

CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
15 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260



F 6a

Filed: September 28, 1998
49th Day: November 15, 1998
Staff: Jo Ginsberg
Staff Report: October 21, 1998
Hearing Date: November 6, 1998
Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: Mendocino County

DECISION: Approval With Conditions

APPEAL NO.: **A-1-MEN-98-80**

APPLICANT: **PATRICIA DALPINO**

APPLICANT'S AGENT: Opal O'Neal

PROJECT LOCATION: West of Highway One, off of Caspar Point Road,
Caspar, Mendocino County, APN 118-010-29.

PROJECT DESCRIPTION: Use of property for camping for up to six
RV's/tents for up to 30 days per calendar year; plus
a maximum of three RV's/tents for an additional 30
days per calendar year.

APPELLANTS: **Jacqueline Peterson; Ray and Loraine Duff**

SUBSTANTIVE FILE DOCUMENTS: Mendocino County Local Coastal Program;
Mendocino County CDP #30-98.

The Motion to adopt the Staff Recommendation of No Substantial Issue is found on Page 4.

STAFF NOTES:

1. Appeal Process.

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the site is located between the sea and the first public road paralleling the sea.

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 Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, because the proposed development is located between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access policies of the Coastal Act.

Highway One in the Town of Caspar. The appellants' contentions are summarized below, and the full text of the contentions is also included as Exhibit No. 5.

1. Visual Resources.

The appellants assert that the Mendocino County approval does not conform to a number of LCP policies on visual resources and special neighborhoods. They cite policies that designate Caspar as a special neighborhood that must be protected to the extent that new development shall remain within the scope and character of existing development, and state that the scenic and visual qualities of Mendocino Coastal Areas shall be considered and protected as a resource of public importance, shall be sited and designed to protect views to and along the ocean and scenic coastal areas, be visually compatible with the character of surrounding areas, and that shall be subordinate to the character of its setting in highly scenic areas. The appellants contend that the approved expansion of camping use is not in character with the surrounding area.

2. Land Use:

The appellants also contend that the approval of this project permits growth of a land use inconsistent with the surrounding residential land use in the same zoning district, setting a poor precedent. They refer to a section of the LUP which states that "if Caspar is to retain its distinct identity, low density development may be appropriate."

B. LOCAL GOVERNMENT ACTION

The applicant applied for a coastal permit to authorize the use of the subject property for camping for up to ten RV's and/or tents for not more than 60 days in any six-month period. On August 28, 1998, the Mendocino County Coastal Permit Administrator approved Coastal Development Permit #30-98, authorizing use of the subject site for camping for up to six RV's/tents for up to 30 days per calendar year. In addition, a maximum of three RV's/tents are permitted for an additional 30 days per calendar year. The County issued a Notice of Final Action which was received in the Commission offices on September 14, 1998. The permit was not appealed to the County Board of Supervisors; consistent with Section 13573, the appellants appealed directly to the Commission because the County of Mendocino charges a fee to process appeals. The appellants appealed the local approval to the Commission on September 28, 1998, within the ten-working day appeal period.

The coastal development permit approved by the County includes several special conditions (see Exhibit No. 6). Some conditions relevant to the visual resource and land use issues raised in the appeal include (1) a requirement that the applicant submit a

1. Appellants' Contentions That Are Related to LCP or Chapter 3 Access Policies (Valid Grounds for Appeal).

The contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. However, the Commission finds that these contentions do not raise a substantial issue, for the reasons discussed below.

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.

As discussed above, the grounds identified in section 30603 for an appeal of a local government action are limited to whether the action taken by the local government conforms to the standards in the LCP and the public access policies found in the Coastal Act. The term substantial issue is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal.Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

LUP Policy 3.5-3 states in relevant part:

Any development permitted in these [designated highly scenic] areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...New development should be subordinate to natural setting and minimize reflective surfaces.

