

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

555 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

W 16a



June 24, 1998

TO: Commissioners and Interested Parties

FROM: Steve Scholl, Deputy Director
Robert Merrill, District Manager
Jack Liebster, Coastal Program Analyst

RE: Time Extension Request No. **A-1-SMC-96-084-E5, Michael Forde** (For Commission consideration at the meeting of July 8, 1998)

Background

The applicant has requested a one-year time extension of a Coastal Development Permit granted by the Commission in 1992 (Permit No. A-1-SMC-96-084-E4, originally A-3-SMC-91-78) for a two lot subdivision of a 183-acre property at 650 Irish Ridge Road, south of Half Moon Bay. The permit application came before the Commission on appeal of an approval by the County of San Mateo. The permit was originally approved by the Commission on December 10, 1992, with an expiration date of December 10, 1994. In January of 1995, Commission staff notified the applicant that pursuant to legislation that extended the expiration date for permits granted for subdivisions (codified at Government Code Section 66452.11), the expiration date of the coastal development permit had been extended until December 10, 1996. Subsequently, Assembly Bill 771, codified at Government Code Section 66452.13, provided an automatic, 12-month extension for tentative subdivision maps which had not expired as of May 15, 1996, and any associated permits issued by the State. Thus, the expiration date of the permit was extended by operation of AB 771 from December 10, 1996 to December 10, 1997.

The present permit extension request (A-1-SMC-96-084-E5) was received on December 9, 1997. If approved, the expiration date of the permit would be extended to December 10, 1998. The applicant has not yet begun construction of the project.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve the request for a time extension to Coastal Development Permit A-1-SMC-96-084-E4 on the grounds that there are not changed circumstances that affect the consistency of the project with the California Coastal Act of 1976. The federal designations of Endangered Species cited by the objectors Committee for Green Foothills do not change how the certified LCP would apply to these species or the two affected creeks, and

that the time extension for the project will continue not to have a significant adverse impact on sensitive habitat areas because the project will continue to be sited and designed to prevent impacts that could significantly degrade the sensitive habitats...[and be] compatible with the maintenance of biologic productivity of the habitats consistent with the applicable LCP policies.

Procedural Note:

Normally, coastal development permits are issued for two-year periods. Development must commence within two years following the date of Commission action. If development has not commenced within that time period, then an extension may be sought. If an extension is not granted, then the development permit expires and a new permit would be necessary.

Section 13169(a) requires the Executive Director to determine whether that there are changed circumstances which affect the proposed developments consistency with the Coastal Act. The certified LCP was the standard of review for the project as originally approved by the Commission on appeal. Consistency with the Coastal Act in this case means consistency with San Mateo County's certified LCP, which was certified as being consistent with the Coastal Act.

If the Executive Director determines there are changed circumstances which affect the proposed project's consistency with the Coastal Act, or if objection is made to the Executive Director's determination of no changed in circumstances, the application shall be reported to the Commission after notice to any person the Executive Director has reason to know would be interested in the matter. If three Commissions object to an extension on the grounds that the proposed development may not be consistent with the California Coastal Act, the application shall be set for a full hearing of the Commission as though it were a new application.

In this case, the applicant seeks a one-year extension of the permit. The Executive Director determined that no change in circumstances had occurred; and, appropriate notice was given. A letter of objection was received (attached) and this Commission hearing was scheduled.

I. STAFF RECOMMENDATION:

The staff recommends that the Commission approve the request for a time extension to Coastal Development Permit A-1-SMC-96-084-E4 on the grounds that there are not changed circumstances, pursuant to Administrative Code Section 13169, that affect the consistency of the project with the California Coastal Act of 1976.

II. Findings:

The Commission hereby finds and declares as follows:

A. Proposed Extension

The applicant has requested a one year time extension of Coastal Development Permit A-1-SMC-96-084-E4. The permit was originally granted to allow a division into two parcels with conditions, as summarized below, to:

1. Limit the land division of the 183 acres to two parcels: an agricultural parcel of approximately 178 to 182 acres and a residential parcel of approximately 1 to 5 acres, to allow the construction of an access road, and to require a separate coastal development permit for additional development.
2. Require a revised tentative map showing these parcels for the Executive Director's review and approval, and requiring the residential parcel to be located and designed to minimize encroachment on commercial timberland.
3. Require submission of a copy of the proposed final map for the Executive Director's review and approval.
4. Incorporates all the conditions of the County's approvals, except for the County's condition No. 16.
5. Require an executed Open Space Easement for all of the land included in the subject parcels, expressly limiting development on the subject land to one single family home plus appurtenant structures on each of the parcels authorized by this permit and requiring all development to be located within designated building envelopes.
6. Require the permittee to execute and record a deed restriction, to notify successors in interest that the density credit for each parcel has been exhausted and that no additional land division or land use which would require a density credit is permitted.

B. Objection

The Executive Director had previously determined that no change in circumstances has occurred, and gave appropriate notice of that determination. The Committee for Green Foothills (CGF), which had appealed the original project to the Commission, objected to the granting of an extension for this permit.

