

CALIFORNIA COASTAL COMMISSION

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Filed:	January 14, 1999
49 th Day:	March 4, 1999
180 th Day:	July 13, 1999
Staff:	Robert Merrill
Staff Report:	July 24, 1999
Hearing Date	August 13, 1999
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 1-98-041-A

APPLICANTS: KURT & KIMBERLY KRAMER

PROJECT LOCATION: Northeast of the intersection of Marsh Road and Park Street, in an unincorporated area just east of Eureka, Humboldt County (APN 014-271-03)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Subdivide a 102.8 acre parcel into two parcels of 12.6 and 90.2 acres.

DESCRIPTION OF AMENDMENT: Modify a special condition requiring the recordation of a future development deed restriction to clarify what kind of future development would require additional authorization.

SUBSTANTIVE FILE DOCUMENTS: Humboldt County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the requested amendment to the coastal development permit originally granted for a subdivision of a 102.8-acre parcel into two parcels of 12.6 and 90.2 acres. The Commission granted the original permit with a special condition requiring the recordation of a future development deed restriction, to ensure that the Commission would be able to review permit amendments for otherwise exempt development that might adversely affect the grazed wetlands on the portion of the site within the Commission's jurisdiction. The applicants are proposing clarifying language to the special

condition that would make the fact that the deed restriction would not apply to the portions of the site outside of the Commission's jurisdiction more explicit. The modifications would not change the substantive requirements of the condition. A deed restriction requiring future review of permit amendments for certain development that would otherwise be exempt under Section 30610(a) of the Coastal Act would still be required by the condition as proposed to be modified. Therefore, the clarifications to the condition language sought by the applicants would not compromise the basic protections for grazed agricultural wetlands that would be provided by the condition. However, the language proposed by the applicants needs to be slightly modified to fully serve its intended purpose and for accuracy. The special condition recommended by staff incorporates these technical changes. Staff believes that the proposed development with the proposed amendment is consistent with the Coastal Act.

STAFF NOTES

1. Standard of Review.

The proposed project is located within an unincorporated area adjacent to Eureka in Humboldt County. Humboldt County has a certified LCP, but the portion of the proposed development that is the subject of Coastal Development Permit Application No. 1-98-41 and the current amendment request is within the Commission's retained jurisdictional area. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

2. Procedural Note.

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted.

In this case, the applicants submitted an amendment request that seeks to modify Special Condition No. 1 of the original permit, a condition which requires the applicants to record a future development deed restriction over the property. The Commission imposed the condition to enable the Commission to be able to review a permit application or amendment request for any future development that might be proposed on the portion of the site within the Commission's jurisdiction that contains grazed agricultural wetlands. As the property contains an existing house, and as the subdivision will make it possible for a second house to be constructed on the property, it is possible that current or future owners of these houses might propose minor incidental development normally associated with single family residences such as outbuildings and grading for landscaping in locations on the parcels where such development could compromise either the wetland values or the agricultural productivity of the lands. Many of these kinds of development are normally exempt from the need to obtain a coastal development permit under Section 30610(a) of the Coastal Act. The deed restriction

requirements will ensure that these otherwise exempt developments can be reviewed by the Commission to ensure that wetland values and agricultural productivity will be protected.

The Commission has coastal development permit jurisdiction over only a portion of the site. The subject property is bisected by the boundary between the Commission's original permit jurisdiction and the coastal development permit jurisdiction of Humboldt County (see Exhibit 3). Coastal Development Permit No. 1-98-041 and its conditions only apply to the portion of the overall project within the Commission's jurisdiction. Therefore, the required deed restriction would only apply to the lowland areas within the Commission's jurisdiction and not to the areas where the existing house is located and the building site identified for the future house. Thus, minor incidental development normally associated with single family residences that is exempt under Section 30610(a) of the Coastal Act that might be proposed at the location of the houses themselves, or in other locations on the property that are outside of the Commission's jurisdiction continue to be exempt. The applicants are proposing clarifying language to the special condition that would make this fact more explicit, to reassure future buyers that normally exempt improvements to the single family homes proposed in an around the homes themselves outside of the area covered by Coastal Development Permit No. 1-98-041 will continue to be exempt from the need for additional authorization from the Commission.

As the intent of the proposed amendment would merely clarify the language of the special condition without changing any of its substantive requirements, the amendment, as modified by conditions herein, is consistent with the intent of the original condition. Thus, the proposed amendment, as conditioned, will not lessen or avoid the intent of the approved permit. Staff thus determined that the amendment request can be accepted for processing and should be heard before the Commission.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

MOTION:

I move approval of Application No. 1-98-041-A.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a "YES" vote, resulting in the adoption of the following resolution and findings. To pass the motion requires an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT AMENDMENT:

The Commission hereby approves the proposed amendment to the coastal development permit, on the grounds that the proposed development with the proposed amendment will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Granting of the permit amendment would comply with the California Environmental Quality Act because there are no feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Standard Conditions: See attached.

III. Special Conditions:

Special Conditions No. 1 of the original permit has been replaced with the following revised condition.

1. Future Development Deed Restriction.

The subject permit is only for the development described in coastal development permit No. 1-98-41. There is an existing single-family house which is located outside the area governed by coastal development permit No. 1-98-41 (the Kramer residence). Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the area governed by Coastal Development Permit No. 1-98-41. Accordingly, the construction of any barn or accessory structures or of any future improvement within the area governed by Coastal Development Permit No. 1-98-41, including but not limited to repair or maintenance identified as requiring a permit in Public Resources Code section 30610 (d) and Title 14 CCR section 13252 (a) - (b), shall require an amendment to Permit 1-98-41 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the certified local government.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT , the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations

The Commission hereby finds and declares:

1. Site Description

The subject property is located in the unincorporated Myrtle town area east of Eureka, along the south side of Eureka Slough and the west side of Freshwater Slough, northeast of the intersection of Marsh Road and Park Street (see Exhibits I and 2).

The parcel to be divided is currently developed with a single-family home but is mostly vacant and used for cattle grazing.

