

## CALIFORNIA COASTAL COMMISSION

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49<sup>th</sup> Day: Waived  
Staff: Robert Merrill  
Staff Report: November 28, 2000  
Hearing Date: December 15, 2000  
Commission Action:

STAFF REPORT:APPEAL - SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with conditions

APPEAL NO.: A-1-MEN-00-044

APPLICANTS: Louis and Debra Appell

APPELLANTS: Commissioner Sara Wan; Commissioner John S. Woolley

PROJECT LOCATION: In Anchor Bay, between Highway One and the Pacific Ocean, 400+/- feet northwest of the intersection of Highway One and Getchell Gulch Road, Mendocino County.

PROJECT DESCRIPTION: Divide a parcel into two lots, of 1.67 acres and 3.57 acres. The project also includes extension of water and sewer services and other underground utilities, and development of a private access road to each parcel.

SUBSTANTIVE FILE DOCUMENTS: Mendocino County CDMS 16-99; and Mendocino County Local Coastal Program.

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SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The County of Mendocino approved with conditions a coastal development minor subdivision permit to divide a parcel into two lots of 1.67 acres and 3.57 acres. The appellants contend that the project as approved is not consistent with the criteria and policies of the County's LCP pertaining to the protection of prescriptive rights of access and protection of environmentally sensitive habitat areas.

Commission staff analysis indicates that the appellant raises substantial issues of conformance of the project as approved by the County with the criteria and policies of the County's certified LCP regarding both the protection of public prescriptive rights of access and protection of environmentally sensitive habitat areas and the public access policies of the Coastal Act.

Staff recommends that the Commission continue the de novo portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information to determine de novo if the project can be found consistent with the policies of the certified LCP.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page #.

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STAFF NOTES:

1. Appeal Process.

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

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

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

The subject development is appealable to the Commission because the proposed development: (1) as a division of land is not a principally permitted use; and (2) is located between the sea and the first public road paralleling the sea, (3) and is within 300 feet of the mean high tide line, the inland extent of any beach, and the top of a seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2. Filing of Appeal.

The appellants filed an appeal (Exhibit No.#) to the Commission in a timely manner on September 18, 2000 within ten working days of receipt by the Commission of the Notice of Final Action on September 1, 2000.

3. 49-Day Waiver.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The

appeal on the above-described decision was filed on September, 18, 2000. The 49<sup>th</sup> day occurred on November, 6, 2000 and the only meeting entirely within the 49-day period would have been October, 10-13, 2000. In accordance with the California Code of Regulations, on September 19, 2000, staff requested all relevant documents and materials regarding the subject permit from the County, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The County permit file information had not been received as of the day of the mailing of staff reports to the Commission and interested parties on items on the Commission's October meeting agenda. Thus, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question. Consistent with Section 13112 of Title 14 of the California Code of Regulations, since the Commission did not timely receive the requested documents and materials, staff mailed a staff recommendation requesting that the Commission open the hearing on October 11 and continue the hearing open until all relevant materials are received from the local government.

Prior to the scheduled October, 11, 2000 hearing, the Commission received a signed 49-Day Waiver from the applicants' representative, waiving the applicants right to have the Commission open the public hearing within 49 days after filing of the appeal. The appellants requested that the hearing be scheduled instead for the December Commission meeting in San Francisco.

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**I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.**

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

**MOTION:**

I move that the Commission determine that Appeal No. A-1-MEN-00-044 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act.

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the

local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-1-MEN-00-044 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

**II. FINDINGS AND DECLARATIONS.**

The Commission hereby finds and declares:

**A. Appellant's Contentions.**

The Commission received an appeal from Commissioner Sara Wan and Commissioner John Woolley. The project as approved by the County consists of a subdivision creating two parcels of 1.67 acres and 3.57 acres, the extension of water, sewer, and other underground utilities, and development of an access road to each parcel. The property is zoned commercial and is located within the community of Anchor Bay. The appellants' contentions are summarized below and the full texts of the contentions are included as Exhibit No.#.

The appeal raises contentions involving: (1) inconsistency with the public access policies of the County's LCP and the Coastal Act pertaining to the protection of public prescriptive rights of access; and (2) inconsistencies with LCP policies regarding the protection of environmentally sensitive habitat areas (ESHA).

**1) Potential Existence of Prescriptive Rights.**

The parcel is located on a bluff top overlooking the Anchor Bay beach. The appellants contend that the existence of a road and worn trails on this property indicates the potential for the existence of prescriptive rights. They refer to an old road descending across the ocean-facing bluff that contains a well-worn trail from the top of the bluff most of way down to the beach, where the trail is less evident about 15 to 20 feet above the ocean/beach area. It is possible to climb down the eroded areas to the beach. Additionally there is evidence of trails heading north and south along the top of the bluff. They cite LUP policy 3.6-27, which states that where evidence indicates the potential for such rights, the County shall apply the research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights." They contend that the County staff report inadequately addressed public access by stating there were no obvious signs of