The full text of the objection is included in Exhibit 2. In summary, CGF contends:

There are now changed circumstances that have occurred since the

granting of the Coastal Development Permit. In particular, the listing of the Red-Legged Frog, the Coho Salmon and Steelhead Trout as endangered or threatened species under the Federal Endangered Species Act should be considered at this time. Two creeks, Lobitos and Tunitas Creeks, are adjacent to the property. These creeks were surveyed by the Department of Fish and Game in the 1970's, and were found to have Steelhead Trout present. The revisions of the size, location, and configuration of the parcels, and subsequent land management practices as the result of the Commission's action have not been evaluated for possible effects upon these newly listed species.

C. No Changed Circumstances

The Commission finds that there are not changed circumstances that affect the consistency of the project with the California Coastal Act of 1976.

The CGF contention has two elements: first, that the designation of certain species that may be present in Lobitos and Tunitas Creeks as Endangered Species constitutes changed circumstances, and second, that the project as approved by the Commission could have "possible effects" on these species.

San Mateo County's certified LCP addresses endangered species in the Sensitive Habitat component of the LUP. In particular, the definition and designations in Policies 7.1 and 7.2 provide:

***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. (emphasis added)

7.2 Designation of Sensitive Habitats

Designate sensitive habitats as including, but not limited to, those shown on the Sensitive Habitats Map for the Coastal Zone.

These policies, of the San Mateo County LCP protect rare and endangered species is by calling for the protection of their habitats. The LCP policies recognize the importance of streams in providing such habitat, and therefore give "streams" and "rare and endangered species habitat" equal status, and equal protection, as Sensitive Habitats.

Moreover, the LCP also explicitly designated both Lobitos and Tunitas creeks on the Sensitive Habitats Map referred to in policy 7.2.

The text of these policies as reproduced above was the certified policy language in place at the time the Commission originally approved the subject permit (then numbered as "A-3-SMC-91-78") and has not been amended since then. Both Lobitos and Tunitas creeks were at that time, and continue to be, designated as Sensitive Habitats on the map referenced in Policy 7.2.

The identification of new or additional rare and endangered species in the two creeks does not change the creeks' status as already-protected Sensitive Habitats. All certified policies for protecting Such Sensitive Habitats were already in force at the time the original permit was approved. The federal endangered species designations cited by the Committee for Green Foothills do not change how the certified LCP would apply to these species or the two creeks. Therefore, there are no changed circumstances with regard to the applicable LCP policies.

Policy 7.3 states the general standard for all sensitive habitat areas:

*7.3 Protection of Sensitive Habitats

- a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.
- b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

The key question in regard to consistency of the approved project with the LCP is whether the approved project would have "significant adverse impact on sensitive habitat areas" (Policy *7.3a) and whether it is "sited and designed to prevent impacts that could significantly degrade the sensitive habitats...[and is] compatible with the maintenance of biologic productivity of the habitats" (Policy *7.3b).

The project as approved by the Commission authorizes the division of the 183 acre parcel into two parcels an timberland/agricultural parcel of

approximately 178 to 182 acres and a residential parcel of approximately 1 to 5 acres and the construction of an access road. Any additional development requires additional coastal development permit authorization.

The permit contains a condition requiring submission of a revised tentative map showing the parcels of \pm 178 to 182 acres and \pm 1-5 acres for the Executive Director's review and approval prior to transmittal of the Coastal Development Permit. This condition has been fulfilled and a copy of the map is included as Exhibit 4. As shown on that map and the vicinity map in Exhibit 3, the residential parcel and its access road are approximately 3600 feet distant from Lobitos Creek and about 3200 feet away from Tunitas Creek. The only construction authorized in the approved permit is the improvement of the existing access road. Significant uncontrolled grading for road construction can cause erosion and sedimentation within a watershed that can smother fish spawning areas within, and disrupt fish passage through coastal streams. However, as conditioned, final plans for this construction are subject to the review and approval by the Commission's Executive Director. As stated in the findings of the original permit, the purpose of the plan review condition is to assure compliance with LCP Policy 8.18b which requires that roads be constructed to fit the natural topography and minimize grading. The plan review condition also affords the Executive Director the opportunity to review compliance of the roadway improvements with the terms and conditions of the permit including the County permit conditions which were incorporated into the Commission's permit. These conditions include:

- constructing the road to applicable San Mateo County standards,
- having a registered civil engineer prepare the plans and specifications for the road,
- entering into, and legally recording, an acceptable road maintenance agreement for the future maintenance of the road,
- having a registered civil engineer prepare a drainage analysis and plan for the project, specifically addressing the "flow of the stormwater onto, over, and off of the property" as well as detailing measures to be incorporated to certify that "post development flows and velocities shall not exceed those that existed in the predevelopment state.