The subject property extends south and west from Eureka and Freshwater Sloughs, respectively, across a low meadow area to the base and top of low hills that occupy much of the western and southern portions of the property. Elevations of the site range from sea level to 47 feet above sea level. The existing home is located within the hill area along the south side of the property.

The certified Land Use Plan for the area, the Humboldt Bay Area Plan delineates the urban/rural boundary in a location that bisects the subject property (see Exhibit 4). Most of the property is on the rural side of the boundary, including all of the areas zoned Agricultural Exclusive and a portion of the RS zoning district along the south side of the property.

The subject property contains a variety of environmentally sensitive habitat types. Salt marsh vegetation is found along portions of the property bordering the sloughs and most of the agricultural area of the parcel is composed of seasonal grazed wetlands that are crossed by various small watercourses. Additional wetland areas are found near the top of the hill at the western end of the property.

The subject parcel contains at least two known and recorded archaeological sites. The project area is known to have been inhabited by a significant number of Native Americans at the time of Euro-American settlement.

The subject property is bisected by the boundary between the Commission's original permit jurisdiction and the coastal development permit jurisdiction of Humboldt County (see Exhibit 3). Approximately 70 acres of the parcel are within the Commission's jurisdiction and approximately 32 acres are within the County's jurisdiction. Generally, the low areas of the property are within the Commission's original jurisdiction. These areas consist of former tidelands that were diked off from the adjacent sloughs and reclaimed for agriculture decades before adoption of the Coastal Act. The site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Humboldt County has already granted a coastal development permit for the proposed subdivision.

2. Project Description

The original project consisted of the division of the 102.8 acre parcel into two parcels of 90.2 acres and 12.6 acres (see Exhibit 5). The intent of the project was to create a separate parcel for one additional building site for a home. See Attachment 1, the staff report for the original permit.

The smaller of the two parcels, Parcel Two, would encompass the site of the existing house and most of the hilly area upon which it is built, and an access driveway that extends east from Marsh Road. All of this parcel would be contained within the RS-5/A,W, residential zoning district. Only a small portion of proposed Parcel Two is within the Commission's retained jurisdiction.

The larger of the two parcels, Parcel One, would consist of the rest of the property including all of the portions of the property that extend into Eureka and Freshwater Sloughs, the agricultural lands, and the hilly area on the west side of the property. This parcel would extend into all of the different zoning districts that affect the site including the agricultural, natural resource, and residential districts. The vast majority of proposed Parcel One is within the Commission's retained jurisdiction, although the future home site is not. The future home site is proposed on the hilltop along the west side of the parcel just off of Marsh Road.

The proposed amendment request seeks to modify the one special condition of the original permit, Special Condition No. 1. As approved by the Commission, Special Condition No. 1, reads as follows:

1. Future Development Deed Restriction.

The subject permit is only for the development described in coastal development permit No. 1-98-41. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the area governed by coastal development permit No. 1-98-41. Accordingly, any future improvements to the existing single family house, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b) which are proposed within the area governed by coastal development permit No. 1-98-41 shall require an amendment to Permit No. 1-98-41 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the certified local government.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT , the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the

restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

The amendment seeks to replace this condition with the following condition:

1. Future Development Deed Restriction.

The subject permit is only for the development described in coastal development permit No. 1-98-41. There is an existing single-family house which is located outside the area governed by coastal development permit No. 1-98-41 (the Kramer residence) which is not subject to the provisions of Title 14 California Code of Regulations, section 13252 (a)-(b). However, the construction any barn or accessory structures or the conduct of any future improvement within the area governed by coastal development permit No. 1-98-41, including but not limited to repair or maintenance identified as requiring a permit in Public Resources Code section 30610 (d) and Title 14 CCR section 13252 (a) - (b), shall require an amendment to Permit 1-98-41 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the certified local government.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT , the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

The intent of the amendment is to make it clearer that the limitations imposed by the deed restriction only apply to the portion of the project within the Commission's jurisdiction and do not apply to the area immediately in and around the existing house on the site and the identified site for a future house on the parcel to be created as a result of the subdivision. The applicant believes such clarification would reassure future buyers that normally exempt improvements to the single family homes proposed in an around the homes themselves outside of the area covered by Coastal Development Permit No. 1-98-041 will continue to be exempt from the need for additional authorization from the Commission.

3. Protection of Grazed Agricultural Wetlands.

Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and that development in areas near such sensitive habitat areas shall be sited and designed to prevent significant adverse impacts to these areas.

Section 30241 of the Coastal Act states in applicable part that the maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, land that conflicts between agricultural and urban land uses shall be minimized through various means, including assuring that divisions of agricultural lands shall not diminish the productivity of such lands.

Much of the acreage of the subject property is devoted to agricultural grazing lands for cattle. In turn, much of this grazing land is composed of seasonal grazed wetlands that are crossed by various small watercourses.

The Commission imposed Special Condition No. 1 in the original permit to enable the Commission to be able to review a permit application or amendment request for any future development that might be proposed on the portion of the site within the Commission's jurisdiction that contains grazed agricultural wetlands. As the property contains an existing house, and as the subdivision will make it possible for a second house to be constructed on the property, its possible that current or future owners of these houses might propose minor incidental development normally associated with single family residences such as outbuildings and grading for landscaping in locations on the parcels where such development could compromise either the wetland values or the agricultural productivity of the lands. Many of these kinds of development are normally exempt from the need to obtain a coastal development permit under Section 30610(a) of the Coastal Act. The deed restriction requirements were intended to ensure that these otherwise exempt developments can be reviewed by the Commission in the future to ensure that wetland values and agricultural productivity will be protected.

The modifications to this condition requested by the applicants through the permit amendment request do not change the substantive requirements of the condition. A deed restriction requiring future review of permit amendments for certain development that would otherwise be exempt under Section 30610(a) of the Coastal Act would still be required by the condition as proposed to be modified. Therefore, the clarifications to the condition language sought by the applicants would not compromise the basic protections for grazed agricultural wetlands that would be provided by the condition. However, the proposed language the condition proposed by the applicants needs to be slightly modified to fully serve its intended purpose and to ensure accuracy.

The modifications the Commission is making to the condition language proposed by the applicants is set forth in the following paragraph. The applicants' language to be deleted is shown with strike-throughs, and additional language to be added is underlined.

