

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

5 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

W 13a



Filed: May 28, 1998
49th Day: July 16, 1998
Staff: Jack Liebster
Staff Report: June 19, 1998
Hearing Date: July 8, 1998
Commission Action:

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of San Mateo

DECISION: Approval with Conditions

APPEAL NO.: A-1-SMC-98-049

APPLICANT: ELIZABETH NEEL & RICHARD CHARNOCK

PROJECT LOCATION: Corner of Juliana Avenue and The Strand, Moss Beach, San Mateo County, APN 037-086-260.

PROJECT DESCRIPTION: Drilling of up to three test wells to find a location with suitable water and completion of a production well at that location.

APPELLANT: Sara Hindman

SUBSTANTIVE FILE DOCUMENTS: San Mateo County Local Coastal Program; San Mateo County Coastal Development Permit File No. CDP-97-0016. Permit No. 1-95-054 (Feiner, Mendocino County)

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed because the appellant has not raised any substantial issue with the local government's action and its consistency with the certified LCP or the access policies of the Coastal Act.

APPEAL NO.: **A-1-SMC-98-049**

APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**

Page 2

As approved, the project would allow the drilling of up to three test wells, and if water is found, the completion of a single domestic well. The appellant's contentions raise two categories of issues: those related to "cumulative impacts" associated with the potential future development of a house on the subject parcel and six other vacant parcels in the vicinity in the same ownership, and those related to the well-drilling itself.

The appellant contends that approval of this well-drilling permit will lead to subsequent approval and development of a house on the subject lot and the six other lots, and that such development in turn will raise a number of issues of consistency with the LCP. However, the development of a well does not mandate the subsequent approval of a house on the property. Any proposal for such a house will need a separate coastal development permit, which also will be appealable to the Commission. The test drilling allowed by this permit is necessary to determine if any house subsequently proposed can meet the LCP requirements for proof of a potable and adequate water supply. In fact, if the testing fails to show adequate water on site and adequate water from some other source cannot be provided, an application for a residence could be found inconsistent with LCP policies and would thus be deniable. As such, the issues raised by the applicant regarding possible future development proposals not yet approved for the site do not address the project being appealed itself, and are thus not valid grounds for an appeal.

With regard to the well drilling itself, the appellant contends the approved project raises issues regarding the scope of the project, public access and prescriptive rights, habitat and marine resources, geologic and erosion hazards, waste and wastewater disposal, "risk of failure," and reliability of the water supply. As detailed in the staff report, because the extent and scope of the well project as approved by the County is very limited and because there is persuasive factual support for the County of San Mateo's decision that the development is consistent with the certified LCP, staff recommends that the Commission find that the appeal does not raise a substantial issue of consistency with the LCP.

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.)

APPEAL NO.: **A-1-SMC-98-049**

APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**

Page 3

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 as approved by the local government does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed development is located between the first public road and the sea and is within 300 feet of the bluff face as defined in Section 30603.

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, the tests for the Commission to consider would be whether (1) the development is in conformity with the certified Local Coastal Program, and (2) whether it is in conformity with Coastal Act public access policies.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant, 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.

2. Filing of Appeal.

The appellant filed an appeal (Exhibit 6) in a timely manner on May 28, 1998, within 10 working days of receipt by the Commission of the County's Notice of Final Action, which was received in the Commission's offices on May 22, 1998 (Exhibit 5).

APPEAL NO.: **A-1-SMC-98-049**
APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**
Page 4

Pursuant to Section 30261 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally approved coastal development permit is filed. In accordance with the California Code of Regulations, on May 29, 1998 staff requested all relevant documents and materials regarding the subject permit from the County, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The Commission did receive all requested documents and materials in a timely manner and the hearing has been set within 49 days from the date of the receipt of the appeal on May 28, 1998.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-SMC-98-049 raises NO substantial issue with respect to the grounds on which the appeal has been filed pursuant to Section 30603 of the Coastal Act.

Staff recommends a YES vote. To pass the motion, a majority vote of Commissioners present is required. Approval of the motion means that the County permit action is final.

II. Findings and Declarations.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of San Mateo County's decision to approve the project from Sara Hindman. The project as approved by the County consists of the drilling of up to three test wells, and if water of sufficient quality and quantity is found, the completion of a single domestic well.

The appellant's contentions are summarized below, and the full text of the contentions are included in the appeal submitted to the Commission (Exhibit 6). Although the appellant signed the appeal "on behalf of those in letter," which lists the names of 13 other persons and the "Friends of the Field," only the appellant has in fact signed the appeal. Therefore, the Commission considers the appeal to be filed only by the appellant, Sara Hindman.

The appellant contends that "[t]he permit to drill the well is the first step in the planned development of seven lots on this 2.47 acre parcel and must be evaluated as such," and goes on to detail several issues. The appeal states the following with regard to those issues (page numbers refer to the appeal, Exhibit 6):

1. Prescriptive Rights and Interference with Public Access:

"Development of this property with seven houses will interfere with public access, public easements and coastal trails that have been used for decades in this area...The County has been unwilling to recognize these issues/rights, claiming there is no evidence of there being any basis for adjudicating prescriptive easement rights, contrary to...Tables 10.1 and 10.2 from the LCP." (p. 3)

2. Marine Sanctuary Vulnerability:

"This property is located at the northern end of the Fitzgerald Marine Reserve and is also part of the Monterey Bay National Marine Sanctuary. The Fitzgerald Marine Reserve is a Sensitive Habitat area and subject to protection under LCP Section 7.3. Again, there is no evidence that the county took these factors into consideration." (p. 5)

3. Habitat Degradation:

"Habitat degradation impacting the local fauna and flora is a critical issue. When looking at habitat loss, it is both insufficient and misleading to simply consider the impact of developing each lot in isolation from the impact incurred by developing the entire project... The botanical survey did not find endangered plants, however, native plants were found... There is yet to be an exhaustive fauna survey and environmental impact analysis, not only of existing animal populations on the bluff tops, but also in the intertidal area which would be affected by alterations in runoff and erosion patterns." (p. 5-6)

"Several wells have recently been drilled in the Moss Beach/Montara area. We have been able to see first hand just how much the surrounding areas are disturbed by the drilling process... a sensitive area requires special precautions and protection to maintain the native species. Strict clean-up and restoration efforts should be required to maintain this sensitive area and restore it if drilling is permitted..." (p. 7)

4. Geological Concerns

"...The bluffs and soil are an area of low stability... The fifty year erosion setback requirement...would be directly in conflict with this home site and the drilling location..."

"We are extremely worried about the effects of the drilling procedures on the fragile bluffs... With the erosion caused by this past winter's severe storms, the development of seven homes, wells, fences, etc., causes increased runoff which could accelerate even greater coastal erosion." (p. 6-7)

The appellants cite LCP Policy 9.8 requirements that bluff and cliff top development be setback to assure stability and structural integrity for the lifespan of the development (at least 50 years), and be required to neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area. They contend there is no evidence that the county has followed this requirement. (p. 6-7)

5. Other Well Drilling Concerns

The appellants also question how the spoils of the test drilling will be handled, what facilities (storage tanks, reservoir, etc) are part of the project, what the risk associated with potential failure of the project are, and how the project could affect groundwater. (p. 7-8)

6. General Plan Consistency

The appellants also contend that the San Mateo County General Plan designates the site as open space, and that LCP policy 1.3(b) pertaining to open space applies and therefore the project "is not the responsible way to develop [the] property."

B. LOCAL GOVERNMENT ACTION

After hearings on July 3 and August 7, 1997, the Zoning Hearing Officer approved a coastal development permit (CDP) for the project. On appeal from that action the San Mateo County Planning Commission held hearings on the project on November 12, 1997 and January 14, 1998 and approved the CDP with conditions. The conditions (as numbered by the County) required in part that:

- #1: Grading and vegetation removal be minimized, disturbed vegetation be replaced and that wells that are not per standard be removed entirely;
- #3: The well shall not be located closer than 50 feet from the ocean bluff edges;
- #4: In the event that a public water supply becomes available, the applicant shall switch to this alternative;
- #5: This Coastal Development Permit is valid, ultimately, for only one domestic well, although up to three test well sites may be drilled and tested. Any future development shall be subject to the County's Coastal Development requirements; and

APPEAL NO.: **A-1-SMC-98-049**

APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**

Page 7

- #7: Prior to the building permit, the applicant obtain a well permit from Environmental Health and meet all requirement of that department.

This approval was appealed to the San Mateo County's Board of Supervisors by the current appellant for essentially the same reasons given in the current appeal. On May 12, 1998 the Board of Supervisors denied the appeal, thus upholding the Planning Commission's approval of the project.

The County then issued a Notice of Final Action on the Coastal Development Permit, which was received by Commission staff on May 22, 1998 (see Exhibit 5). The project was then appealed to the Coastal Commission in a timely manner on May 28, 1998, within the 10-working day appeal period.

C. PROJECT SETTING AND DESCRIPTION, AND HISTORY.

The project site is located on a coastal bluff covered with native and non-native vegetation, above the Fitzgerald Marine Reserve and about 200 feet west of Cabrillo Highway. Views of the site from the highway are mostly obscured by a grove of tall Monterey pines near the Highway. The parcel was originally comprised of several lots of the Moss Beach Heights Subdivision recorded in 1908 and was altered to its current configuration via a 1991 lot line adjustment.

The approved project would allow the drilling of up to three test wells at specified locations to determine which location, if any, is capable of producing water that will meet County Environmental Health standards for quality and quantity sufficient to support a single family residence. If water is found, the approved project would also allow completion of a single domestic well. The three specific sites for drilling the test well are located near the southern end of the parcel, as shown in the site plan, attached as Exhibit 4.

D. SUBSTANTIAL ISSUE ANALYSIS.

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.