consistent past public use and concluding no solid proof of public prescriptive use is evident. They state there is no indication that the County followed the prescribed methods outlined in the Attorney General's Manual. Specifically, the manual states "the most important source of implied dedication evidence is from persons familiar with past and current uses of the property and that an in-depth investigation entails locating and interviewing many potential testimonial witnesses." The appellants contend that it is important to obtain personal accounts and locate where public access has occurred on the property before any subdivision occurs. Without this information, one cannot conclude that the subdivision will "not interfere with the public's right of access to the sea through use....," as required by Coastal Act Section 30211. Furthermore, as the potential for public prescriptive rights of public access may not have been investigated, the appellants contend that it is not clear that the proposed configuration of lots would provide for future building sites that would not interfere with public prescriptive rights of access. Therefore, a substantial issue is raised as to whether the project as approved would interfere with any public prescriptive rights that may exist on the property, inconsistent with Coastal Act Section 30211.

## **2) Environmentally Sensitive Habitat Areas**

The appellants contend that the project as approved by the County raises a substantial issue of compliance with the ESHA protection policies established under Mendocino County LCP policies as the County did not adequately investigate whether a drainage swale through the property contains riparian habitat wetlands that must be protected by a buffer. The subject parcel contains a drainage swale that extends through the property from east to west and descends down to the ocean/beach. The drainage contains vegetation commonly associated with riparian areas including mature willows. The County report states that no unique or protected habitat was observed on the property during a 1991 botanical survey. However, the staff report does acknowledge the existence of a drainage area on the property, stating that while the existing outfall may be a natural drainage path, much of the water that drains through it is from off-site sources, directed by man-made drainage improvements. The report goes on to state that the Statewide Interpretive Guidelines incorporated as an appendix to the certified LUP exempts man-made ditches from protection as wetlands and ESHA.

The appellants point out that the certified LCP ESHA policies do not make a distinction between "natural" and "man-made" wetlands. Both are afforded protection under the certified LCP. The appellants acknowledge that the 1991 botanical survey did not reveal any rare or endangered species within the area, but state that it is not clear that the scope of review of the referenced 1991 botanical survey specifically included wetland vegetation and riparian vegetation. The appellants believe that even if the survey did include such information, the survey was performed nine years ago and may not reflect current conditions. Furthermore, the appellants state there is no indication that the survey was performed for this particular development proposal. Therefore, the appellants assert that a substantial issue is raised as to whether the project as approved is consistent with the requirements of Sections 20.496.015(A) and 20.532.060 that a botanical survey be performed for projects that are located within an ESHA or have the potential to negatively affect the ESHA.

Furthermore, without such information, the appellants contend that a substantial issue is raised as to whether the project as approved is consistent with the ESHA protection policies established under Mendocino County LCP policies 3.1-2, 3.1-7, 3.1-10, and Coastal Zoning Code Section 20.496.020, as the permit does not establish a buffer to protect an ESHA on the property and the project could contribute to cumulative adverse impacts on wildlife habitat.

**B. Local Government Action.**

On August 3, 2000 the Mendocino County Planning Commission approved the project with conditions. The County then issued a Notice of Final Action on the permit, which was received by Commission staff on September 1, 2000 (Exhibit No. 4).

The County attached to its coastal permit a number of special conditions (Exhibit No. 4). Special Condition #1 requires a drainage report be prepared by a civil engineer. Special Condition #3 requires the identification of building envelopes in accordance with the geological study prior to filing the final parcel map. Special Condition #9 states that all natural drainage and watercourses shall be shown as easements on the final parcel map. Minimum width shall be twenty feet or to the high water level, plus five feet horizontal distance. Special conditions #15 requires a landscaping plan for the highway access and banks of the fill and shall be planted with native species that will not block coastal views. Special condition #16 requires that a note shall be placed on the parcel map that states future commercial development of the parcels may require that a public access easement to and /or along the ocean be offered.

**C. Project and Site Description.**

The project consists of the subdivision of an oceanfront 5.3+ acre parcel into two parcels located on the west side of Highway One, just south of the existing commercial core of the community of Anchor Bay (see Exhibits 1-3). The parcel would be divided into two lots of 1.67+ acres and 3.57+ acres. Both parcels would have a frontage along Highway One, and would be oriented to provide each with some ocean frontage. The project also includes the construction of a new access road off of Highway One that would extend from the northeast corner of the property and be contained within a 100-foot wide by 230-foot long easement, ending in a 60-foot radius turnaround. Water and sewer service would be provided to each parcel, as well as electrical, telephone, and cable service, all of which would be buried underground.