The subject permit is only for the development described in coastal development permit No. 1-98-41. There is an existing single-family house which is located outside the area governed by coastal development permit No. 1-98-41 (the Kramer residence) ~~which is not subject to the provisions of Title 14 California Code of Regulations, section 13252 (a) - (b).~~ Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the area governed by Coastal Development Permit No. 1-98-41. Accordingly, ~~However,~~ the construction of any barn or accessory structures or ~~the conduct of~~ any future improvement within the area governed by coastal development permit No. 1-98-41, including but no limited to repair or maintenance identified as requiring a permit in Public Resources Code section 30610 (d) and Title 14 CCR section 13252 (a) - (b), shall require an amendment to Permit 1-98-41 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the certified local government.

The Commission notes that as proposed by the applicants, the modified language would include a statement that areas outside the area governed by coastal development permit No. 1-98-41 are "not subject to the provisions of Title 14 California Code of Regulations, section 13252(a)-(b)." This statement is not accurate. The cited section addresses exemptions for repair and maintenance activities in the coastal zone that do in fact, apply outside of the area governed by Coastal Development Permit No. 1-98-41. Therefore, the Commission modifies the language proposed by the applicants to delete the inaccurate portion of the statement. In addition, the Commission notes that part of the modification proposed by the applicant would delete the basic statement of the condition that the exemptions provided in Section 30610(a) of the Coastal Act shall not apply to the area governed by the permit. This statement is an essential part of the meaning of the condition and needs to be retained. Finally, the language proposed by the applicants would state that "...the conduct of any future improvement ...shall require an amendment." The term "the conduct of" has no meaning under the Coastal Act. Therefore, the Commission deletes the phrase.

As modified by the Commission, the amendment language proposed by the applicants is adequate to serve the purposes intended by Special Condition No. 1 of the original permit. As conditioned, the Commission finds that the proposed development with the proposed amendment is consistent with Sections 30240 and 30241 of the Coastal Act, as the proposed development as amended will not indirectly lead to future development within the extensive grazed agricultural wetlands on the site.

7. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed amendment has been conditioned to be found consistent with the policies of the Coastal Act and to minimize all adverse environmental effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, the Commission finds that the proposed amendment, as conditioned to mitigate the identified impacts, can be found consistent with Coastal Act requirements to conform to CEQA.

ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



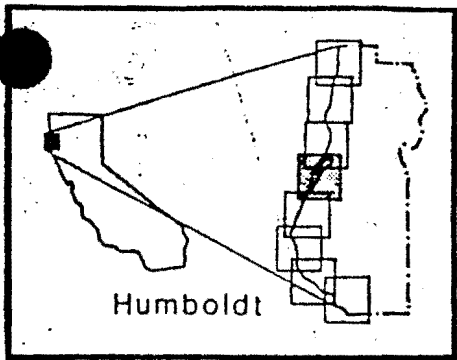

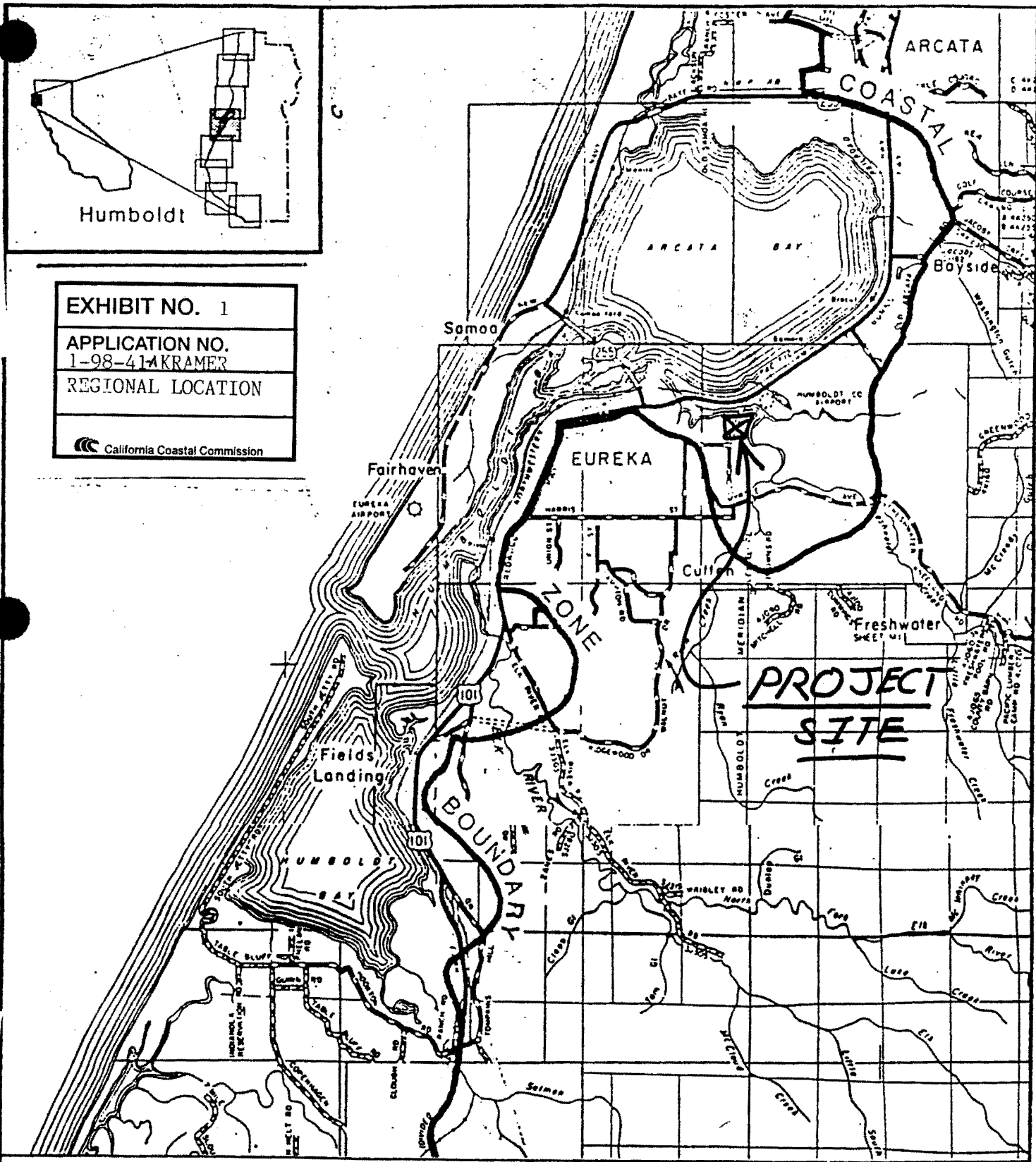


EXHIBIT NO. 1
APPLICATION NO.
1-98-41-KRAMER
REGIONAL LOCATION

 California Coastal Commission



 California Coastal Commission

LOCATION MAP

County of Humboldt

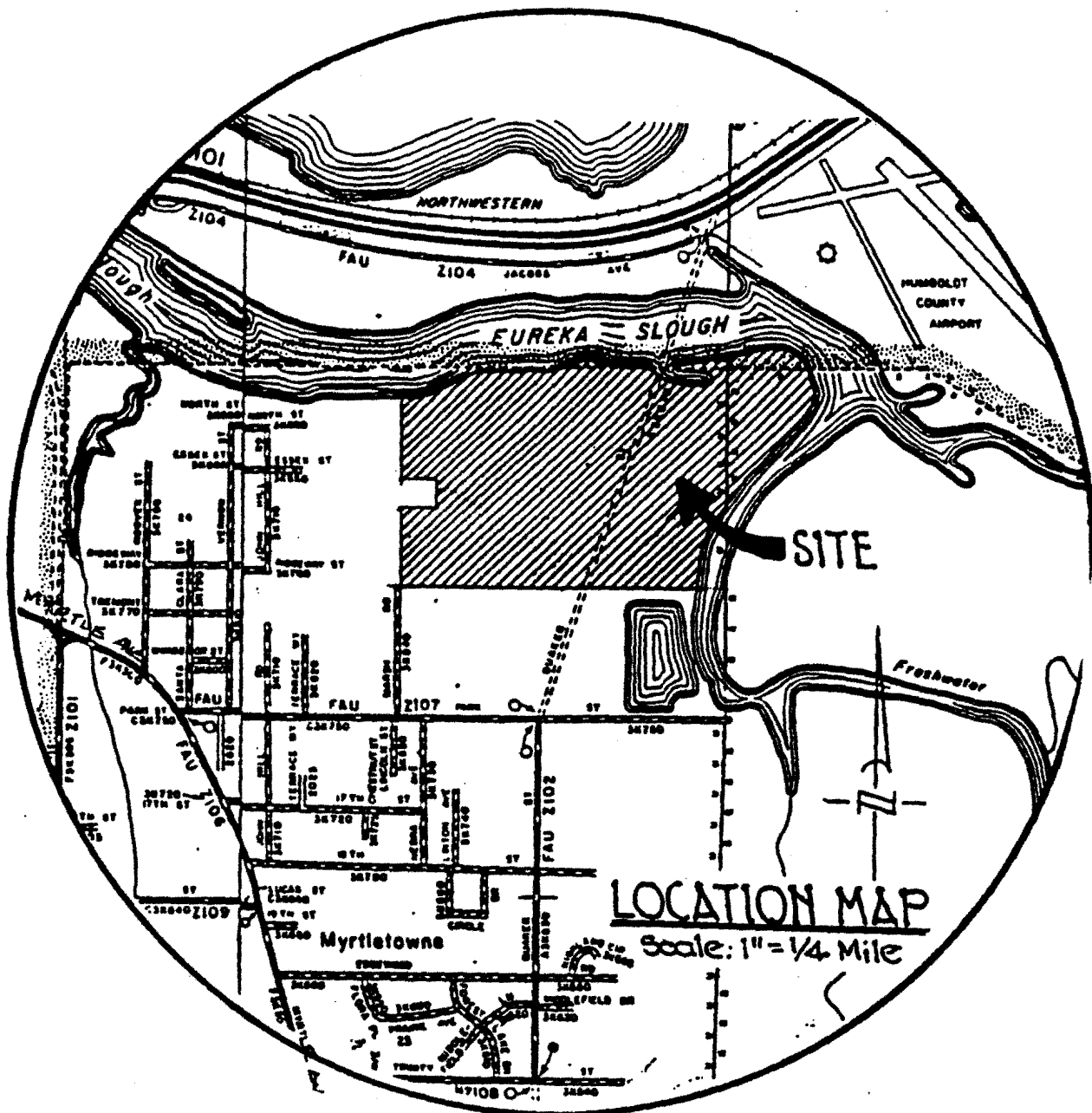



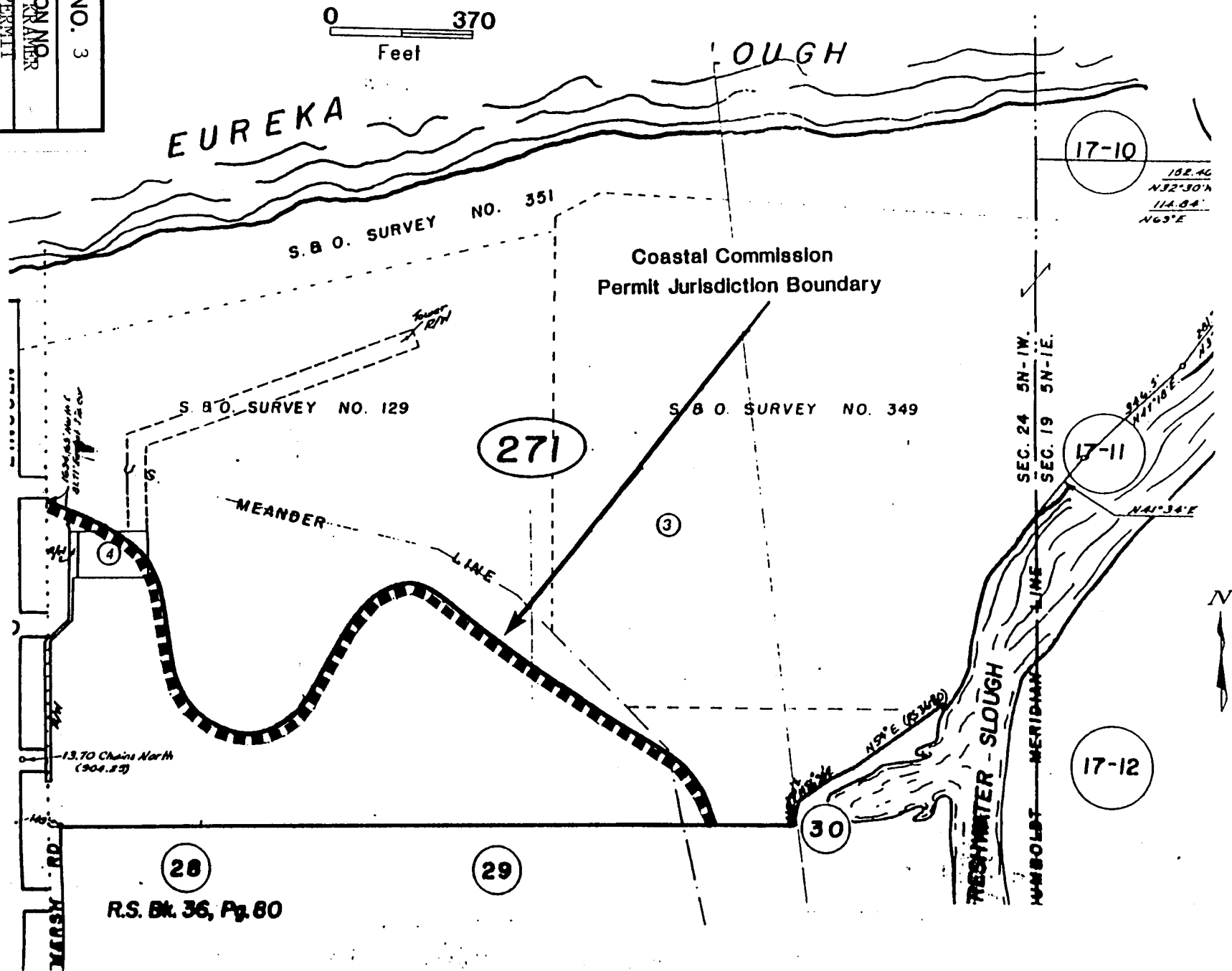
EXHIBIT NO. 2

APPLICATION NO.
1-98-41A KRAMER

VICINITY MAP

California Coastal Commission

 California Coastal Commission	EXHIBIT NO. 3
	APPLICATION NO. 1-98-41
	COASTAL PERMIT JURISDICTION



CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

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Filed:	April 29, 1998
49th Day:	June 17, 1998
180th Day:	October 26, 1998
Staff:	Robert Merrill
Staff Report:	July 24, 1998
Hearing Date:	August 12, 1998
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 1-98-41

APPLICANT: KURT & KIMBERLY KRAMER

PROJECT LOCATION: Northeast of the intersection of Marsh Road and Park Street, in an unincorporated area just east of Eureka, Humboldt County (APN 014-271-03)

PROJECT DESCRIPTION: Subdivide a 102.8-acre parcel into two parcels of 12.6 and 90.2 acres.

Lot area: 102.8 acres to be divided into a 12.6-acre lot (Lot A) and a 90.2-acre lot (Lot B)

Plan designation: Multiple designations of Agriculture Exclusive (AE), Natural Resources (NR), and Residential Low Density (RL)

Zoning: Multiple zoning of: Agriculture Exclusive with a Transitional Ag. Lands combining zone (AE/T); Natural Resources with a Wetlands combining zone (NR/W); and Residential Single Family with a 5,000 square foot minimum parcel size and with Archaeological Resources, and Wetlands combining zones (RS-5/A,W)

LOCAL APPROVALS RECEIVED: Humboldt County: (1) Coastal Development Permit No. CDP-55-96; (2) Tentative Map approval No. PMS-19-96; and (3) CEQA Negative Declaration all approved April 16, 1998.

OTHER APPROVALS: None Required.

SUBSTANTIVE FILE DOCUMENTS: Humboldt County Local Coastal Program

ATTACHMENT 1 — ORIGINAL STAFF REPORT

STAFF NOTES

1. Standard of Review.

The proposed project is located within an unincorporated area adjacent to Eureka in Humboldt County. Humboldt County has a certified LCP, but the portion of the proposed development that is the subject of Coastal Development Permit Application No. 1-98-41 is within the Commission's retained jurisdictional area. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the coastal development permit for the proposed lot split with conditions.

