proposed structure, (2) the finished floor elevations, (3) the topmost elevation of the roof, and (4) garage slab elevation must be shown on the plan elevations and cross-section (if one is provided).

Joe and MaryAnne Luchini

Subject: Request for Planned Agricultural Permit, File #PAD 96-0010, Coastal Development Permit, File #CDP 96-0027, Architectural Review, File #ARC 96-0011

February 19, 1997

Page 6

- e. Once the building is under construction, prior to the below floor framing inspection or the pouring of the concrete slab (as the case may be) for the lowest floor(s), the applicant shall provide to the Building Inspection Section a letter from the licensed land surveyor or engineer certifying that the lowest floor height, as constructed, is equal to the elevation specified for that floor in the approved plans. Similarly, certifications on the garage slab and the topmost elevation of the roof are required.
 - f. If the actual floor height, garage slab, or roof height, as constructed, is different than the elevation specified in the plans, then the applicant shall cease all construction and no additional inspections shall be approved until a revised set of plans is submitted to and subsequently approved by both the Current Planning Section and the Building Inspection Section.
- 11. All utilities must be constructed underground.
 - 12. The building plans shall show all proposed exterior light fixtures. The use of exterior light fixtures must be minimized. Where necessary, fixtures which shield glare and employ warm colors will be required.
 - 13. The owner of the property shall record the following statement with the County Recorder's Office on the subject property prior to requesting a final inspection on the building permit:

This parcel is adjacent to property utilized for agricultural purposes. Residents of the parcel may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including plowing, spraying, pruning and harvesting, which occasionally generate dust, smoke, noise, and odor. San Mateo County has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations.
 - 14. That the applicant shall pay in-lieu fees for the provision of public access as allowed under LCP Policy 10.32(e), prior to the issuance of the Certificate of Occupancy. The fee amount shall be set by the Planning Director prior to the issuance of the building permit, shall be based on the equivalent value of a viewing easement from the existing access

Joe and MaryAnne Luchini

Subject: Request for Planned Agricultural Permit, File #PAD 96-0010, Coastal Development Permit, File #CDP 96-0027, Architectural Review, File #ARC 96-0011

February 19, 1997

Page 7

trail to a viewing point on the coastal bluff, and shall not exceed \$5,000.00. ~~In addition the applicant agrees to grant a lateral easement meeting the requirements of Local Coastal Program, along the bluff top located in a manner that would provide for an eventual connection with trails to the North and South of the property.~~

Department of Public Works

15. Prior to the issuance of the building permit, the applicant will be required to provide payment of "roadway mitigation fees" based on the square footage (assessable space) of the proposed building per Ordinance #3277.
16. At the time of building permit submittal, the applicant shall submit a driveway "plan and profile," to the Department of Public Works, showing the driveway access to the parcel (garage slab) complying with County standards for driveway slopes (not to exceed 20%) and to County standards for the driveways (at the property line) being the same elevation as the center of the access roadway. When appropriate, this plan and profile shall be prepared from elevations and alignment shown on the roadway improvement plans. The driveway plan shall also include and show specific provisions and details for both the existing and the proposed drainage patterns and drainage facilities.
17. Any work performed within the State right-of-way (ROW) will require an encroachment permit from CalTrans. A completed application, a fee of \$420.00 more or less, environmental documentation, and five sets of plans should be submitted to the following address:

G. J. Battaglini, District Office Chief
CalTrans District 4
Maintenance Services and Permits
P.O. Box 23660
Oakland, CA 94623-0660

Half Moon Bay Fire

18. The applicant shall comply with all posting, access, smoke detector, water storage, and other fire safety requirements imposed by the Half Moon Bay Fire Protection District.

Joe and MaryAnne Luchini

Subject: Request for Planned Agricultural Permit, File #PAD 96-0010, Coastal Development Permit, File #CDP 96-0027, Architectural Review, File #ARC 96-0011

February 19, 1997

Page 8

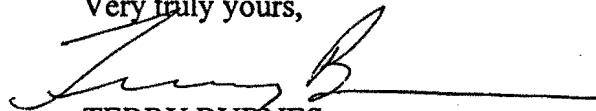
Any interested party may appeal the County's approval of this Coastal Development Permit to the California Coastal Commission North Coast District Office. They may be reached at 415/904-5267.