The property is designated in the Land Use Plan (LUP) and zoned under the Coastal Zoning Ordinance as Commercial. This designation and zoning district allows for both visitor serving commercial uses as well as other kinds of commercial uses. The Commercial zoning district also allows residential uses as a conditional use. A portion of the site is within the Flood Plain Combining District, although the only identified portion

of the site subject to periodic inundation is the tidal area west of the bluff. The site is the furthest extension of the commercially zoned area of Anchor Bay, although the immediate surrounding land uses are residential, with the commercial core of Anchor Bay lying approximately 700 feet to the north. Section 4.12 of the Land Use Plan provides the following specific guidance with respect to land use at Anchor Bay:

“The cluster of subdivisions at Anchor Bay occupies high bluffs on either side of Fish Rock Creek. However, Anchor Bay’s compact commercial area turns its back on the Pacific and does not take advantage of the views. Overnight accommodations or a restaurant with a view deck should be built on the bluff top. Anchor Bay’s proximity to Gualala, 3.5 miles south, limits the need and opportunity for additional businesses.”

A note on the tentative map states that the use of the land to be subdivided will be a mix of residential and commercial uses. However, neither the precise uses that would be included in the mix nor a specific development plan were submitted as part of the application to the County.

The property is vacant except for certain sanitary sewer line facilities within easements held by the local sewer district. These facilities include an underground sewer main line that traverses the property north to south, an approximately 600-square-foot pump station building near the southwest corner of the property, and an access road from Highway One to the pump station along the southern boundary of the property.

The property occupies a portion of the coastal terrace, which slopes gently to the southwest to the coastal bluff. The bluff drops steeply approximately 60 to 80 feet down to the ocean. Remnants of an old road cut descend southerly from the northwest corner of the proposed parcel 1 across the bluff face. The cut fades at a point approximately 15 to 20 feet above the tidal area. The property lies at the southern end of Anchor Bay Beach, a curvilinear sandy beach that extends along the approximately half mile long shoreline of the bay.

The site is mostly vegetated by grasses and larger pines. A botanical survey conducted in 1991 as part of a separate boundary line adjustment did not reveal any rare or endangered species. A drainage swale passes through the property in a northeasterly to southwesterly direction before dropping precipitously down to the beach (see Exhibit No. 3). Some willows exist within parts of the drainage swale.

The site is not designated as a “highly scenic area,” but it is within the “special community of Anchor Bay. The Coastal Zoning Ordinance states that new development within special communities must be within the scope and character of the surrounding development, and public coastal views shall be protected. Although glimpses of blue

water views are afforded through the property from Highway One, the pine trees on the property mostly obscure views to the ocean from the highway.

**D. Substantial Issue Analysis.**

Section 30603(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Both of the contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding (1) potential existence of prescriptive rights; and (2) environmentally sensitive habitat areas. The Commission finds that both of these contentions raise a substantial issue, for the reasons discussed below.

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

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

The term substantial issue is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to both allegations (a and b below) a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP.

#### **Allegations Raising a Substantial Issue**

The appellant contends that as approved, the project raises a substantial issue of consistency with Mendocino County's Local Coastal Plan (LCP) and the public access policies of the Coastal Act pertaining to the protection of potential prescriptive rights of access and the protection of environmentally sensitive habitat areas (ESHA).

#### **a. Existence of Public Prescriptive Rights.**

The appellants contend that the approved project raises a substantial issue of conformance with Mendocino County's Local Coastal Plan (LCP) and the public access policies of the Coastal Act pertaining to the protection of public prescriptive rights of access. They contend that the potential for public prescriptive rights of public access use may not have been adequately investigated, and therefore it is not clear that the proposed configuration of lots would provide for future building sites that would not interfere with any public prescriptive rights of public access. Section 30211 mandates that new development not interfere with the public's right of access where acquired through use. The Coastal Act (Sections 30210-30212) establishes policies requiring maximum public access to and along the coast. In addition, Chapter 3.6 of Mendocino County's LCP establishes specific policies governing prescriptive rights investigations, the provision of public access, and recreational opportunities along the Mendocino Coast.

#### **Coastal Act Policies**

##### **Section 30210**

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities*

*shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

- (1) It is inconsistent with public safety, military security needs, or the protection of Fragile coastal resources,*
- (2) Adequate access exists nearby, or,*
- (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Mendocino County's LCP Policies

Policy 3.6-5 requires that access be obtained, either voluntarily or through a condition requiring an offer of dedication, for coastal development permits. In detail, it states that:

*"Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a nonprofit land trust may be helpful and should be explored in the future. If other methods for obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking area, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Coastal Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued."*

Policy 3.6-6 calls for access points to be at frequent rather than infrequent intervals along the coast.

Policy 3.6-9 requires an offer of dedication as a condition of permit approval where access is shown on the Coastal Plan Map.

LUP Policy 3.6-27 states that:

*No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights." Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of approval...*

Policy 3.6-28 requires an offer of dedication as a condition of new development. Specifically, it states:

*"New development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement, as required by other policies in this Chapter, for public use. Such offers shall run for a period of 21 years and shall be to grant and convey to the people of the State of California an easement for access over and across the offeror's property."*

Policy 4.12-11 deals with public access in the Anchor Bay Campground. It states:

*"A guarantee of continued fee access to the public as well as guests shall be acquired consistent with Policy 3.6-5 together with a provision for obtaining a non-fee accessway if the visitor serving facility should be changed to another use."*

These policies are reiterated in the County Coastal Zoning Ordinance in Chapter 20.528.