These requirements, taken together with the distance of the creeks in question from the proposed development, will assure that erosion and sedimentation associated with improvement of the access road as permitted will be controlled. Future development of a residence on the proposed five-acre parcel could also create erosion and sedimentation that could potentially affect stream habitat. However, such development would require additional authorization from the County and the potential impacts of the project on stream habitat in its review of the necessary permit application and could condition the permit to mitigate such impacts. The Committee for Green

Foothills suggests in its letter of objection to the extension report that "subsequent land management practices as a result of the Commission's action" could adversely affect endangered species habitat in the streams. Presumably, the land management practices mentioned in the letter refer to timber harvesting activities that are allowed in the Planned Agricultural District zoning that applies to the forested parcel. Although logging activities can create erosion and sedimentation that can adversely affect stream habitat, no timber harvesting was approved by the original permit and any timber harvesting would require additional regulatory approvals. The California Department of Forestry would have to approve a Timber Harvesting Plan for larger harvesting proposals and timber harvesting proposals for less than three acres would require a coastal development permit from the County. In both instances, the reviewing agency would have the opportunity to condition the harvesting activities to require appropriate erosion and sedimentation control measures to minimize any impact on stream habitat.

Therefore, the time extension for the project will not affect the consistency of the approved project with the Coastal Act and certified LCP because the project will continue not to have a "significant adverse impact on sensitive habitat areas" and will continue to be "sited and designed to prevent impacts that could significantly degrade the sensitive habitats...[and be] compatible with the maintenance of biologic productivity of the habitats" consistent with the applicable LCP policies.

Therefore staff recommends the Commission find that the proposed time extension meets the requirements of Section 13169(a) of the Commission's Regulations, and that the extension be approved.

Exhibits:

1. Regional Location Map
2. Committee for Green Foothills' Objection to Extension Request
3. Vicinity Map
4. Site Plan/Tentative Map
5. Adopted Findings, Permit A-3-SMC-91-78 (original permit)

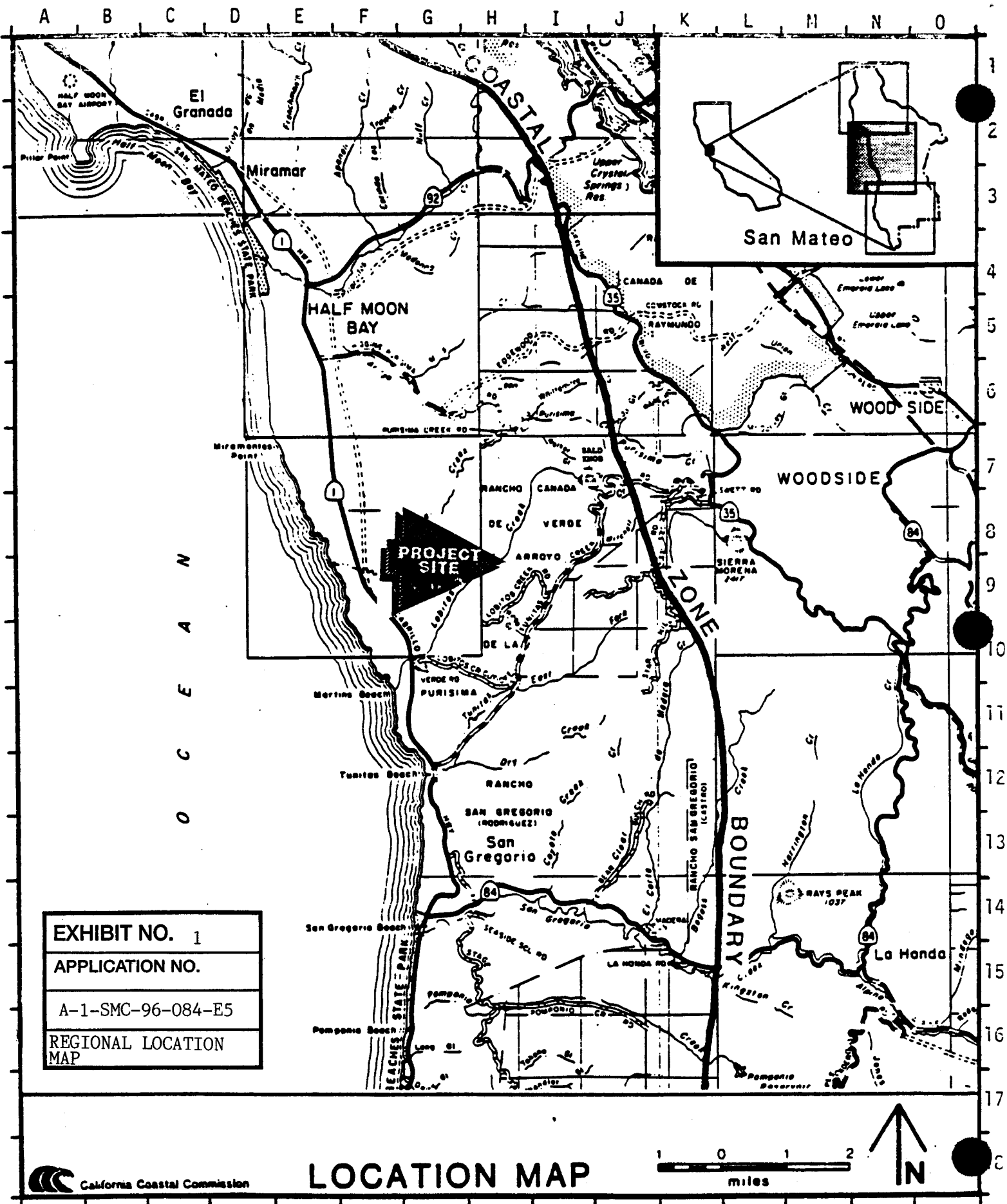


EXHIBIT NO. 1
APPLICATION NO.
A-1-SMC-96-084-E5
REGIONAL LOCATION MAP

January 21, 1998

By FAX 904-⁵⁴⁰⁰~~5200~~
Hard copy by mail

RECEIVED

JAN 20 1998

CALIFORNIA
COASTAL COMMISSION

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Attention: Robert S. Merrill