1. Appellant's Contentions That Are Not Valid Grounds for Appeal

The appellant's contentions mostly fall into two main categories: those that concern the possible future development of a house on the subject parcel and/or six adjacent vacant parcels in the same ownership, and those related to the well-drilling specifically allowed by this permit. While these two categories are sometimes combined in the appeal's discussion of issues, the

APPEAL NO.: **A-1-SMC-98-049**

APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**

Page 8

categories are analyzed separately in these findings. The contentions regarding issues raised by the wells themselves are dealt with in detail in the next section. The contentions related to development of one or more houses on the seven vacant lots in the area involve a variety of alleged access, erosion, geologic stability, marine resource, habitat and other "cumulative effect" issues. However there is no permit application for such houses before the Commission at this time. Therefore, these issues are treated as a group, and as discussed below, are not valid grounds for appeal because they do not relate to the approved project's consistency with the certified Local Coastal Program or the access policies of the Coastal Act. In addition, the appellants raise an issue concerning conformity of the project with General Plan Map 8.5m, which is not part of the certified LCP. Therefore, that issue is also not a valid ground for appeal.

Furthermore, the appellants raise a concern that the County has not addressed "accoutrements" normally associated with the development and use of wells. However, such accoutrements are not included in the approved project and do not constitute part of the development that can be appealed. Therefore, this contention also does not raise a valid ground for appeal.

a. Invalid Grounds for Appeal Related to Future development of the House

Discussion: The appellant contends that approval of this well-drilling permit will lead to subsequent approval and development of a house on the subject lot and the six other lots, and that such development in turn raises the issues cited. However, the appellant has not specified, nor can staff identify, provisions of the LCP that, either directly, or through any mandated "cumulative impact" evaluation, require the potential effects of a subsequent permit request for a house or houses to be addressed at the time of a permit request for a well. The development of a house or houses may very well have some of the impacts described but a county approval of such development is not before the Commission for appeal at this time.

The Commission has previously separated site investigation and pre-development activities similar to well-drilling from the question of possible future development. The development of a well itself does not mandate the subsequent approval of a house on the property. In fact, the test drilling allowed by this permit is necessary to determine if any house subsequently proposed can meet the LCP requirements for proof of a potable and adequate water supply. Section 6328.14 of LCP Amendment 1-97-C requires CDP applications to demonstrate adequate water supply. If the testing fails to show adequate water, and adequate water from some other source cannot be provided, an application for a residence could be found inconsistent with LCP policies and would be deniable. Moreover, any proposal for a house will need a separate coastal development permit, which would also will be appealable to the Commission.

APPEAL NO.: **A-1-SMC-98-049**

APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**

Page 9

A valid ground for appeal must relate the approved development to the LCP and/or Coastal Act public access policies. The issues raised by the applicant regarding possible future development requests at the site do not address the consistency of the development currently approved or its consistency with either LCP policies or Coastal Act public access policies. Thus, the Commission finds that these contentions, even if true, do not constitute a valid basis for appeal of the project.

The Commission's further finds that its determination that no substantial issue exists with respect to the grounds on which the appeal of the permit for the well has been filed in no way should be construed as committing the Commission to approve future residential development on the site. At such time as the applicant may wish to proceed with residential development of the subject parcel, a new coastal permit will be necessary, and the County will have to consider what development would be allowable.

b. Conformity with General Plan Map 8.5m

The appellants also contend:

"The San Mateo General Plan Map 8.5M lists this area as Open Space. The Local Coastal Program (LCP) Section 1.3(b) recognizes that "in order to make a logical urban/rural boundary some land has been included within the urban boundary which should be restricted to open space use and not developed at relatively high densities." This is not the responsible way to develop property, especially coastal property, which requires greater protection, and needs to be reconsidered." (p.5)

The referenced General Plan designation is not a valid grounds for appeal, as it is not part of the certified LCP. The certified Land Use Plan designation is "Low Density Residential" and the certified LCP zoning is RM/CZ (Resource Management/Coastal Zone), not open space. In addition, notwithstanding the appellant's reference to LCP Policy 1.3(b), the certified land use designation and zoning allows for a single family residence on a legal lot, including appurtenant facilities such as domestic wells, as principally permitted uses.

Therefore, the Commission finds that the appellant's contention regarding General Plan Map 8.5 does not constitute a valid ground for appeal.

c. "Well Accoutrements"

The appellant contends the following:

"EQUIPMENT

None of the accoutrements surrounding a well were addressed. No mention or discussion is made of the storage tanks, reservoir, piping, and other equipment necessary for domestic wells." (p.7-8)

APPEAL NO.: **A-1-SMC-98-049**
APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**
Page 10

Discussion:

The project as described in the application and as approved by the Board of Supervisors does not include the facilities enumerated by the appellants. Moreover, permit condition #5 specifically states:

This Coastal Development Permit is valid, ultimately for only one domestic well, although up to three test well sites may be drilled and tested: any future development shall be subject to the County's Coastal Development requirements.

Since the elements described by the appellant are not part of the development currently proposed, this contention does not address the consistency of the approved development with the LCP and Coastal Act public access policies. Therefore, the Commission finds that this contention does not constitute a valid ground for appeal.

The Commission notes that the kind of accoutrements referred to by the appellants would only be needed in the event a house that would use the well is later approved. A request for authorization of the accoutrements would most likely be combined with a request for authorization of the house. Thus, the County will have the opportunity to review the consistency of any such development with the LCP and Coastal Act policies at that time.

2. Appellant's Contentions that are Related to LCP or Coastal Act access policies (Valid Grounds for Appeal)

The contentions raised in the appeal regarding test-drilling and completion of a well itself present potentially valid grounds for appeal in that they allege inconsistencies of the approved development actually before the Commission with policies or implementing measures of the certified LCP. These contentions involve the scope of the project, interference with public access and prescriptive rights, habitat and marine resources, geologic and erosion hazards, waste and wastewater disposal, "risk of failure," and adequacy of the water supply. However, the Commission finds that no substantial issue is raised by these contentions, for the reasons discussed under the respective headings below.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

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

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply 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 interpretations 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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the County presents no substantial issue.

(a) Access and Prescriptive Rights

Many of the appellant's contentions regarding public access and prescriptive rights were made in relation to "[d]evelopment of this property with seven houses" (Exhibit 6, page 3). However, to ensure that potentially valid access issues are fully addressed, the Commission has reviewed these contentions as if they were intended to apply to the well-drilling project itself.

The appellant contends that the project will affect both existing public trails (The Strand/Coastal Trail) and potential prescriptive rights identified by the LCP. The appeal states the following:

"...Any development of this property will severely impact one-third of the public coastal access in the Moss Beach area. The Strand (a bluff-edge paper street and established trail) runs through this property and the prescriptive rights issues and various easement issues concerning this acreage must be resolved before any type of permit may be approved. Additional grants and setbacks to preserve the Strand will be necessary as the erosion continues. The County has been unwilling to recognize these issues/rights, claiming there is no evidence of there being any basis for adjudicating prescriptive easement rights, contrary

APPEAL NO.: **A-1-SMC-98-049**

APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**

Page 12

to the tables in the LCP. The County's assertion is inconsistent with Tables 10.1 and 10.2 from the LCP. These charts provide clear evidence that prescriptive rights are very likely to exist on this property..."(p.3)

"THE COASTAL TRAIL

Among the various prescriptive rights/public access issues that must be resolved prior to possible development is the Coastal Trail, appearing in the California State Master Plan and the San Mateo County General Plan. The San Mateo County Trails Plan, approved by the Board of Supervisors in March 1990, lists the Coastal Trail on its Priority List. This trail corridor is situated along the coastal bluffs and affects this property.

THE STRAND

"The Strand, a blufftop access trail, runs through this property and must be protected. There is no evidence that the County has made any attempt to protect the Strand from the effects of well drilling or subsequent development. A 1997 superior Court of San Mateo County decision states: "the Strand is a publicly dedicated and owned right of way, and is, and historically been, used by members of the public for coastal access and other purposes." Christopher Tyler and Amy Tezza v. Dell P. Williams No. 387846 (Sup. Ct. San Mateo County) (1997) at page 5..." Exhibit 6, p. 4)

Having identified these concerns, the appellant's contentions goes on to cite certain LCP policies. The appeal states the following:

"There is no evidence in County documentation that it considered the shoreline destination recommendations for this area. The LCP, regarding Site Specific Recommendations for Shoreline Destinations in the Fitzgerald Marine Reserve, states: "Develop access along the bluffs and to the beaches of the Fitzgerald Marine Reserve in stages as public funding is available to adequately improve and manage the access and protect the resources. The access should be oriented toward education and nature viewing and interpretation, particularly in the northern and central sections." (LCP, Table 10.6p. 10.31) The LCP further recommends the development of "an interpretive trail along the bluff parallel to Vallemar Street." It states "sign and improve access to the bluff from the end of Juliana Avenue and Wienke Way. This will be the major public access to the bluff. The other trails along Vallemar Street should remain open, however." (LCP, Table 10.6, p. 10.32)

"Section 6913.5 Ocean Shoreline Criteria states: "The following criteria shall apply along the entire ocean shoreline of the RM/CZ District: (b): for land divisions and planned unit developments.

APPEAL NO.: **A-1-SMC-98-049**

APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**

Page 13

[(emphasis added)] a public access easement, extending inland no more than 100 feet from the mean high tide line, shall be dedicated along the ocean shoreline before private development is to be permitted..." (p. 3)

"Section 10.27 of the LCP discusses Development Standards for Protecting Adjacent Land Uses in regards to access trails. LCP Section 10.27(a) "Provide separation between shoreline access and adjacent residential uses to protect the privacy and security of houses and the public nature and uses of the shoreline. Specifically, keep the edge of lateral shoreline access trails 25 feet and vertical shoreline access trails ten feet from any occupied residential structure." (LCP, 10.9.) The San Mateo County Zoning Regulations also support public access easements for the purpose of coastal access. We are justly concerned that development will simply devour the public access along the bluffs. It is up to San Mateo County to protect the Strand and it has not occurred in this case. Coastal access is just too important to be ignored, especially in areas adjacent to the Fitzgerald Marine Reserve, an area of special biological concern. (p.4)

Discussion:

LCP Tables 10.1 and 10.2 cited by the appellants do identify the area as significant for access and potentially subject to prescriptive rights. The appellants contend (Exhibit 6, pg. 5):

"...public rights must be clearly established before any type of well drilling or other development can occur. What happens if this well is dug on top of the public easements?"