Section 20.504.010 of the Mendocino County Zoning Code states that:

The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section 20.504.015, **Highly Scenic Areas**, states in applicable part:

(C) *Development Criteria.*

- (1) *Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*
- (2) *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*
- (10) *Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.*

Section 20.504.020, **Special Communities and Neighborhoods**, states in applicable part:

(B) *The communities and service centers, designated as CRV or CFV, of Westport, Caspar, Albion, Elk and Manchester...shall have special protection as set forth in Section 20.504.020(C):*

by no more than three RV's/tents. The appellants state, incorrectly, that the "County's approval allows up to six RV's clustered on one acres for twice the usual permitted time." As stated above, the "usual permitted time" would either be 14 days in any six-month period for 6 RV's/tents without a coastal permit, or 60 days in any six-month period for up to 10 RV's/tents with a coastal permit consistent with Zoning Code Section 20.460.030(B). The use allowed by the County pursuant to the coastal permit is in fact less than the maximum allowable with a coastal permit, and only slightly more than that which is already currently allowed without a coastal permit.

Thus, the Commission finds that limited temporary camping use is already allowed even without permits and is part of the character of the area as envisioned by the certified LCP. Therefore, the Commission finds that no substantial issue is raised with regard to the provisions of LUP Policies 3.5-1, 3.5-2, and 3.5-3, and Zoning Code Sections 20.504.010, 20.504.010.015, and 20.504.020 that call for new development to be consistent with or compatible with the character of the area.

In addition, the Commission notes that the Zoning Code section regarding the protection of special communities that is referred to by the appellants in their appeal may not apply to the site at all. Subsection (B) of Section 20.504.020, Special Communities and Neighborhoods, states that "the communities and service centers, designated as CRV or CFV, of Westport, Caspar, Albion, Elk and Manchester...shall have special protection as set forth in Section 20.504.020(C)" (emphasis added). The subject property is not designated as CRV (Coastal Rural Village) or CFV (Coastal Fishing Village); rather it is designated as Rural Residential-5 acre minimum [Rural Residential-2 acre minimum conditional]. Those areas of Caspar that are designated CRV consist of the portions of the community that include the more densely developed central core of Caspar, some distance to the south of the project site. As the site is not designated as CRV or CFV, Section 20.504.020 can be interpreted to mean that the special protections set forth in subsection (c) of that section do not apply. Nonetheless, for the reasons discussed above, the Commission finds that the project as approved by the County does not raise a substantial issue of conformance with this policy.

With regard to the effects of the project on views, the Commission notes that no views of the shoreline are afforded through the site from public vantage points and only a small portion of the ocean can be seen through the site from Old Highway One and the current Highway One.

Furthermore, the County has conditioned the permit to require landscape screening along the eastern property boundary and in the area between Jughandle State Reserve and the portion of the site where RV's are parked in order to screen the camping use from public view areas along Old and new Highway One and from Jughandle State Reserve. Thus, the approved coastal permit requires landscape screening to minimize visual impacts from public viewing areas. Therefore, the Commission finds that the project as approved

Section 20.460.030, **Camping**, states:

The use of real property, by the owner or non-paying guests thereof, for temporary camping may be permitted upon issuance of a coastal development administrative permit in compliance with the following provisions:

- (A) **Location.** *Temporary camping may be permitted only in the RR, RMR, AG, RL, FL and TP zoning districts.*
- (B) **Duration.** *The maximum time limit for temporary camping shall not exceed sixty (60) days in any six (6) month period.*
- (C) **Intensity.** *Not more than thirty (30) individuals or more than ten (10) tents or recreational vehicles may be on a site at any one time. Tents or recreational vehicles etc. shall not be blocked up or placed upon any permanent foundation and shall not be connected to any utility such as water, gas or electricity. Tents or recreational vehicles etc. not in use shall be removed from the site.*
- (D) **Exclusions.** *Temporary camping utilizing six (6) or less tents or recreational vehicles for fourteen (14) days or less in any six (6) month period shall be exempt from the provisions of this section.*

Discussion: As noted above in the Visual Resources section, the development approved by the County pursuant to the coastal permit is a very minimal amount of increased camping use beyond what is already allowed by the LCP without a coastal permit. In addition, the approved use is limited to 60 days in a calendar year, and the RV's/tents allowed by the permit would not be placed upon any permanent foundation and would not be connected to any utility such as water, gas, or electricity. Thus, the Commission finds that the development approved by the coastal permit *does* constitute "low-density development" as indicated is appropriate in LUP Section 4.6.