Re: Notice of Extension Request for Coastal Development Permit dated
January 9, 1998 for Permit Number A-1-SMC-96-084-E4, Michael Forde,
Applicant

The Committee for Green Foothills objects to the granting of this extension. The permit was granted by the Coastal Commission on December 10, 1992, after our organization appealed the project to the Commission. The conditions adopted by the Commission to revise the project and to which we agreed, have not been complied with within the five years since the permit was granted.

There are now changed circumstances that have occurred since the granting of the Coastal Development Permit. In particular, the listing of the Red-Legged Frog, the Coho Salmon and Steelhead Trout as endangered or threatened species under the Federal Endangered Species Act should be considered at this time. Two creeks, Lobitos and Tunitas Creeks, are adjacent to the property. These creeks were surveyed by the Department of Fish and Game in the 1970's, and were found to have Steelhead Trout present. The revisions of the size, location, and configuration of the parcels, and subsequent land management practices as the result of the Commission's action have not been evaluated for possible effects upon these newly listed species.

We would appreciate receiving notice of any further action the Commission proposes to take regarding this requested extension. You should use the address listed below for any notification.

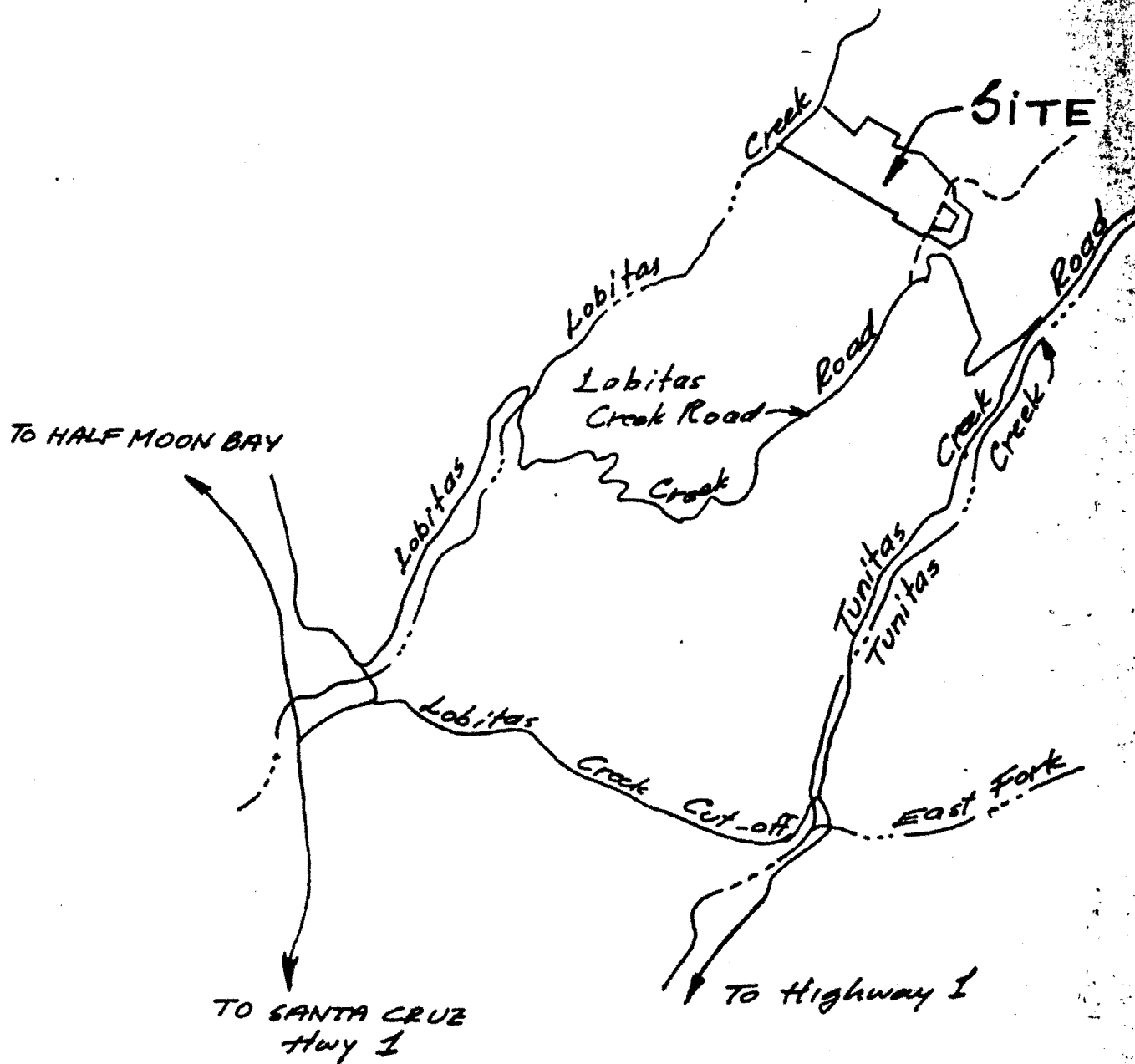
Sincerely,

Lennie Roberts

Lennie Roberts, Legislative Advocate
Committee for Green Foothills
339 La Cuesta
Portola Valley, CA 94028

Telephone: 650-854-0449
FAX: 650-854-8134

EXHIBIT NO. 2
APPLICATION NO.
A-1-SMC-96-084-E5
CGF Objection to Extension Request



ED HOLDING

D WATER
SEMENT
DING TANK

EXHIBIT NO. 3
APPLICATION NO.
A-1-SMC-96-084-E5
VICINITY MAP

NOTES:

1. THIS MAP DOES NOT REPRESENT A BOUNDARY SURVEY.
2. CONTOURS, ROADS AND OTHER FEATURES WERE TAKEN FROM SAN MATEO COUNTY AERIAL MAPS AND RECORDS.

LANDS OF
MICKLES

LANDS OF
PERCY & HARRIOT
67-370-030

LANDS OF
EFFA

(SEE NOTE #4)

67-370-020
LANDS OF THYSEN

PARCEL B
(25 PM 16)
LANDS OF
HIATT

66-240-090

BLANKET * and/or
UNLOCATABLE EASEMENTS:

R/W 450 OR 300 *

ACCESS ROAD

2 13% GRADE
W/ DRIVEWAY TO PARCELS
2 13% GRADE

RESIDENTIAL
PARCEL

EXHIBIT NO. 4

APPLICATION NO.

A-1-SMC-96-084-E5

SITE PLAN/TENTATIVE
MAP

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
640 CAPITOLA ROAD
SANTA CRUZ, CA 95062
(408) 479-3511

Filed: 09/25/91
49th Day: 11/13/91 (waived)
180th Day: 03/25/92 (waived)
Staff: J. Sheele/cm
Staff Report: 03/26/92 1340P
Hearing Date: 04/08/92
and 12/10/92



Commission Action:

ADOPTED

STAFF REPORT: APPEAL

LOCAL GOVERNMENT: County of San Mateo