Regarding the question of prescriptive rights, LCP Tables 10.1 and 10.2 cited by the appellants do identify the area as significant for access and potentially subject to prescriptive rights. Table 10.1 is a general assessment of access trails and shoreline destinations, and lists three existing trails on private property in the vicinity of the project site. Table 10.2 is a preliminary analysis of the likelihood of prescriptive rights on these trails. It indicates the existence of each of these trails on aerial photographs taken in 1958, 1965 and 1970. The LCP Background Document (p. 10.14) further describes the significance of this table:

"Aerials from 1956, 1965 and 1970 were examined to determine whether current trails have existed over the 20 year period. If the trail was maintained through use and existed throughout this period, it is assumed that there is a likelihood that prescriptive rights may exist."

Based on this information the appellants contend (Exhibit 6. pg.5):

"...public rights must be clearly established before any type of well drilling or other development can occur. What happens if this well is dug on top of the public easements?"

APPEAL NO.: **A-1-SMC-98-049**
APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**
Page 14

While staff is unaware of any subsequent prescriptive rights investigations, the data in the LCP is sufficient to indicate that potential existence of prescriptive rights to and along The Strand/Coastal Trail and on the property must be addressed, if and when a Coastal Development Permit for a house is applied for. However, given the extent and scope of the approved development, a well located at any of three drill sites would not interfere with any prescriptive rights which may exist. None of the drill sites would be located on The Strand, which is the identified location of the Coastal Trail or on any of the worn pathways shown on the above-mentioned aerials. Therefore, regardless if prescriptive rights can be substantiated, the development will not interfere with those rights and would not interfere with access along The Strand. In addition, Juliana Avenue, located some 30 feet south of the potential well sites, provides additional vertical access to The Strand/Coastal Trail (see exhibit 4).

Therefore this contention does not raise a substantial issue with regard to conformance of the approved project with LCP and Coastal Act public access policies.

The appellant also cites sections of Table 10.6 to establish that access is a priority in this area. But these sections specifically call for developing such access through public funding. The permitting of a well on a private lot is not inconsistent with these provisions, and therefore does not raise a substantial issue.

The appellant next cites Section 6913.5 which pertains to "land divisions and planned unit developments." Neither of these types of development were approved by the County in the local permit; therefore this contention does not raise a substantial issue.

Finally, Section (Policy) 10.27 does not apply to this permit as it addresses "residential uses" and "any occupied residential structure," not well drilling. Therefore this contention does not raise a substantial issue.

(b) Habitat and Marine Impacts:

The appellants contend that:

...Special precautions and protection to protect this unique area and the native plants located here. This coastal plain is unique and must be protected from invasive drilling procedures; a sensitive area requires special precautions and protection to maintain native species. Strict clean-up and restoration efforts should be required to maintain this sensitive area and restore it if drilling is permitted." (page 7)

Discussion:

The LCP contains 54 policies relating to sensitive habitats, which are defined in LUP Policy 7.1 as follows:

***7.1 Definition of Sensitive Habitats**

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and off-shore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.

Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.

A botanical assessment was completed for the parcel on May 27, 1997, and is part of the local record of action. The assessment indicates that while the area may have native plants, no rare or endangered plant species were found. Nothing has been submitted by the appellants or appears in the record to show that the parcel contains "sensitive habitats" as defined by the LCP. It should also be noted that Condition #1 attached to the permit by the County provides for the clean-up and restoration efforts sought by the appellants, and further reduces the potential impacts of the project.

Based on these facts, the Commission finds that there is persuasive factual support for the County of San Mateo's decision that the development is consistent with the certified LCP. Consequently, the Commission concludes that the appeal raises no substantial issue with respect to conformance of the approved project with LCP provisions regarding protection of sensitive habitats.

(c) Geologic and Erosion Hazards:

The appellant contends the permit as approved by the County is not consistent with LCP Policy 9.8 regarding bluff and cliff top development setbacks. That Policy provides:

9.8 Regulation of Development on Coastal Bluff Tops

- a. Permit bluff and cliff top development only if design and setback provisions are adequate to assure stability and structural integrity for the expected economic lifespan of the development (at least 50 years), and if the development (including storm runoff, foot traffic, grading, irrigation and septic tanks) will neither create nor contribute significantly erosion problems or geologic instability of the site or surrounding area.

APPEAL NO.: **A-1-SMC-98-049**
APPLICANT: **ELIZABETH NEEL & RICHARD CHARNOCK**
Page 16

The appellant also contends (Exhibit 6, p.2) that the

...USGS estimates an average of more than one foot per year erosion in this area (please see attached table).

Discussion:

The County's Negative Declaration on the project notes that the project is located:

...just east of coastal cliffs that are identified by the County's Geotechnical Hazards Synthesis Maps as "Low Stability." [This] category stipulates that no structures should be located within a 45 degree (1:1) setback zone,... or within 50 feet of the blufftop, whichever is greater. The proposed well location... would comply with these requirements.

The local record also includes a November 15, 1990 report by JCP Consultants/Engineers regarding "Engineering Geologic Reconnaissance Services for Proposed Development of Seven Homes on Vallemar Street and Juliana Avenue, Moss Beach, California." This report states (p. 9):

The San Mateo County Local Coastal Program, Section 9.8, limits the area of development to within 50 feet of the bluff top or to the setback limit of a line described on the bluff top by the intersection of a plane inclined at a 20 degree angle from horizontal passing through the toe of the bluff, whichever is greater. This line is shown on Figure 2.

This Figure 2 (attached as Exhibit 7) was included in the staff report to the Planning Commission, and was part of the basis for the County's decision on the project. Permit Condition #1 as approved by the County does require a 50 foot setback for the well. Moreover, the approved site plan shows the nearest permitted well site more than 60 feet from the bluff edge.

As for the appellant's contention regarding the USGS, staff did not find an attached table, but did find an unattributed map (included as exhibit 8). Due to the scale of this map, it is difficult to discern where the subject parcel lies in relation to the boundary between the areas of "greater than 1 foot" and "less than 1 foot" average erosion rates. But even if the erosion were rapid enough to consume 60 or more feet of the bluff over the next 50 years, if it is subsequently determined that no house can be approved, the well can simply be abandoned or removed. The implied question of erosion destroying the well and leaving any house constructed in the interim without a water source is addressed in section (g) below.

The Commission therefore finds that the well as approved by the County does not raise a substantial issue of conformance with provisions of the certified LCP concerning geologic hazards associated with bluff top development.

(d) Waste and Wastewater Disposal:

The appellants contend that:

Regarding the potential well itself, the issue of the impact on the actual drilling site was not discussed by the County officials. What happens to the waste generated by actual test drilling? How will this waste matter be disposed? There is no indication of how the spoils from a test drilling will be handled. Dumping the waste down Juliana Avenue or over the cliff will contaminate the Marine Reserve, a sensitive habitat under the protection of LCP Section 7.3... (p. 7)

Discussion:

The County's permit condition #7 requires a well permit from the Building Department. Such permits require removal and appropriate disposal of spoils from well drilling (and certainly will not permit dumping the spoil onto Juliana Avenue or over the cliff). Therefore, the Commission finds that the project as approved does not raise a substantial issue of conformance with the certified LCP with respect to waste and wastewater disposal.

(f) "Risk of Failure"

The appellants contend:

RISK OF FAILURE

There has been no discussion on the effects of the inherent risk of failure associated with this project. There is significant risk of contamination and pollution to the surrounding public sewer and water lines in case of failure. A catastrophe, whether manmade, the result of equipment failure, geology, or severe weather conditions will cause a tremendously harmful impact upon the surrounding areas....

The significant cumulative and individual impacts of groundwater resource depletion within this area could be severe. What is to be done in regards to possible saltwater intrusion, and saltwater contamination, as the result of drilling so close to the ocean? This important issue must be resolved so that no large aquifers are contaminated as a result of this drilling project. And what about the opposite effect, i.e., what happens if this project causes freshwater to run into the ocean and damages the ecosystem in the Fitzgerald Marine Reserve... (p. 8)

Discussion:

With regard to the contentions concerning risk of failure, groundwater resource depletion, saltwater intrusion and contamination, and "what happens if this project causes freshwater to run into the ocean," the appellants provide no evidence that any of these results might occur, nor do they cite policies of the LCP that would be contravened.

In contrast, the Negative Declaration that is part of the County's record of decision states:

- g. The project is not expected to have any adverse impacts on the existing groundwater resources in the area. Citizens' Utilities Company of California (CUCC) is the primary water provider to the Moss Beach/Montara area, drawing its water supply from several wells. The CUCC has stated that "smaller dispersed wells should have a minimal impact on base flow on CUCC's existing facilities." In addition, the 1989 Kleinfelder Final EIR concludes that "sufficient water supply and recharge are available in most of the area to allow the use of domestic wells, where suitably located and appropriately constructed," and, additionally, "while some interference effects would be expected for domestic wells located in close proximity to CUCC production wells, these effects are not considered to be of a magnitude sufficient to render useless potential well sites to individual users." In general, both Kleinfelder and CUCC concluded that domestic wells should have a minimal impact on the base flow of the groundwater sources.

Based on these facts, the Commission finds that there is persuasive factual support for the County of San Mateo's decision that the approved development is consistent with the certified LCP. Therefore, the Commission finds that the project as approved does not raise a substantial issue of conformance with the certified LCP with respect to impacts to groundwater resources.

(g) Water Supply Reliability

The appellants contend:

...It is common knowledge that wells dug in the San Mateo County coastside area provide poor quality water and usually fail in a short period of time. The property owner must then apply to the local water district for an emergency hook-up. Citizens Utilities is already struggling to meet local needs and does not have extra water. Every time a water district has to tap into its emergency reserves for private property, less water is available for commercial coastal visitor-serving facilities. (p. 8)

Discussion:

Answering these questions of the appellant is in fact the essence of this permit. This contention raises the issue of the proof of water supply for residential development. Under the LCP as recently amended, Section 632814 requires as a precondition for such development is a proof of sufficient water of an acceptable quality and quantity to support residential development.

SECTION 6328.14 CONDITIONS. Approval of a Coastal Development Permit shall be conditioned as necessary to ensure conformance with and implementation of the Local Coastal Program. The approving authority may require modification and resubmittal of project plans, drawings and specifications to ensure conformance with the Local Coastal Program. When modification and resubmittal of plans is required, action shall be deferred for a sufficient period of time to the project.

For all proposed development requiring a domestic well water source and not subject to the provisions of Section 6328.7(e), require as a condition of approval demonstrated proof of the existing availability of an adequate and potable water source for the proposed development, and that use of the water source will not impair surface streamflow, the water supply of other property owners, agricultural production or sensitive habitats.