Furthermore, the use of a site for temporary camping does not constitute "growth," but, rather, a limited temporary use of an otherwise vacant parcel. The land use allowed by the County does not set a "poor precedent for development in a residential area," as the appellants contend, as the County is allowing only a slight increase in temporary camping use beyond that which is already allowed without a permit. As such, the project will have a minimal effect and will not be precedential. The Commission notes, in addition, that the portion of Section 4.6 quoted by the appellants is not a policy of the LUP with which the project must be found consistent, but is background information provided as introduction to the Jughandle Creek to Russian Gulch Planning Area section of the LUP.

The Commission thus finds that the project as approved raises no substantial issue with respect to conformance of the approved project with the LCP policies regarding land use.

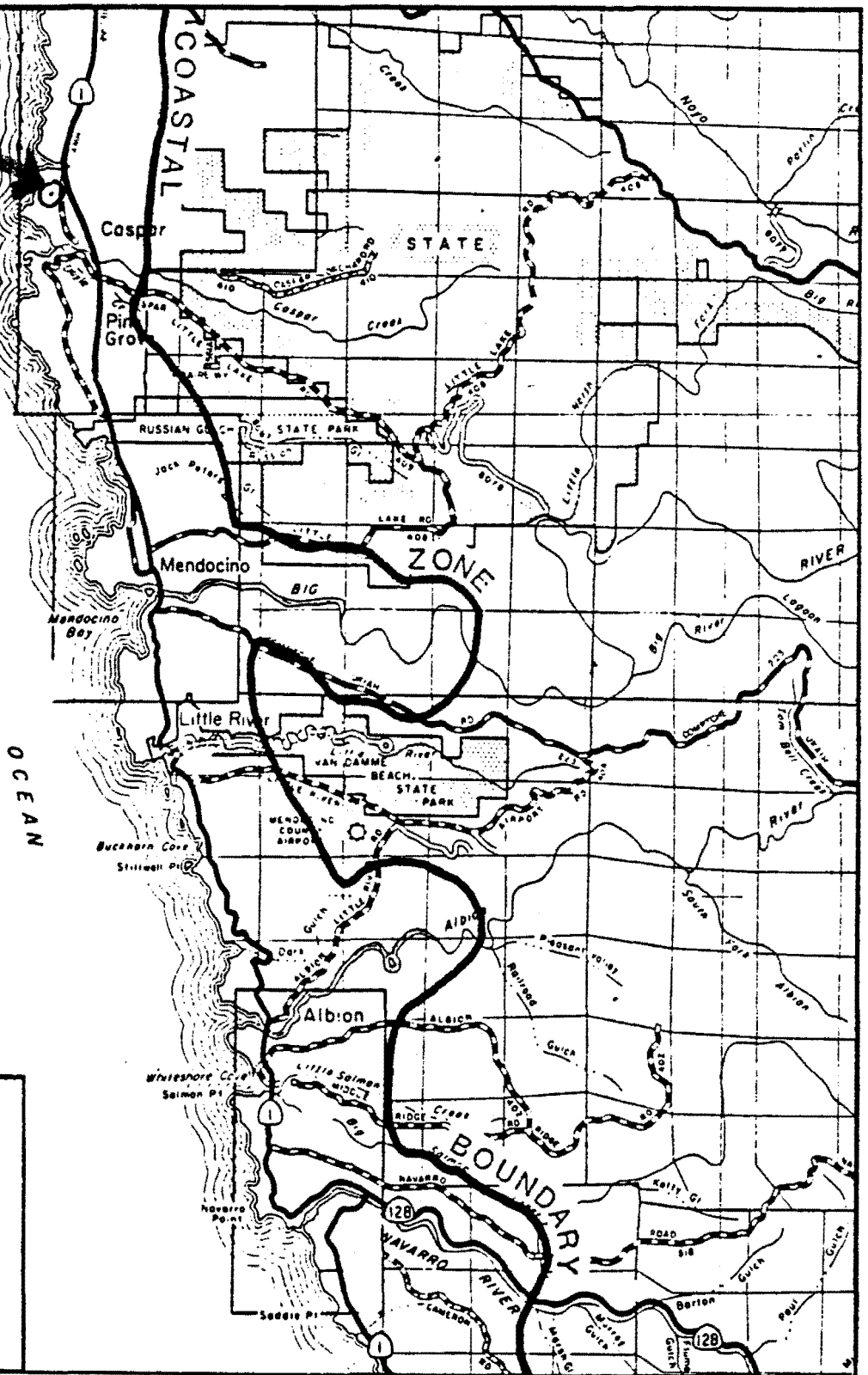
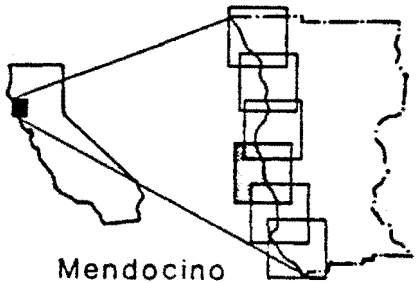
APPROXIMATE
LOCATION