DECISION: Approved with Special Conditions

APPEAL NO.: A-3-SMC-91-78

APPLICANT: MICHAEL FORDE

PROJECT LOCATION: 650 Irish Ridge Road, Half Moon Bay area of San Mateo County, APN 066-240-020

PROJECT DESCRIPTION: Land division of 183 acres into two parcels of 143 and 40 acres.

APPELLANT: Committee for Green Foothills c/o Lennie Roberts

SUBSTANTIVE FILE DOCUMENTS: San Mateo County Minor Subdivision approval SMN 88-20, Planned Agricultural Permit PAD 88-17, and Coastal Development Permit CDP 88-79. San Mateo County Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed because the proposed land division does not maintain the agricultural productivity on the resulting agricultural parcel as required by the San Mateo County Local Coastal Program (LCP) and other alternatives consistent with the LCP are available to the applicant. Staff further recommends that, if the Commission finds that a substantial issue exists, the hearing on this item follow immediately. Staff recommends approval of the coastal development permit with special conditions requiring a maximum residential parcel size of 5 acres to maintain agricultural productivity on the remaining agricultural parcel.

EXHIBIT NO. 5

APPLICATION NO.

A-1-SMC-96-084-E5

ADOPTED FINDINGS
(original permit)

I. APPELLANT'S CONTENTIONS.A. Committee for Green Foothills

The proposed project is to divide a 183 acre parcel into two "agricultural" parcels of 40 and 143 acres. The Committee for Green Foothills believes that the proposed land division cannot be found to comply with the plans, policies, requirements and standards of the San Mateo County LCP; specifically that the potential agricultural productivity of parcels resulting from this land division will not be diminished.

The proposal to create two "agricultural" parcels does not comply with LCP Policies 5.9 (division of land suitable for Agriculture), and 5.12 (minimum parcel size for agricultural parcels). The applicant has stated that he wishes to create a new parcel for residential purposes, and made such an application in 1984 (SMN 84-24). The LCP and PAD regulations require that non-agricultural parcels be no larger than 5 acres. The subject property is under a Williamson Act contract, which prohibits creation of non-agricultural parcels (under 40 acres) unless the property owner files a Notice of Nonrenewal. Legislation enacted in 1986 (AB 1678 - Sher) requires a landowner who serves a Notice of Nonrenewal to wait for a period of 7 years before approval of a Tentative Map can take place. To resolve this perceived conflict, the applicant has been encouraged by the County to create two "agricultural" parcels, with a minimum parcel size of 40 acres for the smaller parcel.