Approximately half of the subject property is located outside the urban boundary. Thus the land division must adhere to the rural land division criteria of Section 30250 of the Coastal Act which specify that all land divisions outside existing developed areas shall be permitted only where 50% of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels. The proposed subdivision is consistent with these criteria.

The subject property contains a variety of coastal resources within its 102.8 acres, including wetland habitat, coastal agriculture, and archaeological resources. However, with the conditions recommended by staff, staff believes the proposed project will not have a significant impact on any of these resources. The subdivision will not result in the loss of agricultural lands, as all of the agricultural lands would be contained on one parcel. The smaller residential parcel to be split off would not contain any agricultural lands. The proposed subdivision will not result in parcels that would only have building sites in areas that would adversely affect coastal resources. One of the proposed parcels is already developed with a single family residence; a future building site has been identified on the other parcel in a location that is not zoned or used for agricultural production and for which a wetlands investigation and an archaeological resources investigation have determined no such resources exist. To prevent otherwise exempt future improvements to the existing and future residences on the two proposed parcels that could adversely affect wetlands, coastal agriculture, or archaeological resources from being constructed without the need for a permit, staff recommends that the Commission impose a condition requiring the recordation of a future development deed restriction. The deed restriction would allow the Commission and/or the County to review a coastal development permit application for such development to ensure coastal resources are protected and would serve to notify potential purchasers of the property in the future that the development potential of the property is limited.