EXHIBIT NO. 1

APPLICATION NO.
A-1-MEN-98-80

DALPINO

 LOCATION MAP
California Coastal Commission



 California Coastal Commission

LOCATION MAP



EXHIBIT NO. 5

APPLICATION NO.
A-1-MEN-98-80

Dalpino

Appeal

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

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

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

JACQUELINE PETERSON 27152 CARRITA DR. MALIBU, CA 90265 tel. (310) 589-5990RAY & DRAINE DUFF PO. BOX 46 CASPAR, CA 95420 tel. (707) 964-3757

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port

government: MENDOCINO COUNTY DEPARTMENT OF PLANNING

2. Brief description of development being

appealed: Local Permit # CDP # 30-98 and/or Application No. 1-MEN-98-234.
USE OF PROPERTY for CAMPING for up to 10 RECREATIONAL VEHICLES (RVs) &/or tents for
more than 60 days in any 6 month period.

3. Development's location (street address, assessor's parcel

no., cross street, etc.): West side of Highway 1, approximately 200 FT.
South of Caspar Point Rd., CASPAR (Mendocino County) APN 118-010-29

4. Description of decision being appealed:

a. Approval; no special conditions:

b. Approval with special conditions: TOO LENGTHY TO ENUMERATE - SEE
STAFF REPORT - SUMMARY AND STAFF

c. Denial:

RECOMMENDATIONS, CPA 1 & 2 of CDA
30-98, 8/27/98 attached full reportNote: For jurisdictions with a total LCP, denial
decisions by a local government cannot be appealed unless
the development is a major energy or public works project.
Denial decisions by port governments are not appealable.TO BE COMPLETED BY COMMISSION:APPEAL NO: A-1-MEN-98-080DATE FILED: 9/28/98DISTRICT: North Coast

H5: 4/88

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COASTAL COMMISSION

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.)

Conflicts with coastal element 3-2, pg 78, and 4.6, pg 167
Coastal zoning code pg. 532-183 - Attached information details
conflict.

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.

Lorin E Duff Kay Bell
Signature of Appellant(s) or
Authorized Agent

Date 9/25/98

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.

EXHIBIT NO.	5
APPLICATION NO.	A-I-MEN-98-80
	Dalpino
	Appeal

Lorin E Duff Kay Bell
Signature of Appellant(s)
Date _____

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP #30-98

HEARING DATE: 8/28/98

OWNER: Patricia Dalpino

ENVIRONMENTAL CONSIDERATIONS:

Categorically Exempt

Negative Declaration

EIR

FINDINGS:

Per staff report

Modifications and/or additions

ACTION:

Approved

Denied

Continued _____

CONDITIONS:

Per staff report

Modifications and/or additions: See attached Standard and Special Conditions

RZ for Ray Hall
Signed: Coastal Permit Administrator

EXHIBIT NO.	6
APPLICATION NO.	A-1-MEN-98-80
	Dalpino
	County Approval and Conditions

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COASTAL COMMISSION

any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

8. If any archaeological sites or artifacts are discovered during site activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. Fire Hazard Condition

- Emergency water supply shall be maintained at all times that a campfire is in use. One half of a fifty gallon container of water shall be reserved for fire protection purposes.
- A shovel or other scraping hand tool shall be located on-site at all times that a campfire is burning.
- An area twenty feet in diameter cleared to mineral soil, shall be maintained surrounding the fire circle prior to ignition of any campfire.
- The applicant shall contact CDF prior to igniting any campfire to ascertain if area-wide bans on campfires are in effect.