A project is considered approved when the appeal period has expired and no appeals have been filed.

If you have any questions on this matter, please contact the Project Planner, Jim Eggemeyer, at 415/363-1930.

Thank you for your courtesy and cooperation.

Very truly yours,



TERRY BURNES
Planning Administrator

cc: Department of Public Works
County Geotechnical Section
Assessor, Chief Deputy
Bill Cameron, Building Inspection
CDF/Rex Buthman
Stan Low, Environmental Services
Planning Director, City of Half Moon Bay
Half Moon Bay Fire Protection District
Coastside County Water District
Paul Gumbinger
Lennie Roberts
Carmel Navarro
David Hayes, Coastal Conservancy
Jack Liebster, North Coast Coastal Commission
Jack Olsen
Jim Rourke
Mary Hobbs
Kenneth Dickerson

COUNTY OF SAN MATEO

PLANNING AND BUILDING DIVISION

Date: February 11, 1997

To: Honorable Board of Supervisors

From: Terry Burnes, Planning Administrator
via Paul M. Koenig, Director of Environmental Services

Subject: **EXECUTIVE SUMMARY:** Consideration of a Planned Agricultural Permit, a Coastal Development Permit, and Architectural Review, to construct a single-family residence on a parcel west of Cabrillo Highway, south of the City of Half Moon Bay. This project is appealable to the California Coastal Commission.

RECOMMENDATION

1. Approve the Planned Agricultural District Permit (PAD 96-0010), Coastal Development Permit (CDP 96-0027), and Architectural Review (ARC 96-0011) as modified by the Planning Commission.
2. Certify the Negative Declaration as being complete, correct, and accurate.

PROPOSAL

The applicant proposes to construct a new 3,490 sq. ft. two-story, single-family residence on a parcel located on the west side of Cabrillo Highway in the Planned Agricultural Zoning District (PAD), south of the City of Half Moon Bay. The project would also involve construction of a 2,033-foot long driveway from Cabrillo Highway to provide access to the proposed residence. The staff recommendation is for approval.

SUMMARY

On October 9, 1996 and November 27, 1996, the Planning Commission considered the applicant's request and split two to two with one Commissioner recusing himself. Although they did not reach a decision on the project, the Planning Commission, did however, on a 4-0 vote, recommend to your Board the relocation of the subject residence to an alternative site, located approximately 400 feet from Cabrillo Highway. Staff has included this alternative in the conditions of approval.

COUNTY OF SAN MATEO
PLANNING AND BUILDING DIVISION

Date: February 11, 1997

To: Honorable Board of Supervisors

From: Terry Burnes, Planning Administrator; Pony PLN 122; Ext. 1859
via Paul M. Koenig, Director of Environmental Services

Subject: Consideration of: (1) a Planned Agricultural Permit and a Coastal Development Permit, pursuant to Sections 6353 and 6328.4 of the Zoning Regulations, and (2) Architectural Review, pursuant to the State Streets and Highways Code Section 261, to construct a single-family residence on a parcel west of Cabrillo Highway, south of the City of Half Moon Bay. This project is appealable to the California Coastal Commission.

File Nos.: PAD 96-0010, CDP 96-0027 and ARC 96-0011 (Gumbinger/Luchini)

RECOMMENDATION

1. Approve the Planned Agricultural District Permit (PAD 96-0010), Coastal Development Permit (CDP 96-0027), and Architectural Review (ARC 96-0011) as modified by the Planning Commission by making the required findings and adopting the conditions of approval contained in Attachment A.
2. Certify the Negative Declaration by making the required findings in Attachment A.