#### Discussion

The above LCP policies provide for the regulation of new development to protect potential prescriptive rights of public access. Mendocino County Land Use Plan Policy 3.6-27 states that where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights." This policy also states that where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of approval.

Section 30211 states, in part, that "Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization." Applicants for coastal development permits must demonstrate that their proposed developments are consistent with the Coastal Act, including the requirements of Section 30211. In implementing this section of the Act the permitting agency, either the Commission or the local government where there is a certified LCP, must consider whether a proposed development will interfere with or adversely affect an area over which the public has obtained rights of access to the sea. If the agency finds that there may be such an interference or effect, then it also must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use. Because the authority to make a final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues should use the same analysis as the courts. Essentially, this requires the agencies to consider whether there is substantial evidence indicating that the basic elements of an implied dedication are present. The agencies also must consider whether the applicant has demonstrated that the law prevents the area from being impliedly dedicated, even if the basic elements of implied dedication have been met.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition of such an easement by the public is referred to as an "implied dedication." The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from along-delayed assertion of rights. the rule establishes a statute of limitation, after which the owner cannot assert formal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- a. The public has used the land for a period of five years or more as if it were public land;
- b. Without asking for or receiving permission from the owners;
- c. With the actual or presumed knowledge of the owner;
- d. Without significant objection or bona fide attempts by the owner to prevent or halt the use, and

- e. The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with 30211, the Commission or the applicable local government cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law.

However, the Commission or the applicable local government is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission or the applicable local government must ensure that proposed development would not interfere with any such rights.

As noted in the project description, the subject property is located at the southern end of Anchor Bay Beach, a long curvilinear sandy beach that extends along virtually the entire shoreline of the bay that gives its name to the community of Anchor Bay. This beach is physically inaccessible for most of its length except via a privately owned accessway through the Anchor Bay Campground that the public may use upon payment of a day use fee. The beach is also physically accessible through the subject property. As noted in the County staff report, remnants of an old road cut descend southerly from the top of the 60 to 80-foot-high bluff at the northwest corner of the proposed parcel 1 across the bluff face. During a visit to the site after receipt of the appeals, Commission staff noted that there is a well-worn trail on this road. The road cut fades at a point approximately 15 to 20 feet above the tidal beach. Although this lowest portion of the old road cut has eroded to the point where one cannot easily walk down it to the beach, one can scramble down this feature to get to the beach. Elsewhere on the subject property and other properties fronting on the beach, the bluffs are generally too steep to allow access down to the beach. During its site visit to the subject property, Commission staff also noted that other trails head north and south along the top of the bluff and through the property to the pump station access road and to Highway One. The existence of the road cut down the face of the bluff and the well-worn trail on the road cut and elsewhere on the subject property raise the possibility that substantial public use of the property may have occurred in the past.

There are some limitations that prevent property from being impliedly dedicated, even if the basic elements of implied dedication have been met. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, he must either affirmatively prove he has granted the public a license to use his property or demonstrate that he made a bona fide attempt to prevent public use. Thus, persons using the property with the owner's "license" (e.g., permission) are not considered to be a "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to accrue. If only a limited and definable number of

persons have used the land, those persons may be able to claim a personal easement but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

Section 813 of the Civil Code, adopted in 1963, allows owners of property to grant access over their property without concern that an implied dedication would occur if they did not take steps to prevent public use of the land. Section 813 provides that recorded notice is conclusive evidence that subsequent use of the land, during the time that such notice is in effect, by the public for any use or for any purpose is permissive.

The County staff report and the local record provide no indication whether such a notice has been recorded against the property.

The County staff report indicates that an easement exists over the property for "right for ingress and egress to and from the Pacific Ocean and that this easement was conveyed to the Anchor Bay Subdivision in 1961. The County staff report also indicates that this easement cannot be physically located on the property today and it is unclear what portion of the property is affected by the easement. Given the existence of this easement, it is possible that whatever use of the property for access purposes that has been made in the past may have been only by grantees of the easement. If that is the case, then there may be no basis for determining that substantial evidence of public prescriptive rights exist as such use would not be by the public at large without the permission of the owner. However, there is insufficient information in the local record to determine what use of the property may have been made of the easement by the easement holders and what other use of the property may have been made by members of the public that are not easement holders. The fact that some easement holders may have used the property for public access purposes pursuant to the easement does not necessarily mean that non-easement holders have not used the property in a manner that could create public prescriptive rights.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code section 1009. Civil Code section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean and its bays and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1,000 yards of the sea; therefore,

the required five year period of use need not have occurred prior to March of 1972 in order to establish public rights.

It is important to note that section 1009 explicitly states that it is not to have any effect on public prescriptive rights existing on the effective date of the Statute (March 4, 1972). Therefore, public use of property for the prescriptive period prior to the enactment of section 1009 or utilization of application procedures set forth in the section is sufficient to establish public rights in the property.