2. Visual Resources Condition

- Prior to issuance of the Coastal Development Permit, the applicant shall submit a landscape plan prepared by a qualified professional, for the review and approval of the Coastal Permit Administrator, which provides fast growing, native and drought tolerant trees to be planted along the eastern property boundary and the area between Jughandle State Reserve and area used to park the RV's. The trees are intended to ultimately screen the camping use from public view areas along Highway 1 and Jughandle State Reserve. The trees shall be installed within 90 days of permit issuance.

3. Land Use Condition

- This permit authorizes the use of the site for camping for up to six (6) RV's/tents for up to 30 days per calendar year. In addition, a maximum of three (3) RV's/tents are permitted for an additional 30 days per calendar year.

EXHIBIT NO.	6
APPLICATION NO.	A-1-MEN-98-80
Dalpino	
County Approval and Conditions	

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-98-80
	Dalpino
	Correspondence

PETER J. THURSTON
Box 27, 45150 Caspar Point Road
Caspar, California 94520

October 16, 1998

California Coastal Commission
North Coast Area
Suite 2000
45 Fremont
San Francisco, California 94105-2219

Re: APPEAL A-1-MEN-98-080
Hearing Nov. 3-6 in Agoura Hills

Dear Gentlepersons:

I am a resident of the area near the parcel of property effected by the above referenced appeal. I join the appeal and urge a reversal of the Hearing Officer's decision and the setting aside of the Permit granted. My reasons are set forth below as I am unable to attend this hearing although I was at the hearing below.

DISCUSSION

The Staff Report and the discussion by the Coastal Permit Administrator are unsupported by the record cited and under the circumstances raises substantial issues for the Commission's consideration. The decision at issue increases the usage allowed by the Mendocino Zoning Code without a permit, a result at odds with limiting use. The references herein are to Staff Report CDP #30-98 dated 8/27/98.

THE HISTORIC USE OF THE PROPERTY.

A consideration that appeared to weigh heavily in the Hearing Officer's decision was the assertion that the property in question had been used for some 30 years by its owner for camping purposes. The record, however, at CPA-5 states that, "The historical intensity of use has not been established or verified." Nor was there any competent evidence at the hearing of such use since the owner was not present. In fact, the land is leased to a third person and is not used by the owner.

The evident concern of the Staff and the Hearing Officer with protecting the petitioner, the owner Dalpino who is not even in possession, is misplaced.

NON-COMMERCIAL USE

In view of the leasing, the findings that the proposed development "is in conformity" with the Local Coastal Program and "is consistent" with the applicable zoning is not supported. The property is being let to a paying user who uses it for camping for herself and others. The assertion that it is a

use in excess of what is allowed by the Zoning Code. That is an abuse of discretion and at odds with the criteria in a highly scenic area.

INCOMPATIBILITY WITH THE NEIGHBORHOOD

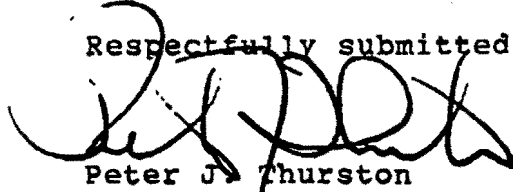
At CPA-6 it is stated that the Staff "concur" that "The transient nature of the use of camping is incompatible with a rural residential neighborhood." Quite so!

Why doesn't this concession end the discussion? The requested use IS incompatible with the neighborhood. It's a trailer park in a residential neighborhood. The Hearing Officer opened the hearing by saying that the project was unsightly and inconsistent with its surroundings. But rather than following the logic of his observations, he approved a project that was, "visually incompatible with the pastoral setting of the surrounding agricultural/rural residential area," and that created an "attractive nuisance." CPA-7. Arguing that six is too many, but that three doesn't create the same problem is simply ignoring reality and an exercise in sophistry, especially in view of the fact that it exceeds what the Zoning permits.

CONCLUSION

The findings that the proposed development "is in conformity with the certified Local Control Program" and is "consistent with the purpose and intent of the applicable zoning district" are unsupportable, even with the conditions imposed. A trailer park by any name is a trailer park, and contrary to the goals of the Coastal Commission it increases an allowable use over the Mendocino Zoning Code rather than reducing an obnoxious use.

Respectfully submitted,



Peter J. Thurston

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-98-80
	Dalpino
	Correspondence