PROPOSAL

The applicant proposes to construct a new 3,490 sq. ft. two-story, single-family residence on a parcel located on the west side of Cabrillo Highway in the Planned Agricultural Zoning District (PAD), south of the City of Half Moon Bay. The project would also involve construction of a 2,033-foot long driveway from Cabrillo Highway to access the proposed residence.

BACKGROUND

Report Prepared By: Jim Eggemeyer, Project Planner, Telephone 415/363-1930

Applicant: Paul Gumbinger

Owner: Maryanne Luchini

Location: Highway 1, just south of Miramontes Road

APN: 066-081-080

Size: 4.88 acres

Existing Zoning: Planned Agricultural District (PAD)

General Plan Designation: Agriculture

Existing Land Use: Vacant

Environmental Evaluation: A Negative Declaration pursuant to the California Environmental Quality Act was published on October 18, 1996. The review period expired on November 13, 1996.

Setting: The property is located on the west side of the Cabrillo Highway. It is approximately 800 feet south of the Half Moon Bay City boundary. The parcel, created by deed in 1941, is a narrow strip of land extending 2,616 feet in length and gently sloping from Highway 1 to the coastal bluff. The parcel consists of entirely non-prime agricultural land and is currently undeveloped. Cowell State Beach access trail parallels the subject property's southern property line.

DISCUSSION

A. KEY ISSUES

1. Planning Commission Review

On November 27, 1996, the Planning Commission deliberations focused on two main issues. These included: (1) conformance with LCP Policy 8.5 (Structures), concerning where the proposed residence should be located on the parcel, and (2) the parcel's agricultural viability and whether or not there was sufficient evidence to make the finding that not allowing a water connection for the proposed residence would constitute a taking of the applicant's property rights.

These two issues are discussed below in greater detail.

2. Agricultural Viability

The Planning Commission was not able to conclude, based on the staff report and information presented at the hearing, that: "denying the residential use would result in a taking of private property." The applicant and the owner subsequently contacted Ann King of U.C. Davis and the Farm Advisors from both San Mateo County and Santa Cruz County for information to determine the agricultural viability of the property. This information is included in Attachment H.

The agricultural viability study was provided by the State Agricultural Bureau and the University of California Agricultural Studies. Cost specific data was provided by the State Agricultural Bureau. The projected gross revenue (adjusted) per acre of Brussels sprouts is \$2,886.00 and the projected expenditure per acre is \$2,762.17. Thus, the probable net operating income per acre is \$123.83, resulting in an annual profit of approximately \$600.00.

The report also included additional research and findings, which are summarized below.

- a. Artichokes and Brussels sprouts were identified as the only viable crops for the subject parcel. This is based on soil conditions and the climate of this location. Both of these types of crops are heavily water dependent.
- b. All attempts to locate a source of on-site groundwater have failed. There is an existing 2-inch diameter water main line on-site that serves three customers (Vint, Navarro, and Giusti). The water line marginally serves Giusti Farms (who has additional water sources) and thus lacks the capacity to deliver the quantity flow/time required to grow artichokes and Brussels sprouts.
- c. The Vint and Navarro properties to the north have not been utilized for agriculture for the past four decades and north of the Vint property, a golf course is currently being developed.
- d. The Giustis have no interest in leasing the subject property due to the lack of water, its small acreage and narrowness.
- e. No non-contiguous owners, public or private, have ever expressed an interest in leasing the subject property or offered to purchase the property.

Staff has concluded that it is unlikely that a viable commercial agricultural operation could be maintained on the property, even with the water connection. As indicated in the November 13, 1996 staff report to the Planning Commission, it is unlikely that

any economic viable use other than agriculture could be made of the property without a water connection because all the types of uses identified in the Planned Agricultural District (PAD) zoning district, for the type of soils on this project site (lands suitable for agriculture), would require water to be viable. The following uses are allowed on lands suitable for agriculture: agriculture; non-residential development customarily considered accessory to agricultural uses (barns, sheds, stables, fences, etc.); dairies; greenhouses; nurseries; animal fanciers; farm labor housing; single-family residences; affordable multi-family residences; schools; fire stations; commercial recreation; aquacultural activities; wineries; timber harvesting; processing, storing, packaging of agricultural products; uses ancillary to agriculture (agricultural grading equipment, agricultural rental supplies, etc.); kennels or catteries; and scientific/technical research and test facilities. Staff has concluded that all the allowable uses would require water to be sustainable. Considering the necessity for water and the owner's four failed attempts to find water on-site, by not allowing a water connection, staff concludes that an assertion could be made that denial of the project could rise to a level of taking.