A prescriptive rights investigation could have enabled the County to determine whether any notices that would preclude potential prescriptive rights from accruing over the property were ever recorded and whether any use of the site by members of the public who are not easement holders was of a nature that could create potential prescriptive rights. As noted above, LUP Policy 3.6-27 states that where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights." The County staff report does not discuss the project's consistency with this policy in discussing why the County staff did not recommend public access. There is no indication in the staff report that the County applied the research methods for investigating potential prescriptive rights described in the Attorney General's manual. Instead, the County staff report states that "no solid proof of prescriptive use is evident," and simply concludes that the "staff does not believe that the nexus to exact a public access easement can be made for this project."

The significance of the coastal resource affected by the County's action on the coastal development permit application is great. There are relatively few sandy beaches available for public access use along the rocky Mendocino County coastline. The extensive Anchor Bay Beach is currently only accessible to the public by the payment of a fee through the Anchor Bay campground at a location approximately 1/4-mile north of the site. This access at the campground is not guaranteed for the future. No recorded easement would preclude the campground owner from barring public access use in the future.

Therefore, as the existence of the road cut to the beach and well worn trails across the property provides evidence of potential public use of the property, and as there is no evidence in the record that the County performed a prescriptive rights investigation using the methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights, the Commission finds that a substantial issue exists as to the conformance of the project as approved with LUP Policy 3.6-27 and Section 30211 of the Coastal Act.

As noted above, Section 30211 of the Coastal Act provides that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Mendocino County Land Use Plan Policy 3.6-27 states in part, that no development shall be approved on a site which will conflict with easements acquired by the public at large by court decree, and where research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of approval.

The County did not require public access as a condition of approval of the project. The County did, however, include a condition requiring that a note be placed on the Parcel map that states that future commercial development of the parcels may require that a public access easement to and/or along the ocean be offered. As the County indicates, the local record for the project does not contain sufficient evidence of historic public use of the site to require a public access easement on the basis of protecting public prescriptive rights. However, whether substantial evidence of such use exists has not been thoroughly investigated by the County. As no prescriptive rights investigation of the site has been performed for the site, it is also not clear just which portions of the property could be affected by public prescriptive rights.

The proposed development includes the construction of a private access road off of Highway One. It is possible that the road could be constructed across old trails previously used by the public to gain access to the shoreline. If substantial evidence of public prescriptive rights of access were to exist on such trails, the road could interfere with the public's use of the trails. In addition, without knowing which areas of the project site, if any, are potentially affected by public prescriptive rights of access, it is not possible to determine whether sufficient building sites that would not interfere with any public prescriptive rights exist on each of the two parcels to be created by the land division. Future development of the parcels for a visitor serving facility consistent with the zoning for the site and the text policies of the Land Use Plan would require a relatively large space. Given the other building constraints that apply to the site such as needing to ensure a sufficient setback from the bluff to ensure the geologic safety of any structure constructed, the possible need to avoid any ESHA that may exist on the property and provide for any needed buffer, if substantial evidence of public prescriptive rights were found to affect a large portion of the subject property, it may be difficult to find an adequate building site.

Performing a prescriptive rights investigation would have enabled the County to determine whether substantial evidence of historic public use of the site exists and if there are portions of the property that an offer to dedicate a public access easement should be provided as a condition of approval of the project. As no prescriptive rights investigation of the site has been performed for the site, there is no factual and legal support for the local government's decision that the development, as approved without public access, is consistent with Section 30211 of the Coastal Act and LUP Policy 3.6-27. The

Commission finds that a substantial issue exists as to whether the project conforms with the provisions of LUP Policy 3.6-27 and Section 30211 of the Coastal Act which state that development shall not interfere with the public's right of access to the sea where acquired through use.

**b. Environmentally Sensitive Habitat Areas**

The appellants assert that in its review of the proposed project, the County did not adequately evaluate whether the drainage swale that runs through the property may be a riparian or wetland habitat. The appellants contend that a substantial issue is raised as to whether the project as approved is consistent with the requirements of Sections 20.496.015(A) and 20.532.060 that a botanical survey be performed for projects that are located within an ESHA or have the potential to negatively affect the ESHA. Furthermore, without such information, the appellants contend that a substantial issue is raised as to whether the project as approved is consistent with the ESHA protection policies and standards established under Mendocino County LUP policies 3.1-2, 3.1-7, 3.1-10, and Coastal Zoning Code Section 20.496.020, as the permit would not establish a buffer to protect an ESHA on the property and the project could contribute to cumulative impacts on wildlife habitat.

Mendocino County Local Coastal Plan

Policy 3.1-2 states in applicable part:

*Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plan or wildlife habitats (all exclusive of buffer zones) including but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource...*

Policy 3.1-7 states in applicable part

*A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments....*

Policy 3.1-10 states in applicable part:

*Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such area shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation*

*removal and grading which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor...*

The Definition Section of Chapter 3.1 Contains the Following Definition of Wetlands

**Wetlands.** Lands which may be covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are extremely fertile and productive environments. Tidal flushing from the ocean and/or nutrient-rich freshwater runoff mix to form a delicate balance responsible for their productivity. They function as nurseries for many aquatic species and serve as feeding and resting areas for waterfowl, shorebirds and wading birds, as well as a few rare and endangered species.