This approach conflicts with the purposes and requirements of the certified LCP. The LCP addressed the problem of parcelization of large agricultural holdings by requiring that any subdivision of land create the smallest possible non-agricultural (residential or other) parcel(s), thus leaving the largest possible amount of land in one large undivided agricultural parcel, which would not diminish the existing or potential agricultural productivity.

The applicant's forestry consultant's report (Stephen R. Staub letter of June 21, 1991) has confirmed that dividing the parcel would indeed diminish the potential agricultural productivity on the resulting parcels and that timber management and harvest operations would need to be carried out as a single operation, in order to have a viable operation on the smaller parcel. The County has required as a condition of approval that the smaller (40 acre) parcel grant exclusive timber and fuelwood harvest rights to the larger (143 acre) parcel. The Committee for Green Foothills believes that such joint management schemes cannot substitute for the requirements of the LCP, and would be extremely difficult and impractical to enforce. We also believe that the provisions of the Williamson Act of a seven year waiting period are not onerous, given the considerable tax benefits the owner has received over the years. Section 6328.13 of the Zoning Ordinance requires that where the plans, policies, requirements or standards of the LCP conflict with other laws, the LCP shall take precedence.

At the time of approval of the LCP, the Irish Ridge area was recognized as a prime example of the failure of prior zoning and land use policies to maintain non-prime (grazing, dry crop and other) lands in large enough parcels to assure their continued agricultural productivity. Where large ranches had once existed, a pattern of 5, 10, 20, and 40 acre ranchettes was replacing these large ranches. Approval of this land division would fly in the face of the county's careful approach to preventing such parcelization, and would represent a damaging change in County policy.

The Committee for Green Foothills is taking the unusual step of appealing the decision of the Zoning Hearing Officer directly to the Coastal Commission for two reasons. Recently the County raised the appeal fee to \$100. Our organization finds the \$200 cost of appealing the project first to the Planning Commission and potentially again to the Board of Supervisors to be excessive. Additionally, the applicant has been pursuing this land division for several years, and we would think that an expeditious resolution of these important policy questions is desirable.

II. LOCAL GOVERNMENT ACTION.

This project was approved by the Zoning Hearing Officer on September 5, 1991. This decision was not appealed to the Planning Commission or Board of Supervisors.

III. APPEAL PROCEDURES.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be approved, whether approved or denied by a city or county. (Coastal Act Sec. 30603(a)). The grounds for an appeal shall be limited to an allegation that the development does not conform to the certified Local Coastal Program or the public access policies set forth in the Coastal Act. Since this project does not lie between the sea and the first public road paralleling the sea, those are the appropriate grounds for an appeal in this instance.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

The only persons qualified to testify before the Commission at any stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.

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

MOTION. Staff recommends a NO vote on the following motion:

I move that the Commission determine that Appeal No. A-3-SMC-91-78 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

V. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT.

The staff recommends that the Commission after public hearing approve a coastal development permit for the project, subject to the suggested conditions attached, and adopt the following resolution:

Approval with Conditions

The Commission hereby grants a permit, subject to the conditions below, for the proposed development as modified, on the grounds that as conditioned the modified development: is in conformity with the certified San Mateo County Local Coastal Program; and, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

VI. STANDARD CONDITIONS. See Exhibit A.VII. SPECIAL CONDITIONS

1. This approval solely authorizes the land division of 183 acres into two parcels of approximately 178 to 182 acres (agricultural) and approximately 1 to 5 acres (residential) and the construction of an access road. Any additional development shall require a separate coastal development permit.

2. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a revised tentative map showing the parcels of ± 178 to 182 acres and $\pm 1-5$ acres for the Executive Director's review and approval. The 5-acre maximum, residential parcel should be located within the Resource Management/Coastal Zone (RM/CZ) zoning designation and shall be designed to minimize encroachment on commercial timberland. If an alternative location within the Planned Agricultural District (PAD) has less impact on production or potential productive timberlands, that alternative location may be allowed for the residential parcel. The submittal shall include evidence of review and approval by the County Planning Division.

If farm labor housing to support on-site agricultural uses is authorized by the County and Coastal Commission in the future, the open space easement can be amended to accommodate such development.

3. PRIOR TO RECORDATION, the permittee shall submit a copy of the proposed final map for the Executive Director's review and approval. The final map shall include all proposed easements as well as a note that the density credit for each parcel has been exhausted. A copy of the recorded final map shall be submitted to the Executive Director within 30 days of recordation.

4. This approval incorporates all the conditions of the County's approvals, Minor Subdivision, SMN 88-20; Planned Agricultural Permit, PAD 88-17 and Coastal Development Permit, CDP 88-79, Condition Nos. 1-17 except for condition No. 16; see Exhibit B. All materials required for submission by the conditions shall also be submitted for the Executive Director's review and approval.

5. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, an executed Open Space Easement pursuant to Government Code Section 51070 et. seq. for all of the land included in the subject parcels (current A.P.N. 066-240-020, proposed parcel 1 approximately 1 to 5 acres, proposed parcel 2, approximately 178 to 182 acres). The Open Space Easement shall expressly limit development on the subject land to one single family home plus appurtenant structures on each of the parcels authorized by this permit. All development shall be located within the building envelopes

designated on the revised parcel map required by condition 2 of this permit. The Open Space Easement shall also provide for Commission review and approval of abandonment of the easement as provided for in Section 51093 of the Government Code.