3. Agricultural Advisory Committee Meeting of January 13, 1997

At the recent Agricultural Advisory Committee meeting, the project was agendized to provide the Committee with information regarding the Planning Commission's concerns. The Committee approved the following language and recommends that your Board:

"Reaffirm the original recommendation of the Agricultural Advisory Committee from the August meeting supporting the applicant's proposed location with the inclusion of the 'Right to Farm' language and furthermore, that if the Board of Supervisors is inclined to approve another location, that this project be re-referred to the Agricultural Advisory Committee for review and comment prior to a decision being rendered."

Planning staff has included the right to farm language as recommended above as Condition #14 in Attachment A of this report. Since the Agricultural Advisory Committee acts in the capacity as an advisory committee, your Board may decide to relocate the proposed residence to an alternative location without re-referring this application to the Committee for their review and comment prior to a decision.

4. Alternative Site Locations

During the Planning Commission's public hearing, the Commissioners considered three site locations for the proposed residence (Attachment C). These included: (1) the applicant's proposal, "Alternative Location A," the most westerly location, approximately 2,000 feet from Cabrillo Highway, (2) the applicant's alternative location, "Alternative Location B," located approximately 1,000 feet from Cabrillo

Highway, and (3) the Planning Commission's preferred and recommended location, "Alternative Location C," located approximately 400 feet from Cabrillo Highway.

The Planning Commission reviewed the proposed building locations relative to: (1) the State Scenic Corridor (Cabrillo Highway), (2) existing vegetation in the vicinity of the proposed building sites, and (3) existing structures on the parcel north of the project site. The Commission determined that by moving the proposed residence to Alternative Location C and redesigning the residence to be lower, less formal, and designed to blend in with the area, this relocation would comply with LCP Policy 8.5 (Structures). Policy 8.5 requires that the number of structures located in open fields and grassland areas be minimized, that structures be designed in scale with the rural character of the region, and that they be clustered near existing natural or manmade vertical features. Staff has included additional recommended conditions of approval relocating the proposed residence and redesigning the residence to blend in with the area.

5. Shoreline Access

LCP Policy 10.30 (Requirement of Minimum Access) requires the provision of shoreline access for development between the sea and the nearest public road. Case law requires that a relationship between the access condition and impacts to public scenic access be demonstrated in each case. As recommended to the Planning Commission, this proposal would require the payment of an in-lieu fee pursuant to LCP Policy 10.32(e) for the equivalent value of a viewing easement from the existing access trail to a viewing point on the coastal bluff. In the previous staff report to the Planning Commission, staff found that dedication of physical vertical shoreline access across the property to be impractical, as the property is surrounded on three sides by public lands (Cowell State Beach, the State Beach access trail, and Highway 1) and includes an existing vertical access to the Cowell State Beach.

B. ENVIRONMENTAL REVIEW

An Initial Study and Negative Declaration was prepared for this project pursuant to the California Environmental Quality Act and published on October 18, 1996. An Initial Study and Negative Declaration were required for this project because the project site is located within a State Scenic Corridor. Two letters commenting on the Negative Declaration were received and are enclosed as Attachment D. Staff's comments to these letters are included as Attachment E.

Indicated in the Negative Declaration were mitigation measures to avoid potentially significant effects. These included building colors, landscape buffers and moving the proposed residence closer to Highway 1.