The edge or upland limit of wetlands is designated by the California Coastal Commission guidelines on wetlands as: (a) the boundary between land with predominantly hydrophytic (adapted to wet conditions) cover and land with predominantly mesophytic (adapted to average conditions) or xerophytic (adapted to dry conditions) cover; (b) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or, in the case of wetlands without vegetation or soils; (c) the boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not. Areas with drained hydric soils that are no longer capable of supporting hydrophytes (species adapted to wet conditions) are not considered wetlands.

This definition is repeated in the Glossary of the Land Use Plan and in the Coastal Zoning Ordinance

Mendocino County Coastal Zoning:

Section 20.496.010 states in applicable part:

*Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and animals.*

Section 20.492.015 states in applicable part:

**(A) Determining the Extent of ESHA.** *The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact ESHA if:....*

*(3) The development is proposed to be located within one-hundred feet of an environmentally sensitive habitat and/or has the potential to negatively impact the long-term maintenance of the habitat, as determined through project review.*

*Development proposals in ESHA's including but not limited to those shown on the coastal land use maps, or have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The biological survey shall be submitted for the review and approval of the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey shall be prepared as described in Section 20.532.060, "Environmentally Sensitive Habitat Area- Supplemental Application Procedures."*

Section 20.496.020 states in applicable part:

*ESHA- Development Criteria*

*(A) Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

*(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width.*

*Configuration of the buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of riparian vegetation or the top of the bluff).*

Section 20.532.060 states in applicable part:

*Environmentally Sensitive Habitat Area – Supplemental Application Procedures*

*Additional project information shall be required for development within an Environmentally Sensitive Habitat Area (ESHA) and may be required for any development within five hundred (500) feet of an ESHA if the development is determined to have the*

*potential to impact an ESHA. Additional requirements may include one or more of the following:*

*(A) Topographic Base Map. . . .*

*(B) Inundation Map. . . .*

*(C) Vegetation Map. . . .*

*(D) Soils Map. . . .*

*(E) Report of Compliance. . . .*

Discussion

The above LCP policies provide for the regulation of new development to protect Environmentally Sensitive Habitat Areas (ESHA). The Mendocino County Coastal Zoning Code Section 20.496.010 defines ESHA's as including wetlands and riparian areas and establishes buffers to protect them. Zoning Code Section 20.496.015 (A) states that developments that have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The survey must be approved by the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey must be prepared as described in Section 20.532.060 and include a topographic base map, an inundation map, a vegetation map, and a soils map. LUP Policy 3.1-7 and Zoning Code Section 20.496.020 require that buffer areas shall be established adjacent to all environmentally sensitive habitat areas to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. Section 20.496.020 states that the width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development, in which case the buffer can be reduced to not less than fifty (50) feet in width.

The drainage swale that the appellants contend was not adequately protected as ESHA in the County's review of the project crosses the property from a drainage culvert under Highway One near the southeast corner of the property to the bluff face near the northwest corner of the property. As can be seen in Exhibit No. 3, the swale follows a natural drainage, as evidenced by its location crossing the middle of a curving section of the topographic contours.

Coastal Zoning Ordinance Section 20.496.010 also states that "*Environmentally Sensitive Habitat Areas (ESHA's) include... wetlands, riparian areas.*" The appellants contend that the drainage

swale contains wetland areas and riparian vegetation, and therefore may be an ESHA. The LCP definition of wetlands (see above) is very similar to the definition of wetlands in the Coastal Act and in the Commission's administrative regulations. These definitions require the presence of hydrophytic vegetation, or hydric soils, or hydrology for an area to be defined as a wetland. The appellants contend that because the swale contains water at certain times of the year and contains some wetland plants, the swale likely constitutes a wetland. LUP Policy 3.1-10 states that "*Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas.* Because the drainage swale contains some riparian vegetation, including willows, the appellants contend the swale is an ESHA pursuant to LUP Policy 3.1-10.

If the drainage swale does constitute ESHA, the approved development could adversely affect the ESHA in at least a couple of ways, thereby raising a substantial issue of conformity with the ESHA protection policies of the certified LCP. First, the approved driveway improvements would encroach very close to the drainage swale. Exhibit No. 3 shows that the right-of-way encroaches to within approximately 10 feet of the centerline of the drainage swale. The encroachment is well within the buffer that the LUP Policy 3.1-7 and Zoning Code Section 20.496.020 mandate be established adjacent to all ESHA, even if the buffer were allowed to be established with the minimum 50-foot width mandated by Zoning Code Section 20.496.020, instead of the normal 100-foot width. The grading involved in creating the driveway would subject the drainage swale to sedimentation and would eliminate any transitional habitat value the buffer would have. The second way the approved development could adversely affect the ESHA, is by creating a need for a future crossing of the drainage swale. The approved parcel configuration leaves very little developable area on the southerly of the two parcels to be created (Parcel 2) that is between the approved access driveway and the drainage swale. Most of the developable portion of Parcel 2 is south of the drainage swale. If this area were to be used for future development and gain access from the access road to be developed, some sort of crossing of the ESHA would be required. A crossing would not be needed if the small area of Parcel 2 north of the drainage could be developed. However, developing this area may be problematic if not infeasible when the various site constraints to development are taken into account, including the ESHA buffer area along the drainage swale, required setbacks from Highway One and the access driveway, and the steep topography along the eastern edge of the parcel. Developing a crossing of the drainage swale could remove riparian vegetation, fill portions of the wetlands, contribute sedimentation to the stream, and eliminate habitat area.