If a suitable source of water is found by the test drilling, that source will have to be confirmed as adequate in any subsequent permit for a residence. It is at that time that most of the questions raised by the appellant will properly be addressed. Among the considerations will be the long-term dependability of the well, both in terms of its safe yield of groundwater, risk of contamination, and risk of destruction by erosion or geologic instability.

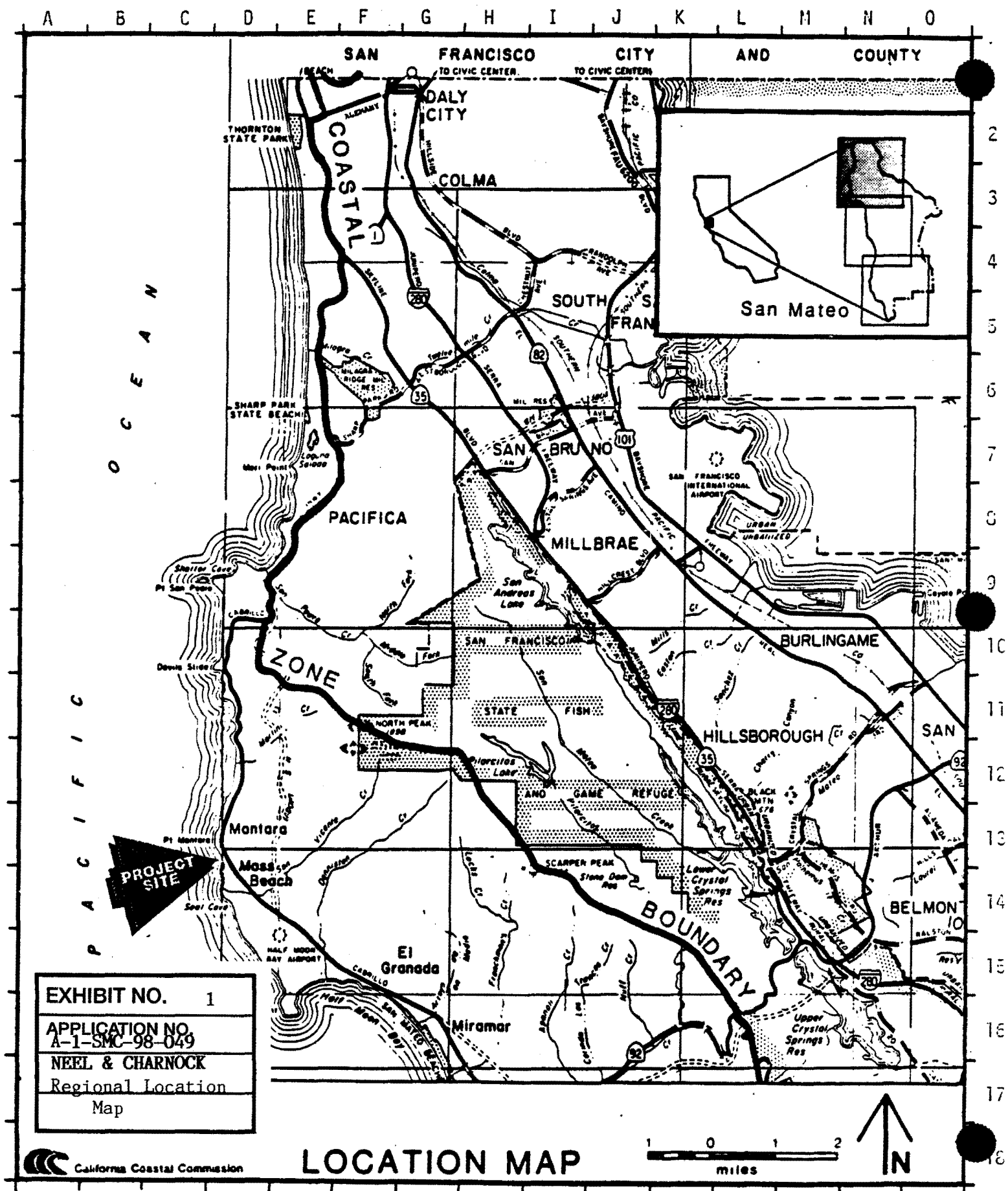
The Commission finds that the adequacy of water supply for subsequent development will be addressed at the time an application of development of a house is submitted, if at all, and is not germane to the consideration of whether construction of a well is consistent with the certified LCP. Therefore, the Commission finds that the project as approved does not raise a substantial issue of conformance with the certified LCP with respect to adequacy of the water supply for future development.

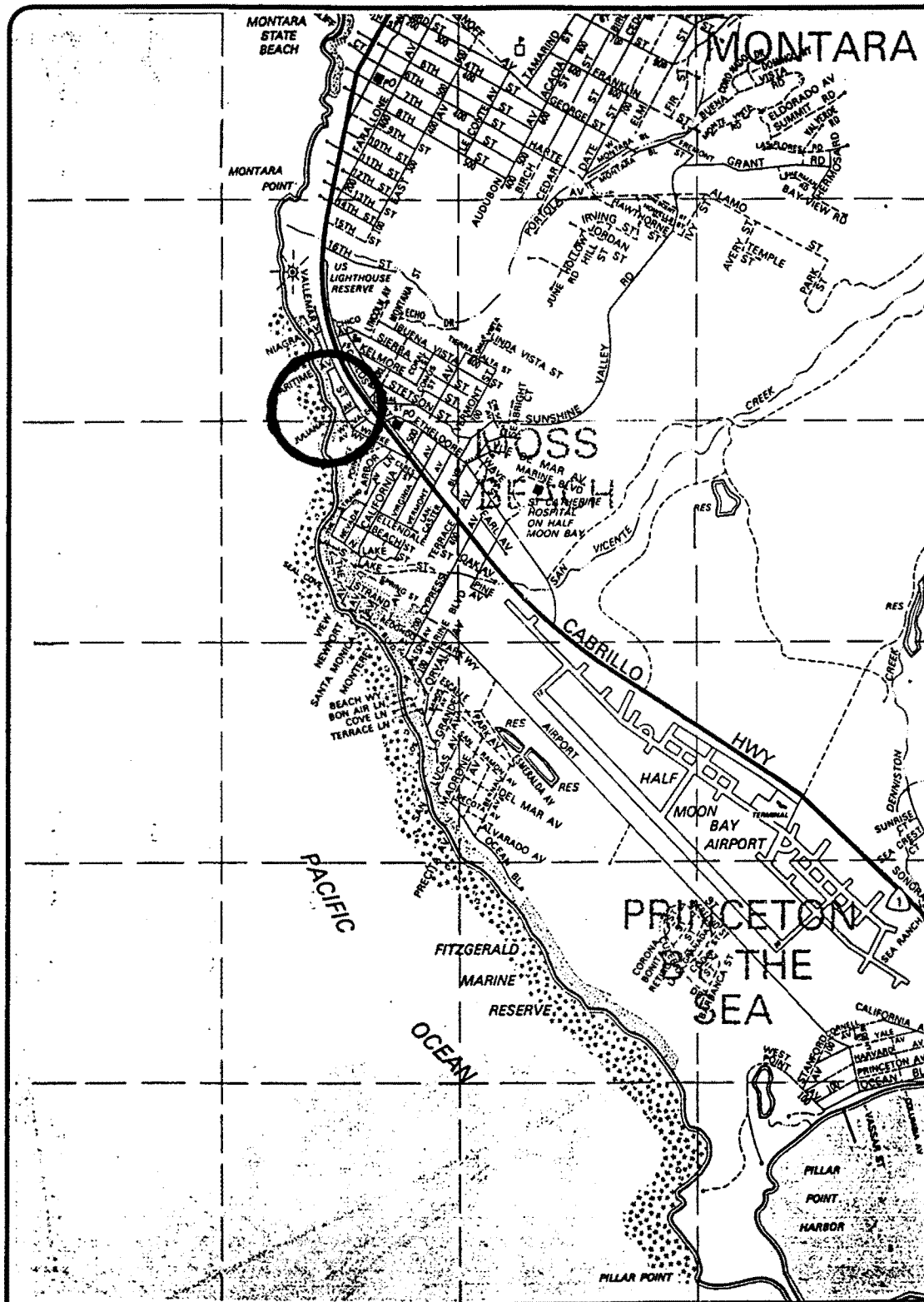
Conclusion

For the reasons discussed above, the Commission finds that the appeal raises no substantial issue with respect to conformance of the approved project with San Mateo County LCP.

EXHIBITS

1. Regional Location Map
2. Site Location Map
3. Street Location Map
4. Site Plan
5. County Notice of Final Local Action
6. Appeal
7. Erosion Setback Line
8. "Historic Bluff Erosion"