As conditioned, staff believes that the project is fully consistent with the

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environmentally sensitive habitat area, coastal agriculture, new development, archaeological resource, and other policies of Chapter 3 of the Coastal Act.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION:

1. Motion:

I move that the Commission approve Coastal Development Permit No. 1-98-41 subject to conditions.

2. Staff Recommendation of Approval:

Staff recommends a **YES** vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

3. Resolution to Approve Permit:

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions. See Attached.

III. Special Conditions.

1. Future Development Deed Restriction.

The subject permit is only for the development described in coastal development permit No. 1-98-41. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the area governed by coastal development permit No. 1-98-41. Accordingly, any future improvements to the existing single family house, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), which are proposed within the area governed by coastal development permit No. 1-98-41 shall require an amendment to Permit No. 1-98-41 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the certified local government.

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PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT , the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations

The Commission hereby finds and declares:

1. Site Description

The subject property is located in the unincorporated Myrtletown area east of Eureka, along the south side of Eureka Slough and the west side of Freshwater Slough, northeast of the intersection of Marsh Road and Park Street (see Exhibits 1 and 2).

The parcel to be divided is currently developed with a single-family home but is mostly vacant and used for cattle grazing.

The subject property extends south and west from Eureka and Freshwater Sloughs, respectively, across a low meadow area to the base and top of low hills that occupy much of the western and southern portions of the property. Elevations of the site range from sea level to 47 feet above sea level. The existing home is located within the hill area along the south side of the property.

The subject property is located within four separate (land use plan designations) zoning districts. The majority of the parcel, including most of the low areas extending south and west from the sloughs, is designated Agricultural Exclusive, with a Transitional Agricultural Lands Combining Zone (AE/T). The AE zoning district is applied to prime agricultural lands for food and fiber production as well as other open space uses, and to protect these areas from untimely conversion to other uses. Most of the hilly southern and western portions of parcel are designated as Residential Single Family - 5,000 square foot minimum parcel size with Archaeological Resources and Coastal Wetlands Combining Zones (RS-5/A,W). The RS zoning district is applied to areas suitable for low density residential development with full community services. The existing residence on the parcel is located within this zoning district. Two areas of the parcel, in the northwest corner of the parcel along Eureka Slough, and the northeast corner of the parcel adjacent to both Eureka and Freshwater Sloughs, are designated as Natural Resources, with

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a Coastal Wetlands Combining Zone. The NR zoning district is applied to areas which either contain environmentally sensitive habitat, or where for a variety of reasons, most development is not prudent.

The certified Land Use Plan for the area, the Humboldt Bay Area Plan delineates the urban/rural boundary in a location that bisects the subject property (see Exhibit 4). Most of the property is on the rural side of the boundary, including all of the areas zoned Agricultural Exclusive and a portion of the RS zoning district along the south side of the property.

The subject property contains a variety of environmentally sensitive habitat types. Salt marsh vegetation is found along portions of the property bordering the sloughs and most of the agricultural area of the parcel is composed of seasonal grazed wetlands that are crossed by various small watercourses. Additional wetland areas are found near the top of the hill at the western end of the property.

The subject parcel contains at least two known and recorded archaeological sites. The project area is known to have been inhabited by a significant number of Native Americans at the time of Euro-American settlement.

The subject property is bisected by the boundary between the Commission's original permit jurisdiction and the coastal development permit jurisdiction of Humboldt County (see Exhibit 3). Approximately 70 acres of the parcel are within the Commission's jurisdiction and approximately 32 acres are within the County's jurisdiction. Generally, the low areas of the property are within the Commission's original jurisdiction. These areas consist of former tidelands that were diked off from the adjacent sloughs and reclaimed for agriculture decades before adoption of the Coastal Act. Humboldt County has already granted a coastal development permit for the proposed subdivision.

2. Project Description

The applicants propose to divide the 102.8 acre parcel into two parcels of 90.2 acres and 12.6 acres (see Exhibit 5). The intent of the project is to create a separate parcel for one additional building site for a home.

The smaller of the two parcels, Parcel Two, would encompass the site of the existing house and most of the hilly area upon which it is built, and an access driveway that extends east from Marsh Road. All of this parcel would be contained within the RS-5/A,W, residential zoning district. Only a small portion of proposed Parcel Two is within the Commission's retained jurisdiction.

The larger of the two parcels, Parcel One, would consist of the rest of the property including all of the portions of the property that extend into Eureka and Freshwater Sloughs, the agricultural lands, and the hilly area on the west side of the property. This parcel would extend into all of the different zoning districts that affect the site including the agricultural, natural

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resource, and residential districts. The vast majority of proposed Parcel One is within the Commission's retained jurisdiction, although the future home site is not. The future home site is proposed on the hilltop along the west side of the parcel just off of Marsh Road.

Development may have commenced without benefit of a coastal development permit. The applicants have already conveyed Parcel One to a separate owner, even though a final parcel map for the subdivision has not yet been recorded.

3. New Development

Section 30250(a) of the Coastal Act states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized. In addition, land divisions outside existing developed areas shall be permitted only where 50% of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels.

The proposed project, as conditioned, meets all the criteria set forth in Section 30250(a) as outlined below.

1. Rural Land Division Criteria

The subject parcels is located partially outside of the urban boundary of Eureka, and is therefore subject to the Coastal Act's rural land division criteria. To meet the criteria, the subject parcel must be located within an area where 50% or more of the usable parcels have been developed, the newly created parcels must be no smaller than the average size of the surrounding parcels, and there must be no significant individual or cumulative impacts resulting from the division.

a. 50% Developed Criterion

Based on an examination of County Assessor Office information, Commission staff has determined that the area is over 50% developed. This result is not surprising given that half of the area is included within the urban boundary and the unincorporated area is adjacent to the city limits of Eureka, a developing city. Thus, the land division meets the 50% developed criterion for rural land divisions, as set forth in Section 30250(a) of the Coastal Act.

b. Average Parcel Size Criterion

Coastal Act Section 30250(a) requires that new parcels be no smaller than the average size of the surrounding parcels. The Commission in past decisions has set forth the standard by which to evaluate average parcel size. All parcels

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lying all or partly within 1/4-mile of the perimeter of the subject parcel should be considered as "surrounding parcels" unless such parcels are within an existing urban area or unless a predominant topographical feature (e.g. a major ridge or canyon) makes it clear that a particular parcel within 1/4-mile is distinct from the parcel under consideration.