ATTACHMENTS

- A. Recommended Findings and Conditions of Approval
- B. Site Location Plan
- C. Site Plan - Alternative Locations "A", "B", and "C"
- D. Copies of Letters Commenting on Negative Declaration
- E. Copies of Planning Staff's Response Letters to Comments Received Regarding the Negative Declaration
- F. Copy of the California Coastal Commission Letter Dated October 3, 1996
- G. Copy of the November 13, 1997 Planning Commission Staff Report and Negative Declaration
- H. Copy of the Agricultural Viability Study

Respectfully submitted,



Terry Burnes, Planning Administrator



REVIEWED FOR AGENDA

TB:JE:fc - JKEH0122.6FU

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



**Appeal from Coastal Permit Decision of San Mateo County
re.: Gumbinger/Luchini APN 066-081-080, CDP 96-0027**

Section IV.

The project as approved by the County is inconsistent with the San Mateo County LCP, and the local decision approving it warrants a new hearing for the following reasons:

Inconsistency with Visual Resources policies

The LCP Visual Resources policies state:

- *8.5 Minimize the number of structures located in open fields and grassland areas;... be designed in scale with the rural character of the region, and ... be clustered near existing natural or man-made vertical features.

***8.15 Coastal Views**

Prevent development (including buildings, structures, fences, un-natural obstructions, signs, and landscaping) from substantially blocking views to or along the shoreline from coastal roads, roadside rests and vista points, recreation areas, and beaches.

***8.18 Location of New Development**

Require:

- a. That new development be located, sited, and designed to fit the physical setting, so that its presence is subordinate to the pre-existing character of the site, enhances the scenic and visual qualities of the area, or maintains the natural characteristics of existing major water courses, established and mature trees, or dominant vegetative communities...
- c. That private roads and driveways be shared, where feasible, to reduce the amount of grading, cutting and filling required to provide access.

8.20 Scale

Relate structures in size and scale to adjacent buildings and landforms.

8.31 Regulation of Scenic Corridors in Rural Areas

- a. Apply the policies of the Scenic Road Element of the County General Plan.
- b. Apply Section 6325.1 (Primary Scenic Resources Areas Criteria) of the Resource Management (RM) Zoning District as specific regulations protecting Scenic Corridors in the Coastal Zone.
- c. Apply the Rural Design Policies of the LCP.
- d. Apply the Policies for Landforms and Vegetative Forms of the LCP.

EXHIBIT NO.	9
APPLICATION NO.	A-1-SMC-97-013
LUCHINI Commissioners Areias & Calcagno appeals	

- e. Require a minimum setback of 100 feet from the right-of-way line, and greater where possible; however, permit a 50-foot setback when sufficient screening is provided to shield the structure from public view.
- f. Continue applying special regulations for the Skyline Boulevard and Cabrillo Highway State Scenic Corridors.

The approved structure would be located in an open grassland field in the LCP-designated State Scenic Highway Corridor and in full view of Highway One from a southerly approach. In addition, it would substantially block views to the shoreline and ocean from the Cowell Beach public access trail and be in the direct line of sight of users of that trail for almost its entire length. The house, its landscaping and the unusually long 2000 foot driveway would add a strong urban element out of scale with the distinct rural character of the area. The location of the house is in an open area not clustered with the predominant "vertical features" of the site (i.e. the house on the immediately adjacent property).

Inconsistency with Agriculture policies

The LCP Agriculture Policies state in part:

***5.2 Designation of Prime Agricultural Lands**

Designate any parcel which contains prime agricultural lands as Agriculture on the Local Coastal Program Land Use Plan Map, subject to the following exceptions: State Park Lands existing as of the date of Local Coastal Program certification, urban areas, rural service centers, and solid waste disposal sites necessary for the health, safety, and welfare of the County.

***5.3 Definition of Lands Suitable for Agriculture**

Define other lands suitable for agriculture as lands on which existing or potential agricultural use is feasible, including dry farming, animal grazing, and timber harvesting.