LOCATION MAP

47



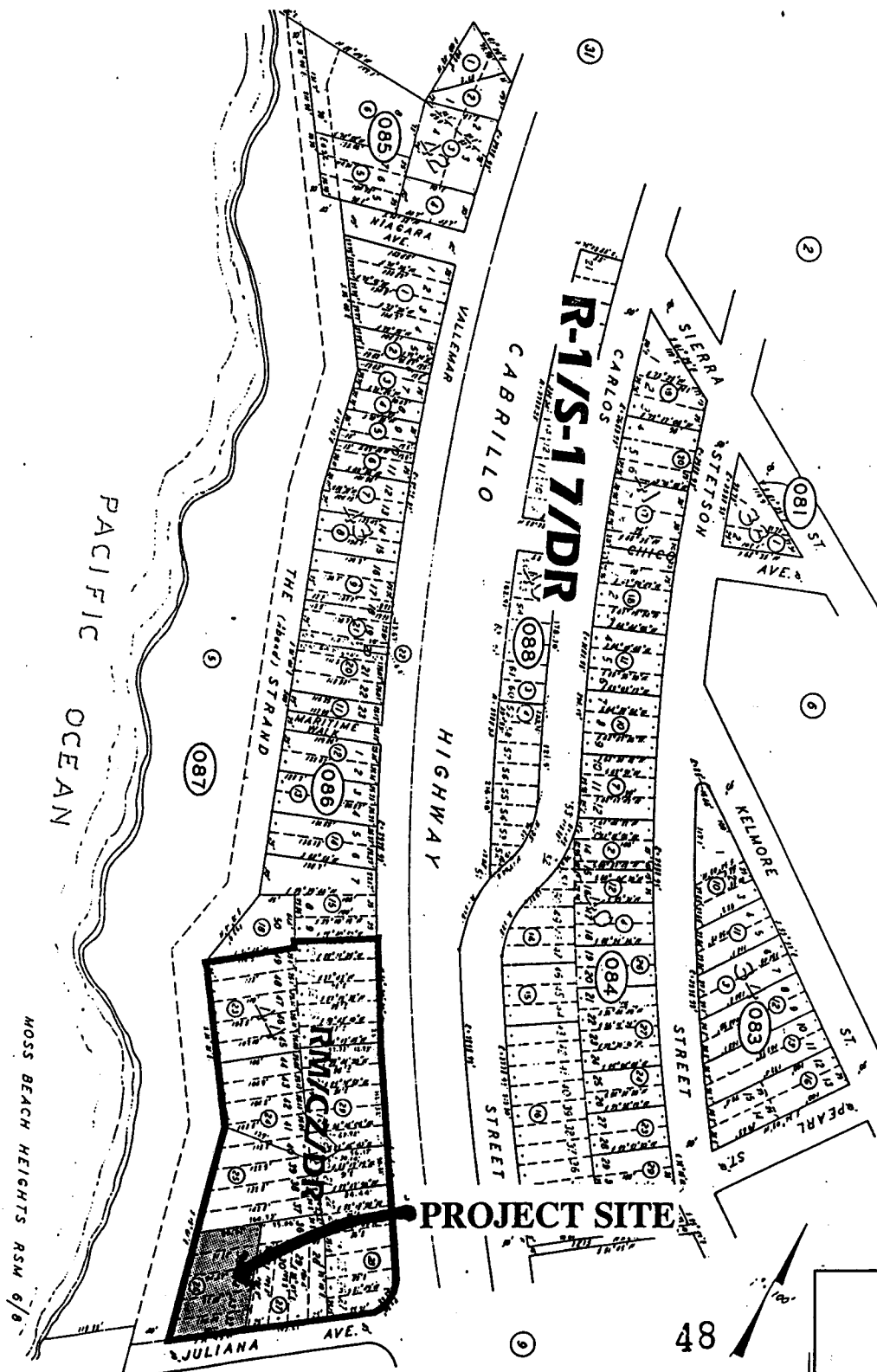
San Mateo County Board of Supervisors Meeting

EXHIBIT NO. 2

APPLICATION NO.
A-1-SMC-98-049


NEEL & CHARNOCK
Site Location Map

California Coastal Commission

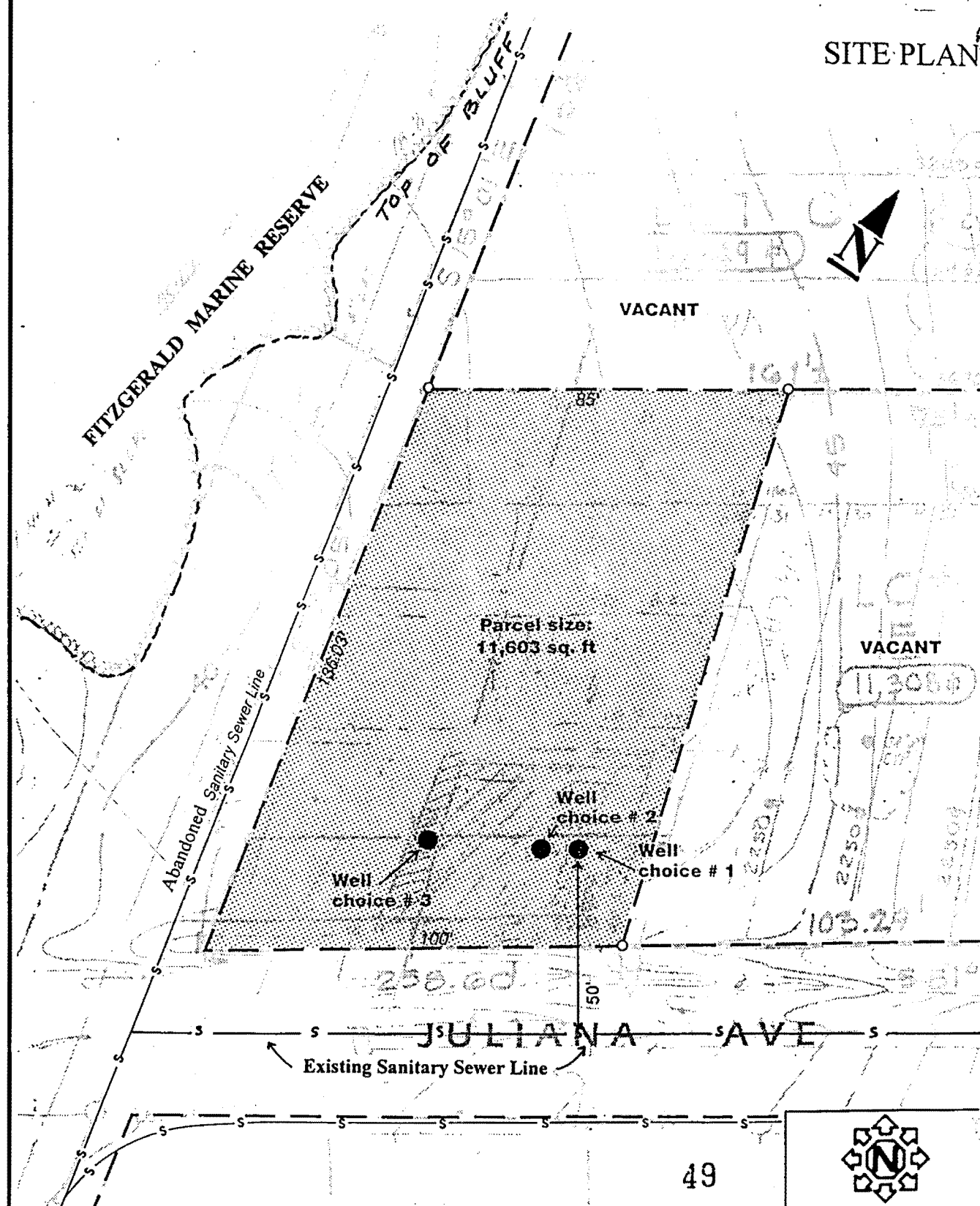


48

San Mateo County Board of Supervisors Meeting

| | |
|---|---------------------|
| EXHIBIT NO. | 3 |
| APPLICATION NO. | A-1-SMC-98-049 |
| NEEL & CHARNOCK | Street Location Map |
|  California Coastal Commission | |

SITE PLAN



San Mateo County Board of Supervisors Meeting

| | |
|-------------------------------|----------------|
| EXHIBIT NO. | 4 |
| APPLICATION NO. | A-1-SMC-98-049 |
| NEEL & CHARNOCK | |
| Site Plan | |
| California Coastal Commission | |



Planning and Building Division

County of San Mateo

Mail Drop PLN122 · 590 Hamilton Street · 2nd Floor · Redwood City
California 94063 · Telephone 650/363-4161 · Fax 650/363-4849

Board of Supervisors
Ruben Barrales
Richard S. Gordon
Mary Griffin
Tom Huening
Michael D. Nevin

**Director of
Environmental Services**
Paul M. Koenig

Planning Administrator
Terry L. Burnes

RECEIVED
MAY 22 1998

Please reply to:

Dave Holbrook
(650) 363-1837

CALIFORNIA
COASTAL COMMISSION

May 15, 1998

| | |
|--|----------------|
| EXHIBIT NO. | 5 |
| APPLICATION NO. | A-1-SMC-98-049 |
| NEEL & CHARNOCK Notice of Final Local Action (3 pages) | |
| California Coastal Commission | |

Sara Hindman
P.O. Box 46
Moss Beach, CA 94038

Subject: Applicant: Elizabeth Neel (prospective buyer)
 Appellant: Sara Hindman and neighbors
 Location: Corner of Juliana Avenue and The Strand, Moss Beach
 APN: 037-086-260

Dear Ms. Hindman:

On May 12, 1998, the San Mateo County Board of Supervisors considered your appeal of the Planning Commission's decision to approve a Coastal Development Permit and a Resource Management Permit to allow drilling of a domestic well on a parcel in Moss Beach. This project is appealable to the California Coastal Commission.

Based on the information provided by staff, the Board of Supervisors accepted the staff recommendation to deny the appeal and uphold the Planning Commission's decision to approve permits for a domestic well as follows:

FINDINGS

Regarding the Negative Declaration, Find:

1. That the revised Negative Declaration is complete, correct and adequate and prepared in accordance with the California Environmental Quality Act and applicable State and County Guidelines.
2. That, on the basis of the Initial Study and comments received thereto, there is no evidence that the project will have a significant effect on the environment.
3. That the Negative Declaration reflects the independent judgment of San Mateo County.

Sara Hindman

Subject: Location: Corner of Juliana Avenue and The Strand, Moss Beach

APN: 037-086-260

May 15, 1998

Page 2

Regarding the Coastal Development Permit, Find:

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 LCP regarding the placement of structures in the urban unincorporated area.

Regarding the Resource Management Permit, Find:

6. That the proposal is consistent with the provisions and requirements of the Development Review Criteria as stipulated in Zoning Regulations Chapter 20A, Section 6324 et seq.

CONDITIONS

Planning Division

1. Grading and vegetation removal shall be minimal for purposes of accessing the parcel and drilling up to three test wells. All disturbed vegetation shall be replaced upon completion of all well drilling and construction activities. Wells that are not deemed adequate per Environmental Health standards shall not be capped but removed entirely per that Division's standards.
2. If the well pump is to be energized, all utility lines connecting to it shall be undergrounded.
3. The well shall not be located closer than 50 feet from the ocean bluff edge.
4. In the event that a public water supply becomes available, the applicant shall switch to this alternative.
5. This Coastal Development Permit is valid, ultimately, for only one domestic well, although up to three test well sites may be drilled and tested; any future development shall be subject to the County's Coastal Development requirements.
6. The Coastal Development Permit shall be valid for one year from the date of its approval. Any extensions of this permit shall require submittal of an extension request and payment of any applicable extension fee.