Using these criteria, Commission staff excluded a number of parcels from the set of surrounding parcels within 1/4 mile of the subject property to be evaluated. In this case, the urban boundary designated on the Humboldt Bay Area Land Use Plan map passes generally north south through the middle of the property (see Exhibit 4). Thus, in preparing the analysis of surrounding parcels, staff excluded all those parcels within the urban boundary, which resulted in all parcels west of the site within 1/4 mile of the property being excluded from the set of parcels to be examined. The staff also excluded all those parcels north of Eureka Slough, as the slough is a predominant topographical feature that separates and makes distinct the parcels on the north side of the slough from those parcels on the south side of the slough. Excluding the parcels north of Eureka Slough also is appropriate given that they are devoted to land uses very distinct from the predominantly agricultural and residential uses made of the parcels south of the slough. The parcels to the north consist of commercial properties and an airport, Murray Field.

Commission staff has determined that there are 12 parcels that lie outside the Urban/Rural boundary, south of Eureka Slough, and within 1/4-mile of the subject parcel. The average size of the parcels within this radius is 12.4 acres, much smaller than the 87.4 acre parcel that would be created within the rural area as part of the proposed subdivision, Parcel One. The average size is also smaller than the other parcel resulting from the subdivision, Parcel Two, which is 12.6 acres. However, Parcel Two need not adhere to the rural subdivision criteria of Section 30250(a) as the proposed parcel would be located entirely within the urban boundary. located 2.7 acres, which is larger than the size of the proposed new lots.

Under the Billings decision (Billings vs. California Coastal Commission, 103 Cal. App. 729 [1980]), to determine the "average" parcel size of the surrounding parcels, the Commission also examines the median (the parcel size that occurs in the middle of the range of parcel sizes) and the mode (the most frequently occurring parcels size) of the surrounding parcels. In this case, the median parcels are 3.4 and 2.9 acres in size. The mode is 1.7 acres. Both the median parcels and the mode parcels are much smaller than 87.4 acre parcel (Parcel One) to be created within the rural area.

Given that all three determinants of average parcel size in this case are smaller than the size of the parcels to be created, the Commission finds that the proposed land division meets the average parcel size criterion.

Therefore, the proposed project effectively meets the rural development criteria of Coastal Act Section 30250(a), as the 50% criterion is met, and the

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average parcel size of the surrounding parcels is smaller than the size of the proposed new parcels.

ii. Adequate Services.

The Humboldt Community Services District provides both sewer and water service to the existing home on proposed Parcel Two and would also provide sewer and water service to the future home site planned for Parcel One. Therefore, the proposed development is consistent with Section 30250(a) to the extent that the development will be located in an existing developed area able to accommodate it.

iii. Effects on Coastal Resources.

The proposed subdivision would not have significant adverse effects on coastal resources. No new parcel would be created that would be unbuildable without adversely affecting coastal resources. Proposed Parcel 2, which will be located entirely within the RS-5/A,W (Residential Single Family with a 5,000 square foot minimum parcel size) zone already has an existing single family residence, a principally permitted use in this zoning district. Proposed Parcel One will be located under all three of the zoning districts that apply to the site, including RS-5/A,W (Residential Single Family with a 5,000 square foot minimum parcel size, AE/T (Agriculture Exclusive), and NR/W (Natural Resources). The parcel configuration proposed has a developable building site for a single family residence within the portion of the property designated residential single family. A single family residence is a principally permitted use under both RS-5/A,W and AE/T. The NR zone is intended to protect natural resource areas and does not allow residences or other significant development not related to protection of the resource. As discussed in the following findings, the building site can be developed in a manner consistent with the Coastal Act and the certified LCP as the site is outside of wetlands and other sensitive habitat, would not affect the agricultural use of the parcel, and would not adversely affect archaeological resources. Therefore, the proposed development will not have significant adverse effects, either individually or cumulately, on coastal resources, consistent with the applicable provision of Section 30250(a) of the Coastal Act.

4. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and that development in areas near such sensitive habitat areas shall be sited and designed to prevent significant adverse impacts to these areas.

As noted previously, the subject property contains a variety of environmentally sensitive habitat types. Salt marsh vegetation is found along portions of the property bordering the sloughs and most of the agricultural area of the parcel is composed of seasonal grazed wetlands that are crossed by

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various small watercourses. Additional wetland areas are found outside of the Commission's jurisdiction near the top of the hill at the western end of the property. These freshwater wetlands have been mapped by a wetland biologist and are delineated on the proposed plot plan submitted with the application.

The future building site identified for proposed Parcel One outside the Commission's jurisdiction is located outside of the mapped wetland area. Thus, proposed Parcel One could be developed for a residential use without necessitating the disturbance of wetlands or other environmentally sensitive habitat. Therefore, the proposed subdivision would not indirectly result in the disturbance of wetlands or other environmentally sensitive habitat area contrary to Section 30240 by causing future development of the parcels to be located in or adjacent to such areas.

After a residence is authorized and constructed in the identified future building site on proposed Parcel One, the future owners of the site might propose minor incidental development normally associated with single family residences such as outbuildings and grading for landscaping in locations on the parcel where such development could compromise the value of the environmentally sensitive habitat areas. Such development might also be proposed for the existing house on Proposed Parcel Two. Many of these kinds of development are normally exempt from the need to obtain a coastal development permit under Section 30610(a) of the Coastal Act. In addition, future purchasers of Proposed Parcel One, unaware of the current proposal to locate a future home site in the site currently proposed, may want to build a new house in other areas of the lot where such development would adversely affect environmentally sensitive habitat and may expect to do so.