Upon approval by the Executive Director, the Open Space Easement shall be recorded within thirty days. A copy of the recorded document shall be forwarded to the Executive Director within ten days of recording. The document shall be recorded free of prior liens and any other encumbrances determined by the Executive Director to affect the easement.

6. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall notify successors in interest that the density credit for each parcel has been exhausted and that no additional land division or land use which would require a density credit is permitted.

VIII. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

1. Project Description

The proposed project is a land division of 183 acres into two parcels of 143 and 40 acres. The subject property is located at 650 Irish Ridge Road in the Half Moon Bay area of San Mateo County. According to the County staff report prepared for the project, the parcel consists of moderate to steeply sloping grassland, brush and some wooded areas. The west side of the parcel is bounded by Lobitos Creek and the northern side is partially bounded by an intermittent creek. Access to the property is via Irish Ridge Road, an unpaved private road off Lobitos Creek Road. The proposed land division would create a 40-acre parcel in the south-central portion of the existing parcel. A revised tentative map was submitted in October, 1990, to shift the proposed 40 acre parcel to the north side of the property to include the Resource Management/Coastal Zone (RM/CZ) zoned portion of the property as suggested by the County Zoning Hearing Officer (see Exhibit 5).

A Forestry Impact Analysis was prepared for the subject site by Stephen R. Staub, Forester and Environmental Consultant on June 21, 1991. The analysis indicates that the parcel contains about 65 acres of timberland, most of which has been selectively harvested twice in the last 15 years and approximately 40 acres of the parcel have potential for growing short rotation eucalyptus fuelwood.

According to the County staff report there are no prime soils on the property. There are approximately 5 to 7 acres of Class IV land, which is rated "fair" for most crops by the Soil Conservation Service. The remaining 95 percent of the property is Class VI, VII and VIII soil which is mostly poor for crops and fair for grazing.

2. Agriculture

A. Substantial Issue

LCP policy 5.3 defines lands suitable for agriculture as lands on which existing or potential agricultural use is feasible, including dry farming, animal grazing and timber harvesting. Most of the property is located within a Planned Agricultural District (PAD) except for approximately 20 acres on the north side which is zoned Resource Management/Coastal Zone (RM/CZ) according to the San Mateo County Local Coastal Program (LCP).

The following LCP agriculture policies are applicable:

*5.9 Division of Land Suitable for Agriculture Designated as Agriculture

Prohibit the division of lands suitable for agriculture unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be reduced.

*5.12 Minimum Parcel Size for Agricultural Parcels

Determine minimum parcel sizes on a case by case basis to ensure maximum existing or potential agricultural productivity.

*5.13 Minimum Parcel Size for Non-Agricultural Parcels

- a. Determine minimum parcel size on a case by case basis to ensure that domestic well water and on-site sewage disposal requirements are met.
- b. Make all non-agricultural parcels as small as practicable (residential parcels may not exceed 5 acres) and cluster them in one or as few clusters as possible.

The LCP agriculture policies are supported, in particular, by Coastal Act Sections 30242 and 30243.

Section 30242.

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Section 30243.

The long-term productivity of soils and timberlands shall be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their divisions into units of noncommercial size shall be limited to providing for necessary timber processing and related facilities.

The proposed project is for a land division to create two agricultural parcels of 143 and 40 acres each. A density analysis done for the property by County staff indicates a maximum allowable density of two units. The proposed division into two parcels would be the ultimate divisibility under the existing zoning.

The basic concept of the LCP is to maintain agricultural viability by insuring that viable agricultural parcels are left intact. If any land divisions occur for the purpose of allowing residential use, the resulting residential parcels should be as small as possible, 1 to 5 acres (considering the need for well and septic system) and should not impair the viability of the principal parcel. In other words, small, agriculturally useless areas of some existing agricultural parcels could be sacrificed to residential use without diminishing the agricultural operation. The result would be that new residential parcels would be clustered where they would not interfere with the farming operation and the principal agricultural parcel would remain intact.

A Forestry Impact Analysis for the subject property was prepared by Stephen R. Staub, Forester and Environmental Consultant on June 21, 1991 (see Exhibit 2). The report concludes as follows:

Both selection tree farm management of the redwood timber and fuelwood cultivation of eucalyptus on appropriate sites can be economically viable under the proposed parcel split providing that suitable access for operations is maintained. Either retention of timber rights for both parcels by one owner or permanent reciprocal management and operations easements for the two parcels could accomplish that objective.

Staff contacted Mr. David Soho, California Department of Forestry, and requested his comments on the Forest Impact Analysis for the subject property. Mr. Soho concurred with Mr. Staub's conclusion.

According to Mr. Staub's report, the maximum annualized net yield for timber and fuelwood operations for the entire 183-acre parcel would be approximately \$9110. The report indicates that currently the property has about 65 acres of timberland, most of which has been selectively harvested twice in the last fifteen years, most recently in 1989.