Sara Hindman

Subject: Location: Corner of Juliana Avenue and The Strand, Moss Beach

APN: 037-086-260

May 15, 1998

Page 3

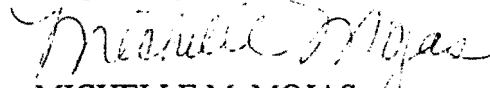
Environmental Health Division

7. Prior to the building permit application stage, the applicant shall obtain a well permit from Environmental Health and meet all requirements of that department.

In addition, the Board also directed that any development permit applications submitted for a residence on this subject parcel or any of the six other parcels (currently owned by Dick Charnock) shall not be exempt from CEQA but shall require an Initial Study that shall take into consideration the cumulative impact of future development on all 7 parcels.

Thank you for your courtesy and cooperation.

Very truly yours,



MICHELLE M. MOJAS

Planning Commission Secretary

cc:

David J. Byers, Esq.

Dick Charnock

Elizabeth Neel

Jeff Kraft

Lennie Roberts

Point Montara Fire

Montara Sanitary District

MCCC, Laura Stein

Paul Perkovic

Lou Slocum

Gail Erwin

Les Fields

Gary Wood

William Kraus

Chris Thollauc

Jack Liebster, North Coast Coastal Commission

Mr. and Mrs. George Wickle

Ms. Susan Overstreet

Mr. and Mrs. Gray

Mr. Joseph Rosario

Lizanne Reynoldsm Adams & Broadwell, et al.

Tim Duff

Planning Director, City of Half Moon Bay

Craig Sihner

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



APPEAL 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):

Sara Hindman & others listed in letter
PO Box 46
Moss Beach CA 94038 (650) 728-5021
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: San Mateo County
2. Brief description of development being appealed: Wells being dug preceding development on 2.47 acre parcel in Moss Beach - area bordered by Juliana Ave and Vallejo St
3. Development's location (street address, assessor's parcel no., cross street, etc.): #CDP 97-0016 RMD 97-0013
APN 037-086-260
4. Description of decision being appealed:
 - a. ☒ Approval; no special conditions: _____
 - b. ☐ Approval with special conditions: _____
 - 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: A-1-SMC-98-049

DATE FILED: 5/28/98

DISTRICT: North Coast

H5: 4/88

| | |
|-------------------------------|----------------|
| EXHIBIT NO. | 6 |
| APPLICATION NO. | A-1-SMC-98-049 |
| NEEL & CHARNOCK | |
| Appeal of | Sara Hindman |
| California Coastal Commission | |

RECEIVED

MAY 28 1998

CALIFORNIA
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.)

please see attached letter & information

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.

Tom Dindman on
Signature of Appellant(s) or
Authorized Agent
Deputy of M&D in letter
Date 5/28/98

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.

Signature of Appellant(s)
Date _____

May 28, 1998

P.O. Box 46
Moss Beach, CA 94038

California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105

Dear Coastal Commission Members,

We are appealing the May 15, 1998 decision of the San Mateo County Board of Supervisors. This decision permits up to three test wells to be drilled on property located on the Vallemar Bluffs in Moss Beach, CA. It is our opinion that this project does not conform to the policies and requirements of the San Mateo County Local Coastal Program and the California Coastal Act. The permit to drill the well is the first step in the planned development of seven lots on this 2.47 acre parcel and must be evaluated as such.

BASIS FOR APPEAL

Allowing this well to be drilled without following the laws of the state of California will set a dangerous precedent for development in sensitive areas that are supposed to be protected by the strictest governmental regulations. The property is situated on the northern portion of the Fitzgerald Marine Reserve, and is designated in a sensitive habitat area by the Local Coastal Program. There is concern that development in this area would damage the Fitzgerald Marine Reserve. Some of the policies of the California Coastal Act include the protection and expansion of public coastal access; protection, enhancement and restoration of environmentally sensitive habitats; protection of the scenic beauty of coastal landscapes and seascapes; and environmental quality protections.

The County has taken the position that drilling for water is more important than determining the effects this action might have on this blufftop area. We understand that the County wants to determine if water is available before it considers the cumulative effects of project actions. However, it is our position that this thinking goes directly against governmental policies designed to provide long-term protection and measure the cumulative effects of development on coastal areas. With so much at risk on this undeveloped coastal property, one would think that the County would be willing to assess the various impacts that would occur before the damage is done.

We feel that the geological hazards, environmental problems, waste water problems, and negative factors inherent in the drilling process warrant further consideration and serious study before any permits could be issued.

The property in this appeal is completely undeveloped at this time, and as far as we know, has never had structures upon it. The physical environment consists of several species of plants and large trees. Without a complete biological report/review of this fragile and sensitive area, how can it be determined just how much this acreage could withstand development?

We are also very concerned that development of this area will negatively impact the use and enjoyment of this area, blocking ocean and scenic views, restricting shoreline access and hampering coastal public right of ways in direct violation of LCP policies.

Dismayed that many issues were not adequately addressed and evaluated at various hearings held by San Mateo County officials, we are especially distressed that the County continues to ignore our concerns regarding the cumulative and detrimental effects this drilling project will have upon the coastal environment and the trails traversing the area. The County's actions contradict LCP plans because issues and policies regarding erosion, coastal trails, public access rights, and sensitive habitats were ignored.

The coastline of California is a precious and unique resource. State legislators have recently renewed their commitment to the coastal regions. They recognize the higher duty of protection the coastal region requires, and San Mateo County must make the same commitment to protect coastal areas with the same heightened level of obligation and duty.

We are concerned that any form of drilling and future development of this area will cause serious damage to the fragile ecosystem. It is vital that these concerns be addressed and rectified satisfactorily. Many of us have lived here for ten years and have seen firsthand the erosion of the cliffs and bluffs. USGS estimates an average of more than one foot per year erosion in this area. (please see attached table.) However, coastal erosion is episodic, and many feet of bluff can disappear in a single storm.

PRESCRIPTIVE RIGHTS AND INTERFERENCE WITH PUBLIC ACCESS

PUBLIC ACCESS AND EASEMENTS

The County of San Mateo clearly violated LCP plans and policies with this permit approval.

Development of this property with seven houses will interfere with public access, public easements and coastal trails that have been used for decades in this area. Any development of this property will severely impact one-third of the public coastal access in the Moss Beach area. The Strand (a bluff-edge paper street and established trail) runs through this property and the prescriptive rights issues and various easement issues concerning this acreage must be resolved before any type of permit may be approved. Additional grants and setbacks to preserve the Strand will be necessary as the erosion continues. The County has been unwilling to recognize these issues/rights, claiming there is no evidence of there being any basis for adjudicating prescriptive easement rights, contrary to the tables in the LCP. The County's assertion is inconsistent with Tables 10.1 and 10.2 from the LCP. These charts provide clear evidence that prescriptive rights are very likely to exist on this property. (Please see attached Table 10.2 regarding the analysis of potential prescriptive rights in this area. Also please review attached Table 10.1 regarding Assessment of Access Trails and Shoreline Destinations.)

In an April 24, 1997 letter, Mr. Charnock acknowledged public access rights along the bluff tops. San Mateo County has taken action in the past to defend easements in this immediate area. (Letter to Constance Bosza, Feb. 1, 1995)

There is no evidence in County documentation that it considered the shoreline destination recommendations for this area. The LCP, regarding Site Specific Recommendations for Shoreline Destinations in the Fitzgerald Marine Reserve, states: "Develop access along the bluffs and to the beaches of the Fitzgerald Marine Reserve in stages as public funding is available to adequately improve and manage the access and protect the resources. The access should be oriented toward education and nature viewing and interpretation, particularly in the northern and central sections." (LCP, Table 10.6, p. 10.31) The LCP further recommends the development of "an interpretive trail along the bluff parallel to Vallemar Street." It states "sign and improve access to the bluff from the end of Juliana Avenue and Wienke Way. This will be the major public access to the bluff. The other trails along Vallemar Street should remain open, however." (LCP, Table 10.6, p. 10.32)

Section 6913.5 Ocean Shoreline Criteria states: "The following criteria shall apply along the entire ocean shoreline of the RM/CZ District: (b): for land divisions and planned unit developments, a public access easement, extending inland no more than 100 feet from the mean high tide line, shall be dedicated along the ocean shoreline before private development is to be permitted."

THE COASTAL TRAIL

Among the various prescriptive rights/public access issues that must be resolved prior to possible development is the Coastal Trail (also known as the Coastside Trail, appearing in the California State Master Plan and the San Mateo County General Plan) directly impacts this property and must be addressed. The San Mateo County Trails Plan, approved by the Board of Supervisors in March 1990, lists the Coastal Trail on its Priority List. (San Mateo County Trails Plan, Parks and Recreation Element of San Mateo County General Plan, introduction p. ii, p. 4). This trail corridor is situated along the coastal bluffs and affects this property.

THE STRAND

The Strand, a blufftop access trail, runs through this property and must be protected. There is no evidence that the County has made any attempt to protect the Strand from the effects of well drilling or subsequent development. A 1997 Superior Court of San Mateo County decision states: "the Strand is a publicly dedicated and owned right of way, and is, and historically been, used by members of the public for coastal access and other purposes." Christopher Tyler and Amy Tezza v. Dell P. Williams No. 387846 (Sup. Ct. San Mateo County) (1997) at page 5.

It goes on to say " with respect to the Strand, ...no use of real property owned or dedicated to a public entity shall ever ripen into any right, title or interest against the owner, regardless of how long or under what circumstances. Civil Code § 1007." (ibid. at page 13).

The Coastal Commission noted in January 1997, that the Strand is currently used by the public as an access trail and is publicly owned. "...the County acquired the Strand in 1967 for public use and for the purpose of establishing a marine reserve (now the Fitzgerald Marine Reserve)." (California Coastal Commission Appeal # A-1-SMC-96-82).

Section 10.27 of the LCP discusses Development Standards for Protecting Adjacent Land Uses in regards to access trails. LCP § 10.27(a) "Provide separation between shoreline access and adjacent residential uses to protect the privacy and security of houses and the public nature and uses of the shoreline. Specifically, keep the edge of lateral shoreline access trails 25 feet and vertical shoreline access trails ten feet from any occupied residential structure." (LCP, 10.9.)