In approving the proposed development, the County did not consider the drainage swale to be ESHA. The County staff report addresses the drainage swale with the following statement:

"A review of all existing data resources did not reveal any unique or protected flora or fauna on the property, or the immediate vicinity. A botanical survey conducted on the property for the boundary Line Adjustment done in 1991 did not reveal any rare or endangered species within the area now subject of this division request. While the site does have storm drainage passing through the property, no unique or protected habitat was

observed. The Department of Fish and Game did not comment on the project. Finally, it should be noted, that the Statewide Interpretive Guidelines, Appendix D, which provides criteria for identifying wetlands and environmentally sensitive habitat areas, provides an exemption for man-made ditches.

While the existing outfall may be a natural drainage path, much of the water that drains through it is from off-site sources, directed by man-made drainage improvements. The mitigation proposed by the Geotechnical Report and in Conditions Number 1 and 2, noted above, should not significantly impact any wildlife or plant life resources. The project will, however, from a cumulative impact standpoint, contribute incrementally to the loss of wildlife habitat resources...."

Thus, in its approval of the project, the County did not afford the drainage swale the status of ESHA. The County noted that a 1991 botanical survey of the property did not identify the drainage swale as ESHA. In addition, the County apparently determined that because the swale received drainage from man-made drainage improvements off-site, and because the State wide Interpretive Guidelines that have been incorporated into the County's Land Use Plan exclude man-made ditches as wetlands and environmentally sensitive habitat areas, the swale could be neither a wetland nor a riparian area. The County did not require that a wetlands survey be submitted by the applicants during the County's review of the proposed project and did not impose conditions in the approval that would protect the swale area from development.

However, a substantial issue exists as to whether the reasons cited by the County for not addressing the drainage swale as an ESHA are valid. The 1991 Botanical survey referred to by the County was performed for a previous boundary line adjustment. A copy of the survey is attached as Exhibit Z. The survey does not purport to be a wetland survey, and does not include any soil or hydrological information. The survey indicates that some vegetation that is commonly found in wetlands exists within the swale area. The certified definition of wetlands in the LCP indicates that the presence of either the necessary hydrologic conditions, wetland vegetation, or hydric soils may qualify an area as a wetland. Thus, to rule out a site as a wetland, a wetland survey would have to examine all three factors. As the 1991 botanical survey did not examine soils and hydrology, and did not fully survey the drainage swale for wetland vegetation, the botanical survey is inadequate to serve as a wetland survey. Furthermore, the survey was not conducted for the current project, but an earlier project in 1991. This nine year old survey may not reflect current conditions at the site.

The 1991 survey does say that "The plant species colonizing the man made drainage ditch would, along a natural watercourse, be interpreted as riparian. The fact that they are growing in a man made drainage ditch is incidental. The drainage ditch does not represent a natural watercourse and had no flowing water at the time of the survey." However, the County's determination, and the determination of the author of the 1991 Botanical Survey that the drainage swale should not be characterized as ESHA in part because some of the drainage water that flows through the drainage

swale comes from man-made sources is not rooted in LCP policies. The certified LCP ESHA policies do not make a distinction between "natural" and "man-made" wetlands. The definition of wetlands in the certified LCP contains no language distinguishing between natural and man-made wetlands. LUP Policy 3.1-2 and Zoning Code Section 20.496.010 state that wetlands are ESHA without distinguishing between natural and man-made wetlands. Wetlands are afforded protection under the LCP, whether natural or man-made.

Finally, the County's determination that the drainage swale is not a wetland under the Coastal Commission's Statewide Interpretive Guidelines is not supported by a review of the guidelines that have been incorporated into the LCP. The Commission's Statewide Interpretive Guidelines would not normally be applicable to the review of development outside of the Commission's retained jurisdictional area. However, the Guidelines were incorporated into the certified Mendocino County LCP as Appendix 8 of the Land Use Plan. The Interpretive Guidelines contain a section entitled "Technical criteria for identifying and mapping wetlands and other wet environmentally sensitive habitat areas." There is a footnote in this section that states that "drainage ditches as defined herein will not be considered wetlands under the Coastal Act. A drainage ditch shall be defined as a narrow (usually less than 5-feet wide), manmade non-tidal ditch excavated from dry land." There is no evidence in the local record that the drainage swale is a man-made ditch excavated from dry land. Instead, as noted previously, the drainage swale follows a natural depression in the topography. The drainage area may contain water that has been redirected from a culvert or drainage structure associated with Highway One, but there is no evidence that the drainage swale was excavated as defined in the limited exemption of the interpretive guidelines. Therefore, the drainage swale is not exempted from being considered a wetland by the referenced footnote in the Interpretive Guidelines that have been incorporated into the LCP.