Dividing the parcel has the potential to diminish the agricultural productivity on the resulting parcels because the timber harvest rights for both parcels would need to be retained by one owner or permanent reciprocal management and operations easements would be needed for both parcels. Nonetheless, a more certain way to achieve LCP conformance and to avoid the complications of timber harvest rights or reciprocal management and operations easements, would be to create small, 1 to 5 acre, residential parcel(s). In this case, the agricultural/timber harvesting operations would be best protected by the creation of a separate small residential parcel so it does not diminish the productive acreage of the (larger) agricultural parcel which remains.

As a condition of approval, the County required that the smaller parcel (40 acres) grant exclusive timber and fuelwood harvest rights to the large parcel (143 acres). This is not consistent with LCP Policies 5.9 and 5.12 which require agricultural productivity of any resulting parcel determined to be feasible for agriculture not be reduced.

As proposed, the project does not comply with LCP requirements to protect agricultural productivity. In addition, Coastal Act Section 30241 objectives regarding protection of agriculturally productive lands are not being met.

The subject property is under a Williamson Act contract which prohibits creation of non-agricultural parcels (under 40 acres) unless the property owner files a Notice of Non-renewal. Legislation enacted in 1986 requires a landowner who serves a Notice of Non-renewal to wait for a period of seven years before approval of a Tentative Map can take place. Government Code Section 51280 et. seq. provides for cancellation of a Williamson Act contract by the landowner but requires the payment of back taxes.

Reasonable alternatives, which would be consistent with the certified LCP (Policy 5.13), are available to the applicant. For example, a small (1 to 5 acre) residential parcel could be created from the principal 183-acre tree farm parcel. The fact that the owner is required to pay back taxes because of the existing Williamson Act contract, is not a basis for approving development which is inconsistent with the certified LCP. The proposed project is inconsistent with LCP agricultural policies and raises a substantial issue regarding conformance with the certified LCP and the protection of agricultural resources.

B. Permit Approval

The proposal can be found consistent with LCP agricultural policies if the land division is modified to create a small residential parcel, 1 to 5 acres, from the principal 183 acre parcel. It is appropriate to locate the residential parcel within the RM/CZ zoning in a manner that minimizes

encroachment on commercial timberland. Future residential development in RM/CZ requires a Use Permit and a coastal development permit from the County. Future residential development of the remainder parcel requires a PAD and a coastal development permit from the County. If a small residential parcel is created, the existing or potential agricultural productivity of the resulting agricultural parcel would not be reduced as required by LCP Policy 5.9. The modified proposal would also be consistent with LCP Policy 5.13 which requires that all non-agricultural parcels/residential parcels not exceed 5 acres. It is also appropriate to incorporate the County's conditions of approval as conditions of this coastal development permit except for Condition No. 16 which required the granting of timber and fuelwood harvest rights of the proposed 40-acre parcel to the owner of the 143-acre parcel. This condition is no longer necessary since the agricultural productivity of the agricultural parcel is protected by the creation of a small, 1 to 5 acre residential parcel within the RM/CZ designation. If the project as proposed to create two agricultural parcels is approved, the above condition would potentially be difficult to enforce.

As conditioned, to create a residential parcel of 1 to 5 acres within the RM/CZ designation which minimizes encroachment on commercial timberland, from the principal 183 acre agricultural parcel (PAD zoning), the project is consistent with the San Mateo County Local Coastal Program agriculture policies which require the protection of agricultural productivity on agricultural parcels.

3. Location of New Development

A. Permit Approval

LCP Policy 8.18 states, in part:

8.18 Location of New Development

Require:

- b. That roads, buildings, and other structural improvements be constructed to fit the natural topography and to minimize grading and modification of existing landforms.
- c. That private roads and driveways be shared, where feasible, to reduce the amount of grading, cutting and filling required to provide access.

According to project plans, existing roads, less than 13 percent grade, cross the property to northern portion of the property zoned RM/CZ. The access road to the approved residential parcel would need to be improved to meet County standards and LCP policy standards. Conditions of the County's approval

require construction of an access road and review of final road plans. LCP Policy 8.18.b requires that roads be constructed to fit the natural topography and minimize grading. It is appropriate to incorporate the County's conditions of approval as conditions of this approval and require review and approval of final plans by the Executive Director. As conditioned, the proposal is consistent with LCP development policies.

4. CEQA

A Negative Declaration for the proposed land division was granted by the County of San Mateo on September 5, 1991. As conditioned, the proposed project will not create any significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

EXHIBITS

- A. Standard Conditions
- B. County Action Approving Permit With Special Conditions
 - 1. Notice of Appeal
 - 2. Appeal by Committee for Green Foothills
 - 3. County Staff Report
 - 4. County Supplemental Staff Report
 - 5. Revised Tentative Map
 - 6. Letter to Mr. Loomis from Mr. Rozar, San Mateo County Development Review Manager, dated November 7, 1991, regarding the appeal.
 - 7. Letter to the Commission from Mr. Forde dated March 17, 1992, regarding the viability of forest operations.