Therefore, to (1) enable the Coastal Commission and/or the County to review a coastal development permit for any future additions or improvements to single family homes that might otherwise be exempt from the need to obtain a coastal development permit and thereby prevent disturbance of the environmentally sensitive habitat areas of the property for such development, and (2) to ensure that future purchasers of the property are notified of the need to avoid development within the extensive wetland areas on the subject property and do not purchase with the expectation to be able to build in ESHA areas, the Commission attaches Special Condition No. 1. The condition requires that a future development deed restriction reflecting such restrictions on development be recorded against the property.

As conditioned, the Commission finds that the project is consistent with Section 30240 of the Coastal Act, as the proposed subdivision will not indirectly lead to future development within the extensive environmentally sensitive wetland habitat on the site.

5. Archaeological Resources

Section 30244 states that reasonable mitigation measures shall be required where development would adversely impact archaeological resources.

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In comments submitted to the Humboldt County Planning Division during the department's review of the tentative map and local coastal development permit for the project, the Humboldt County Public Works, Natural Resources Division indicated that the subject parcel contains at least two known and recorded archaeological sites. The project area is known to have been inhabited by a significant number of Native Americans at the time of Euro-American settlement.

The applicants were required by the County to have an archaeological resources investigation prepared of the property at the time applications were submitted to the County for local permits. The survey, conducted by Roscoe & Associates, included a review of existing archaeological records and a field survey of the area in the vicinity of the future building site identified for proposed Parcel One. The field research conducted by Roscoe & Associates did not discover any significant archaeological resources within the vicinity of the future building site. However, the investigation confirmed that two former villages of the Wiyot Indians have previously been discovered on the property, as reported by the Natural Resources division. Both of these village sites are located more than 300 feet away from the future building site for proposed Parcel One.

The proposed development will not adversely affect the known archaeological resources on the site. Subdividing the property results in no direct impact on the resources and given that a future building site has been identified on the currently vacant proposed Parcel One that is more than 300 feet away from any known archaeological resources, the proposed subdivision will not indirectly impact resources by causing future development to be located where it could adversely affect such resources. Therefore, the Commission finds that the project is consistent with Section 30244 of the Coastal Act, as no development that would adversely impact archaeological resources and require reasonable mitigation measures is proposed.

6. Coastal Agriculture

Section 30241 of the Coastal Act states in applicable part that the maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area's agricultural economy, and that conflicts between agricultural and urban land uses shall be minimized through various means, including assuring that divisions of agricultural lands shall not diminish the productivity of such lands.

Much of the acreage of the subject property is currently devoted to agricultural grazing lands for cattle. The Humboldt County LCP designates the agricultural lands on the site as either Agricultural Exclusive or Natural Resources. (see Exhibit 4).

The proposed development would not adversely affect the productivity of agricultural lands on the property. All of the agricultural lands are located within the area that would become Parcel One of the proposed subdivision. The

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land located within the area that would become Parcel Two is currently devoted to residential uses and private open space surrounding the residence. Therefore, dividing off Proposed Parcel Two from the rest of the parcel would not interfere with the agricultural operations conducted on the property or take agricultural lands out of production. The existing home is setback more than 100 feet from the agricultural lands on the subject property, providing a sufficient buffer to protect agricultural activities.

The future building site identified for proposed Parcel One is located more than 100 feet away from the agricultural lands in an area designated and zoned for residential use. Thus, proposed Parcel One could be developed for a residential use without diminishing the productivity of the agricultural lands on the property.

However, after a residence is authorized and constructed in the identified future building site on proposed Parcel One, the future owners of the site might propose minor incidental development normally associated with single family residences such as outbuildings and grading for landscaping in locations on the parcel where such development could compromise the productivity of the agricultural lands. Many of these kinds of development are normally exempt from the need to obtain a coastal development permit under Section 30610(a) of the Coastal Act. In addition, future purchasers of Proposed Parcel One, unaware of the current proposal to locate a future home site in the site currently proposed, may want to build a new house in other areas of the lot where such development would adversely affect agricultural productivity and may expect to do so.

Therefore, to (1) enable the Coastal Commission and/or the County to review a coastal development permit for any future additions or improvements to single family homes that might otherwise be exempt from the need to obtain a coastal development permit and thereby prevent adverse impacts on agricultural production on the subject property for such development, and (2) to ensure that future purchasers of the property are notified of the need to avoid residential development within the extensive agricultural lands on the subject property and do not purchase with the expectation to be able to build in lands devoted to agricultural production, the Commission attaches Special Condition No. 1. The condition requires that a future development deed restriction reflecting such restrictions on development be recorded against the property.

As conditioned, the Commission finds that the project is consistent with Section 30241 of the Coastal Act as the proposed subdivision will not diminish the productivity of the agricultural lands found on the subject property.

8. Public Access.

Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the

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public's right of access to the sea where acquired through use (i.e. potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety.

In applying Sections 30210, 30211, and 30212, the Commission is limited by the need to show that any denial of a permit application based on those sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential public access.

The subject property is adjacent to two major sloughs that connect with Humboldt Bay, Eureka Slough and Freshwater Slough. However, the Commission does not have before it any evidence that the shoreline of the property has received any substantial public access use. In addition, the shoreline of the applicants' property is not designated in the Humboldt Bay Area Plan of the LCP for public access use.

Whether or not any possible prescriptive rights of public access may have accrued over the property, the proposed project will not affect such rights. The proposed project only involves a land division. No physical development that would block or otherwise preclude use of the shoreline is proposed. In addition, as the proposed subdivision would only result in the future development of one additional residence on the property, the proposed development would not create appreciably additional demand for public access facilities in the area. Therefore, the Commission finds that the proposed project will have no impact on public access. The Commission further finds that the proposed project, which does not include new public access, is consistent with the public access policies of the Coastal Act.

9. Violation

The applicant has already conveyed proposed Parcel One to another party. Although development in the form of conveyance of property to effectuate a subdivision of the property may have occurred without a necessary coastal development permit, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

10. California Environmental Quality Act (CEQA).

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California

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Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Coastal Act. Mitigation measures have been attached, including a requirement that a future development deed restriction be recorded against the property to enable the Commission and/or the County to review a coastal development permit application for any proposed development that would otherwise be exempt under Section 30610(a) to ensure that no development proceeds that would adversely affect environmentally sensitive habitat, archaeological resources, or agricultural productivity.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

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ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.