***5.8 Conversion of Prime Agricultural Land Designated as Agriculture**

- a. Prohibit conversion of prime agricultural land within a parcel to a conditionally permitted use unless it can be demonstrated:
 - (1) That no alternative site exists for the use,

***5.10 Conversion of Land Suitable for Agriculture Designated as Agriculture**

- a. Prohibit the conversion of lands suitable for agriculture within a parcel to conditionally permitted uses unless all of the following can be demonstrated:
 - (1) All agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable;
 - (2) Continued or renewed agricultural use of the soils is not feasible as defined by Section 30108 of the Coastal Act;
 - (3) Clearly defined buffer areas are developed between agricultural and non-agricultural uses;
 - (4) The productivity of any adjacent agricultural lands is not diminished;

- (5) Public service and facility expansions and permitted uses do not impair agricultural viability, including by increased assessment costs or degraded air and water quality.
- b. For parcels adjacent to urban areas, permit conversion if the viability of agricultural uses is severely limited by conflicts with urban uses, the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development, and conditions (3), (4) and (5) in subsection a. are satisfied.

The house, landscaping and extensive driveway permitted by the County would take up and convert agricultural land contrary to these policies. An alternative site for the approved residential use exists on the parcel closer to Highway One. This alternative site would significantly reduce the amount of agricultural land that would be converted. This is the site designated as the appropriate location for the structure by the Planning Commission. The County has not demonstrated consistency with all conversion criteria as required by the policies above. As further described below, the approved development is also inconsistent with the agricultural land protection provisions of LCP policy 1.8.

Inconsistency with Locating and Planning New Development policies

This parcel is designated as both *Agriculture* and *rural land* consistent with LCP policy 1.7 and is outside the urban/rural boundary.

Policy 1.8(a) allows new development in rural areas **only** if it is demonstrated that it will not:
(1) have significant adverse impacts, either individually or cumulatively, on coastal resources and
(2) diminish the ability to keep all prime agricultural land and other land suitable for agriculture in agricultural production.

Contrary to Policy 1.8(a)(2), the approved locations of the house, landscaping and extensive driveway permitted by the County would take up and convert much more agricultural land than an alternate location closer to the road. Moreover, by locating the house in the middle of the lot, it limits the potential of combining at least portions of the lot with the agricultural land on adjacent parcels to facilitate renewed agricultural use of the soils. As described above, it will also have adverse impacts on coastal visual resources contrary to Policy 1.8(a)(1).

Inconsistency with Public Works policies

Policy 2.14(a.) confines urban level services provided by public utilities only to urban areas, designated rural service centers and designated rural residential areas, and does not allow extension of these services to rural areas. Additionally Policy 2.14(d) requires special districts or public agencies to restrict activities in rural zones to those which are consistent with the maintenance of the rural nature of the area and all other policies of the Local Coastal Program. Policy 2.37(c)(4) further permits new water connections to only floriculturalist and agriculture and designated historical structures, not new residential development, within the rural zone.

The approved residential development is in the rural area outside the urban boundary on a parcel that does not have onsite (well) water. The County permit authorizes connection to water service provided by the Coastside County Water District, contrary to policies 2.14(a), 2.14(d) and 2.37(c)(4).

The approved residential use does not meet the criteria for exceptions to policy 2.14(a) provided for in policy 2.14(c), in that it: (A) is not otherwise consistent with the LCP for the other reasons cited in this appeal, contrary to policy 2.14(c)(1), and (B), contrary to policy 2.14(c)(2), does not maintain the rural nature of the area, and actually reduces the productivity of agricultural land, as discussed in the section of this appeal headed "Inconsistencies with Agricultural Policies."

The extension of water service may also further undermine these same urban/rural boundary policies of the LCP by setting a precedent that may allow additional water connectons within the unincorporated area, specifically Montara, Miramontes Road east of Half Moon Bay and Pescadero.