The San Mateo County Zoning Regulations also support public access easements for the purpose of coastal access. We are justly concerned that development will simply devour the public access along the bluffs. It is up to San Mateo County to protect the Strand and it has not occurred in this case. Coastal access is just too important to be ignored, especially in areas adjacent to the Fitzgerald Marine Reserve, an area of special biological concern.

We have provided information obtained in the LCP that supports prescriptive rights easements on this property, however the County continues to ignore this important issue. These coastal trails and the Strand are used constantly by the public and must be protected and preserved. The public rights must be clearly established before any type of well drilling or other development can occur. What happens if this well is dug on top of the public easements?

The San Mateo General Plan Map 8.5M lists this area as Open Space. The Local Coastal Program (LCP) Section 1.3(b) recognizes that "in order to make a logical urban/rural boundary some land has been included within the urban boundary which should be restricted to open space use and not developed at relatively high densities." This is not the responsible way to develop property, especially coastal property, which requires greater protection, and needs to be reconsidered.

OTHER ENVIRONMENTAL CONCERNS AND CRITICAL ISSUES

MARINE SANCTUARY VULNERABILITY

This property is located at the northern end of the Fitzgerald Marine Reserve and is also part of the Monterey Bay National Marine Sanctuary. The Fitzgerald Marine Reserve is a Sensitive Habitat area and subject to protection under LCP Section 7.3. Again, there is no evidence that the county took these factors into consideration. Drilling and development may significantly alter runoff and erosion patterns, altering the local coastal ecology, particularly in the sensitive intertidal zone through alterations to the chemical composition of the coastal water. This proximity to the coast makes the Sanctuary vulnerable to pollution problems in the eleven watersheds which drain into it.

HABITAT DEGRADATION

"Key problems identified in the Sanctuary and its watersheds include sedimentation, toxic pollutants, sediments... high fecal coliform levels, fish population declines, low flows in rivers and streams, wetlands alteration, and habitat degradation." [http://205.155.38.2/water_quality/water-pro.html].

Habitat degradation impacting the local fauna and flora is a critical issue which must also be considered in this case. When looking at habitat loss, it is both insufficient and misleading to simply consider the impact of developing each lot in isolation from the impact incurred by developing the entire project. In addition, man-made structures not only act as prohibitive barriers to migration, isolating small subpopulations from one another, but also significantly

alter local microclimates which help define the suitability of local habitats by changing sunlight, moisture, and wind distribution patterns.

The botanical survey did not find endangered plants, however, native plants were found. In fact, the botanist's report states in two separate places that the prospective home owner would plant native plants on this lot. Apparently, this was mentioned to allay concerns over environmental impact to native plants. If these statements are included to minimize impact on the native plant population, one must also take into account loss of overall area, increased population fragmentation, and microclimate changes due to building structures on the habitat.

FAUNA POPULATION IMPACT

There is yet to be an exhaustive fauna survey and environmental impact analysis, not only of existing animal populations on the bluff tops, but also in the intertidal area which would be affected by alterations in runoff and erosion patterns. The Kleinfelder Water Well EIR reports that the communities of Montara and Moss Beach are located along the coastal portion of the Pacific flyway, the migratory route used by North American waterfowl and shorebird populations. Large numbers of land birds use this flyway as well. As migratory birds pass through the study area, shorebirds and waterbirds find suitable resting and feeding habitats along the coastal strand and offshore waters. (Kleinfelder DEIR, pages 90-91.) Herons, Pelicans, various Raptors, and endangered Snowy Plovers are just a few of the shorebirds who frequent this area.

GEOLOGICAL CONCERNS

Kleinfelder has already identified several serious and potential problems/impacts regarding this entire project. The bluffs and soil are an area of low stability (the fact that the cliffs north and south of this location are high stability is irrelevant as these locations are not where the development is planned.)

Kleinfelder states that soil in Moss Beach/Montara area contains large sand, low organic content, low to moderate moisture holding capacity — in most cases, extremely erodible. (page 86.) In fact, the JCP geology report notes a small landslide immediately west of Lot D. There is also concern over erosion impacting lots B and A. (JCP Report 1990, p.3, p.11) The fifty year erosion setback requirement must also be addressed. It is highly likely that this setback requirement would be directly in conflict with this home site and the drilling location. LCP Section § 9.8 Regulation of Development on Coastal Bluff Tops states: "(a) Permit bluff and cliff top development only if design and setback provisions are adequate to assure stability and structural integrity for the expected economic lifespan of the development (at least 50 years)

and if the development (including storm runoff, foot traffic, grading, irrigation, and septic tanks) will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area." There is no evidence that the county has followed this requirement.

The Environmental Evaluation Checklist is confusing and contradictory because both "no" and "significant unless mitigated" are checked under the heading of Land Suitability and Geology, (j) which asks "affect a natural drainage channel or streambed, or watercourse?".

We are extremely worried about the effects of the drilling procedures on the fragile bluffs. The erosion caused by the recent winter storms only adds to our distress. In a article in the February, 1998, issue of Coast Views, Linda Lee Yule wrote ... "Property owner Dick Charnock, of Half Moon Bay's Real Estate Funding Service, is concerned about cliff retreat on the Vallemar Bluffs. He notes that the run-off from recent heavy rains has created erosion more severe than usual." (Page 29). With the erosion caused by this past winter's severe storms, the development of seven houses, wells, fences, etc., causes increased runoff which could accelerate even greater coastal erosion.

Several wells have recently been drilled in the Moss Beach/Montara area. We have been able to see firsthand just how much the surrounding areas are disturbed by the drilling process. Special precautions and procedures must be taken to protect this unique area and the native plants located here. This coastal plain is unique and must be protected from invasive drilling procedures; a sensitive area requires special precautions and protection to maintain the native species. Strict clean-up and restoration efforts should be required to maintain this sensitive area and restore it if drilling is permitted.

As stated above, the property in question consists of fragile soil with rapid erosion, thus requiring stronger protective measures against damage.

Regarding the potential well itself, the issue of the impact on the actual drilling site was not discussed by County officials. What happens to the waste generated by actual test drilling? How will this waste matter be disposed? There is no indication of how the spoils from a test drilling will be handled. Dumping the waste down Juliana Avenue or over the cliff will contaminate the Marine Reserve, a sensitive habitat under the protection of LCP Section 7.3.

EQUIPMENT

None of the accouterments surrounding a well were addressed. No mention or discussion is

made of the storage tanks, reservoir, piping, and other equipment necessary for domestic wells.

RISK OF FAILURE

There has been no discussion on the effects of the inherent risk of failure associated with this project. There is significant risk of contamination and pollution to the surrounding public sewer and water lines in case of failure. A catastrophe, whether manmade, the result of equipment failure, geology, or severe weather conditions will cause a tremendously harmful impact upon the surrounding areas.

The cumulative effects from this well drilling project are negligible according to the county. However, when one considers the impact on the surrounding area, as we have explained above, it is clear that a significant impact will effect this acreage. Drilling seven random wells (and up to twenty-one drilling attempts) will simply turn this property in a hodge-podge of Swiss cheese. It is common knowledge that wells dug in the San Mateo County coastside area provide poor quality water and usually fail in a short period of time. The property owner must then apply to the local water district for an emergency hook-up. Citizens Utilities is already struggling to meet local needs and does not have extra water. Every time a water district has to tap into its emergency reserves for private property, less water is available for commercial coastal visitor-serving facilities.

The significant cumulative and individual impacts of groundwater resource depletion within this area could be severe. What is to be done in regards to possible saltwater intrusion, and saltwater contamination, as the result of drilling so close to the ocean? This important issue must be resolved so that no large aquifers are contaminated as a result of this drilling project. And what about the opposite affect, i.e., what happens if this project causes freshwater to run into the ocean and damages the ecosystem in the Fitzgerald Marine Reserve.

We are very concerned that the county failed to address the significant impact (both individually and cumulatively) of wastewater generation and disposal created by the drilling of the domestic water well. It is important to address the issues of wastewater generation concerns at this time, especially when considering the fragile geological conditions in which this property sits and the severe negative effects that will result from this drilling project.

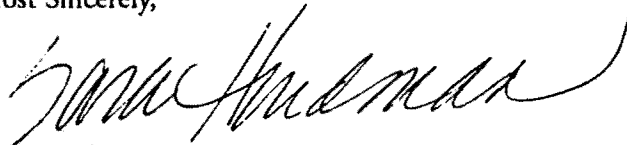
CONCLUSION

There are just too many questions and issues that need definitive answers before any type of development can go forward. It is imperative that the issues surrounding LCP and Coastal Act requirements, prescriptive and public access rights, geological and ecological concerns on this

fragile sensitive habitat, water wells, scenic corridors and other critical considerations that were outlined above be addressed and fully resolved before any development can be contemplated. We respectfully urge the Coastal Commission to find that our appeal raises several substantive issues, and that this project must be addressed in its entirety before this enabling well can proceed.