RECEIVED

MAR 03 1987

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

CALIFORNIA
COASTAL COMMISSIONAPPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Committee for Green Foothillsc/o Lennie Roberts339 La Cuesta Portola Valley CA (415) 854-0449Zip 94028 Area Code Phone No. SECTION II. Decision Being Appealed1. Name of local/port government: San Mateo County2. Brief description of development being appealed: Single family residence (two stories, 3990 square feet) and a 2,033-foot long driveway west of Cabrillo Highway (Hwy. 1).3. Development's location (street address, assessor's parcel no., cross street, etc.): APN 066-081-080
Cabrillo Highway, 800' South of Hawk Moon Bay4. Description of decision being appealed: urban/rural boundary

- a. Approval; no special conditions: _____
- b. Approval with special conditions: PAD 96-0010, CDP 96-0024 and ARC 96-0011
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

EXHIBIT NO.	10
APPLICATION NO.	A-1-SMC-97-013
LUCHINI	
Committee for Green Foothills appeal	

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

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

Please see Attachment "A".

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

SECTION V. Certification

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

Lenora L. Roberts, Legislation Advocate

Committee for Green Foothills

Signature of Appellant(s) or
Authorized Agent

Date February 28, 1997

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

ATTACHMENT "A"

**Appeal of Committee for Green Foothills. c/o Lennie Roberts, 339 La Cuesta, Portola Valley, CA 94028 of PAD 96-0010, CDP 96-0027, ARC 96-0011 (Joe and Mary Anne Luchini, Owner, Paul Gumbinger, Applicant)
APN-066-081-080**

BASIS FOR APPEAL:

The proposed project is a two-story single family residence and 2,000 foot long driveway located between Cabrillo Highway (State Route 1) and the sea. As approved by the Board of Supervisors, the house would be located directly adjacent to the Cowell State Beach access trail, and would interfere with views to and along the ocean bluffs by the public.

The Planning Commission, after two lengthy hearings and a field trip to the site, unanimously (4-0) recommended relocation of the proposed house site to Site "C", near Cabrillo Highway. The Commission then deadlocked 2-2 on whether the project should be approved at all. This 2-2 vote should have resulted in a denial of the project, which would have then required the applicant to appeal the denial. Instead, the staff referred the project to the Board of Supervisors, who by a 3-0 vote approved the original proposed location of the house (Site "A").

This site is not consistent with several policies of the LCP. The project as a whole also raises other critical LCP and Coastal Act issues (public access and extension of urban services) as outlined briefly below:

- 1. The project, as conditioned by the Board, would allow connection to urban service (water) for a non-agricultural use outside the urban/rural boundary, which is prohibited by LCP Policies 2.14 a and c.**
- 2. The project impermissibly allows conversion of land designated and suitable for agriculture, and does not cluster non-agricultural development in locations most protective of agriculture on the site, contrary to LCP Policies 5.10 and 5.15. The house and 2,000 foot long driveway, as approved at Site "A", would convert land suitable for agriculture and would fail to locate development near existing developed areas (single family residence to the north and Cowell Beach Access parking lot to the south).**
- 3. The project would adversely affect important and inspiring coastal views from the Cowell State Beach access trail, and would degrade the open-space experience of visitors walking from the parking area to the bluff-top viewing area, or to the beach and back. The residence, a two-story Mediterranean style house, is not in scale with the rural character of the area, and would not be clustered near existing development, contrary to LCP Policy 8.5. Coastal views**

for trail users would be significantly blocked by this large structure, and the landscaping to hide it, contrary to Policy 8.15. Condition 6 of the County approval, is unclear and contradictory in that it requires a revised planting plan (unavailable to the public at the time of approval of the project) which provides additional shrub and tree plantings which "reduce or eliminate views" of the proposed residence.

4. The project, as approved by the Board of Supervisors, in Condition 14, requires both an in-lieu fee based upon the value of a viewing easement from the existing access trail, plus a voluntary lateral easement (which was not offered by the applicant, but rather pursued by Supervisor Huening as a *quid pro quo* for locating the house near the bluff). By requiring both the payment of an in-lieu fee and the "voluntary" dedication of a lateral easement, this condition may have created an unenforceable requirement, particularly since we are unaware of any offer or agreement by the applicant to this voluntary dedication, either verbally or in writing.