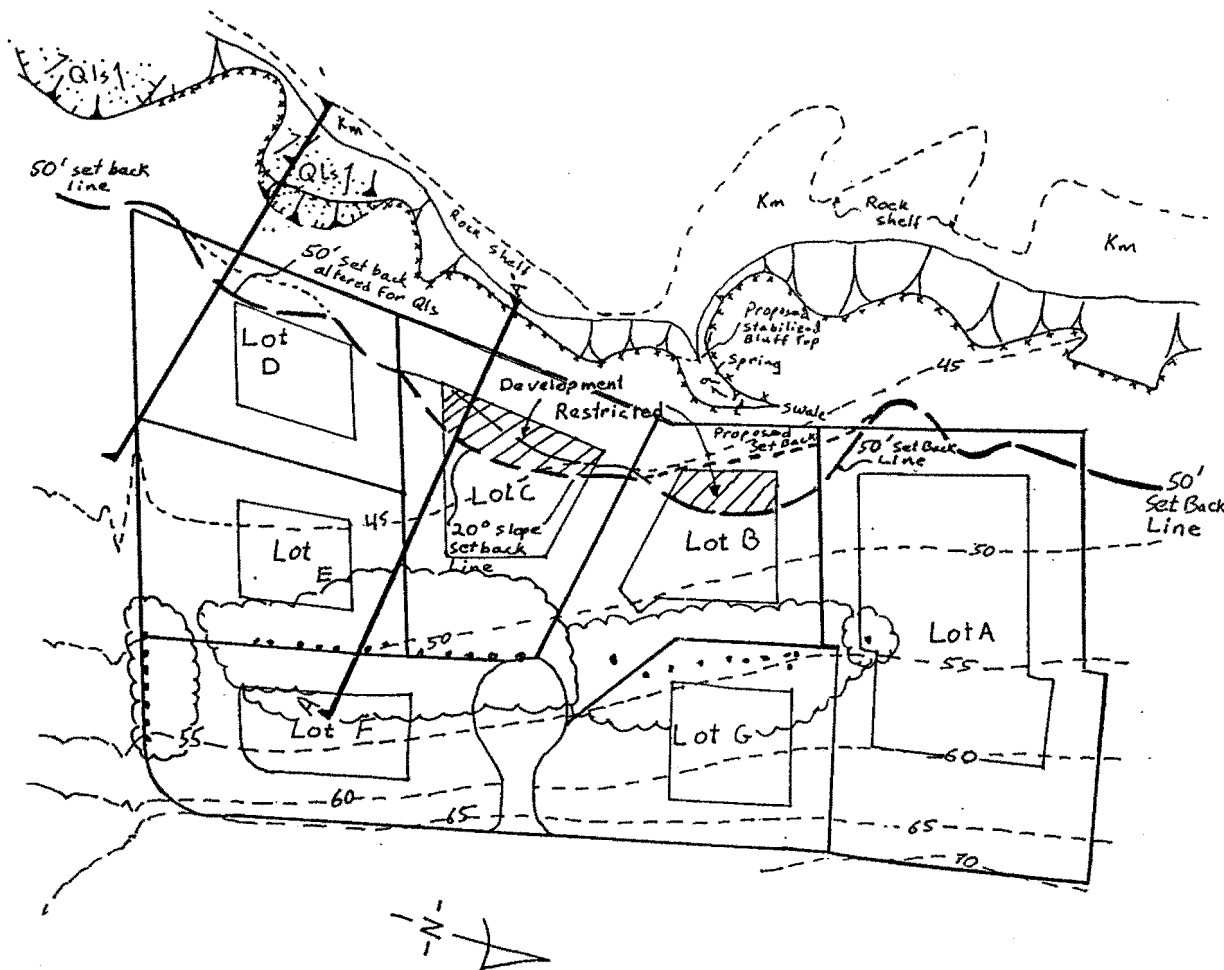
Thank you very much for the opportunity to express our comments regarding possible development on the 2.47 acre parcel in Moss Beach, CA. We very much appreciate your careful consideration of our concerns.

Most Sincerely,











A handwritten signature in cursive script, appearing to read "Sara Hindman".

Sara Hindman

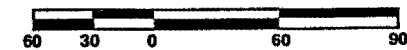
on behalf of Louis Slocum, Bill Kraus, Gary Wood, Judy Wood, Ronald Lanz, Cynthia Lanz, Diana Histan, Michael Histan, Allen Gale, Linda Gale, Les Fields, Gail Erwin, Paul Smith, and Friends of the Field



EXPLANATION

-  Fill - Man emplaced soil and materials
-  Landslide-Arrows show direction of movement
-  Fill Slope
-  Cut Slope
-  Bluff Top
-  Topographic Line
-  Drainage Channel
-  Property Line
-  Fence Line
-  Tree

Note: This Map is a schematic illustration of observed geologic features and should not be used for any other purpose.



Approximate Scale (feet)

Base supplied by J.R. Bennie & R.L. Beigle

| | |
|-----------------|----------------------|
| EXHIBIT NO. | 7 |
| APPLICATION NO. | A-1-SMC-98-049 |
| NEEL & CHARNOCK | Erosion Setback Line |

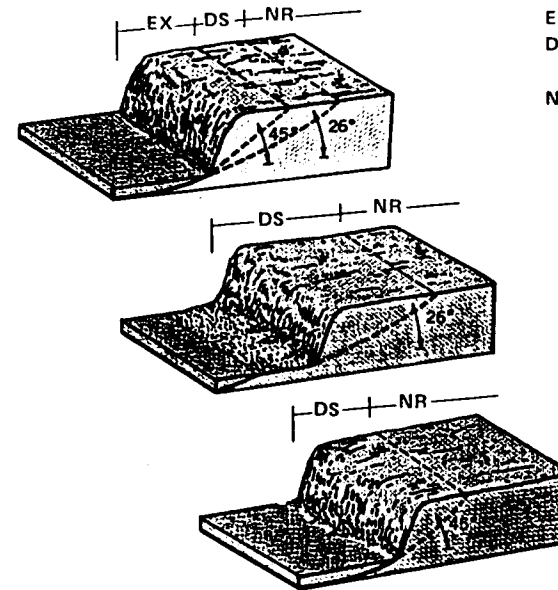
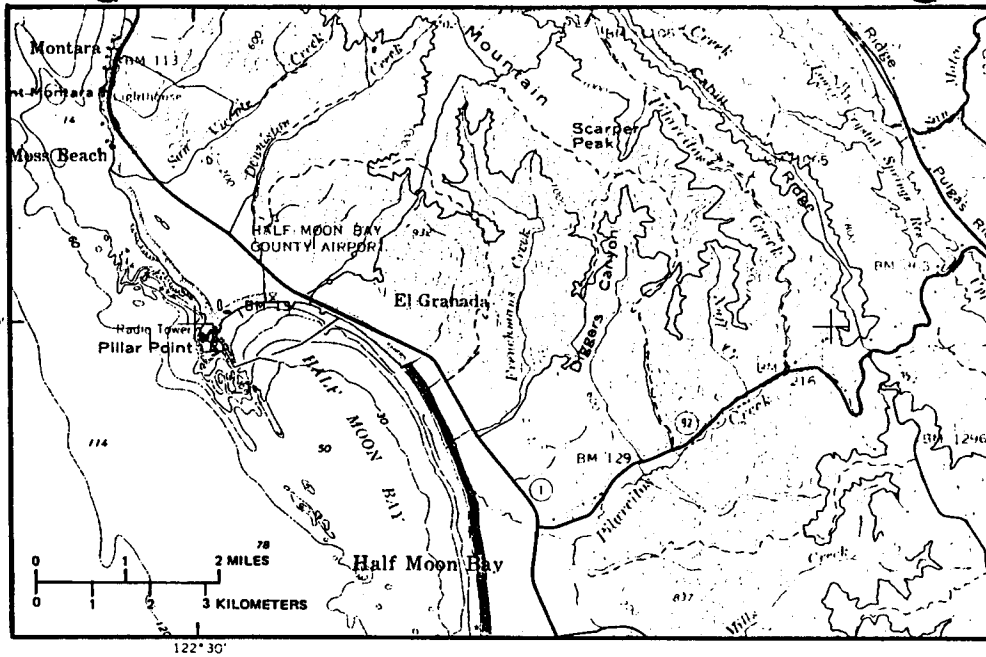
JCP

Site Plan

PROPERTY ON VILLEMAR ST MOSS BEACH

| Project No. | Date | FIGURE 2 |
|-------------|----------|----------|
| JCP 3059 | NOV 1990 | |

County regions for bluff-top development

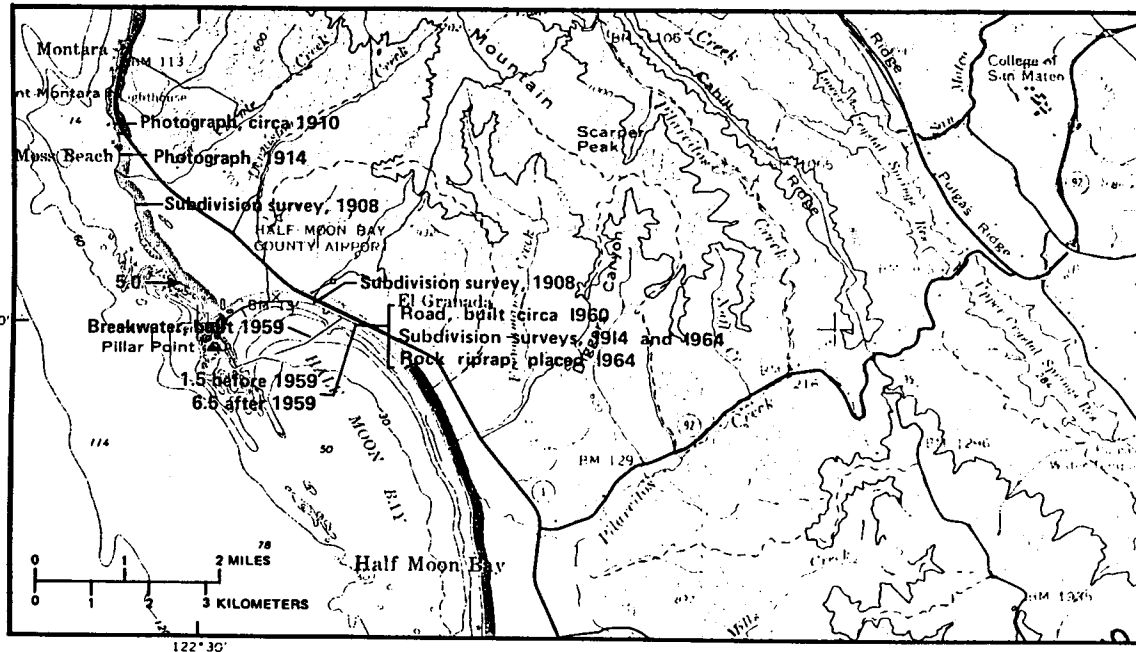


EXPLANATION OF SETBACKS

- EX - structures excluded
- DS - demonstrate stability in geotechnical reports
- NR - normal geotechnical reports for proposed land use

| | |
|-------------------------------|--------------------------|
| EXHIBIT NO. | 8 |
| APPLICATION NO. | A-1-SMC-98-049 |
| NEEL & CHARNOCK | "Historic Bluff Erosion" |
| California Coastal Commission | |

Historic bluff erosion



AVERAGE RATE OF EROSION

- Greater than 1 foot (0.3 m) per year
- Less than 1 foot (0.3 m) per year

5.0 → Rate, in feet per year, at locality indicated by arrow

SOURCES OF DATA

- Based mostly on comparison of:
 - (1) Aerial and ground photographs taken 1926-70
 - (2) Maps made in 1850-1956
- Supplemental information from other archival materials and from field investigations of manmade features, as noted on the map