Therefore, the factors cited by the County do not provide a basis for not protecting the drainage swale as an ESHA. If the swale contains wetlands or riparian habitat as defined in the LCP, the drainage swale should be addressed as an ESHA in the review of any proposed development for the site. As noted previously, Zoning Code Section 20.496.015 (A) states that developments that have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The survey must be approved by the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey must be prepared as described in Section 20.532.060 and include a topographic base map, an inundation map, a vegetation map, and a soils map.

As discussed above, the drainage swale contains resources that suggest that the feature is a wetland and/or riparian habitat, and the fact that some of the water that flows through the swale was diverted to the site by man-made improvements and that the certified LCP contains language stating that drainage ditches are not wetlands does not disqualify the drainage swale from being considered as ESHA. As also discussed above, the approved development includes roadway

improvements that would encroach upon the drainage swale and the approved configuration of lots may necessitate the future construction of a driveway across the drainage swale. Thus, the approved development has the potential to impact an ESHA. However, the County did not require that a wetlands survey or current botanical survey be submitted by the applicants during the County's review of the proposed project. Without such a survey, the Commission finds that there is insufficient factual and legal support for the County's decision that the development is consistent with the ESHA protection policies of the certified LCP. Therefore, a substantial issue is raised as to whether the project as approved is consistent with the requirements of Sections 20.496.015(A) and 20.532.060 of the certified Implementation Plan that a botanical survey be performed for projects that are located within an ESHA or have the potential to negatively affect the ESHA. Furthermore, without such a biological survey, a substantial issue is raised as to whether the project as approved is consistent with the ESHA protection policies established under Mendocino County LCP policies 3.1-2, 3.1-7, 3.1-10, and Coastal Zoning Code Section 20.496.020, as the permit would not establish a buffer to protect a potential ESHA on the property.

#### Conclusion

The Commission finds that the project as approved by the County raises a substantial issue with respect to its conformance with LCP policies and Coastal Act policies pertaining to the protection of public prescriptive rights of access, and with LCP policies regarding the protection of environmentally sensitive habitat areas.

#### **E. Information Needed for de Novo Review of Application**

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

Given that the project the Commission will be considering de novo has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP and the public access and public recreation policies set forth in the Coastal Act. Following is a discussion of the information needed to evaluate the development.

### **Public Prescriptive Rights Information**

As discussed previously, the project raises a substantial issue of conformance with LUP Policy 3.6-27 and Section 30211 which require that development not interfere with the public's right of access to the sea where acquired through use. Information necessary to determine whether substantial evidence of public prescriptive rights of access may have accrued over the property includes not only information regarding the use of the property by the public as if the property was public, but also information regarding actions that the property owners have taken to prevent a public right of access from accruing over the property. Before the Commission could act on the project de novo, the Commission would need to conduct an investigation of public prescriptive rights of access to the sea. To proceed with an investigation of public prescriptive rights, the Commission would need to receive from the applicant the following information:

1. Whether a notice of permissive use of the property has ever been recorded against the property pursuant to Civ. Code Section 813 or Civ. Code Section 1008.
2. Whether the applicants and previous owners of the land has posted any signs or fences in an attempt to control public use of the property, including: (a) the specific language, number, locations, prominence, dates of posting, and state of repair of any signs, and (b) the location, date of installation, date of removal, and state of repair of any fences;
3. Any other evidence of the landowner's attempt to control public use of the property;
4. A map and legal description of the easement over the property for ingress and egress to and from the Pacific Ocean that according to the County staff report was conveyed to the Anchor Bay Subdivision in 1961.

### **Environmentally Sensitive Habitat Area Surveys**

As discussed previously, the project raises a substantial issue of conformance with the policies of the LCP regarding ESHA habitats such as wetlands. The impacts to ESHAs cannot be properly assessed because wetlands within the project area have not been adequately delineated. The applicant did not delineate wetlands as defined by the LCP. To properly determine the extent of all wetlands in the project area, a wetland evaluation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be prepared. It should be noted that part of this procedure includes topographic maps delineating the area surveyed, extent of the wetland, extent of the riparian habitat, and the 100 foot-buffer zone around the outer edge of the riparian. The applicant must retain a biological consultant as listed by the County of Mendocino's Planning and Building Department as qualified to conduct wetlands determinations.

Without the above information, the Commission cannot reach a final determination whether substantial evidence of public prescriptive rights of access or ESHAs would be sufficiently protected by the project consistent with the policies of the LCP and the public access and recreation policies of the Coastal Act.

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Proposed Land Division
4. Notice of Final Action and Findings and Conditions of Approval
5. Appeal to Commission, September 18, 2000
6. 1991 Botanical Survey
7. Correspondence

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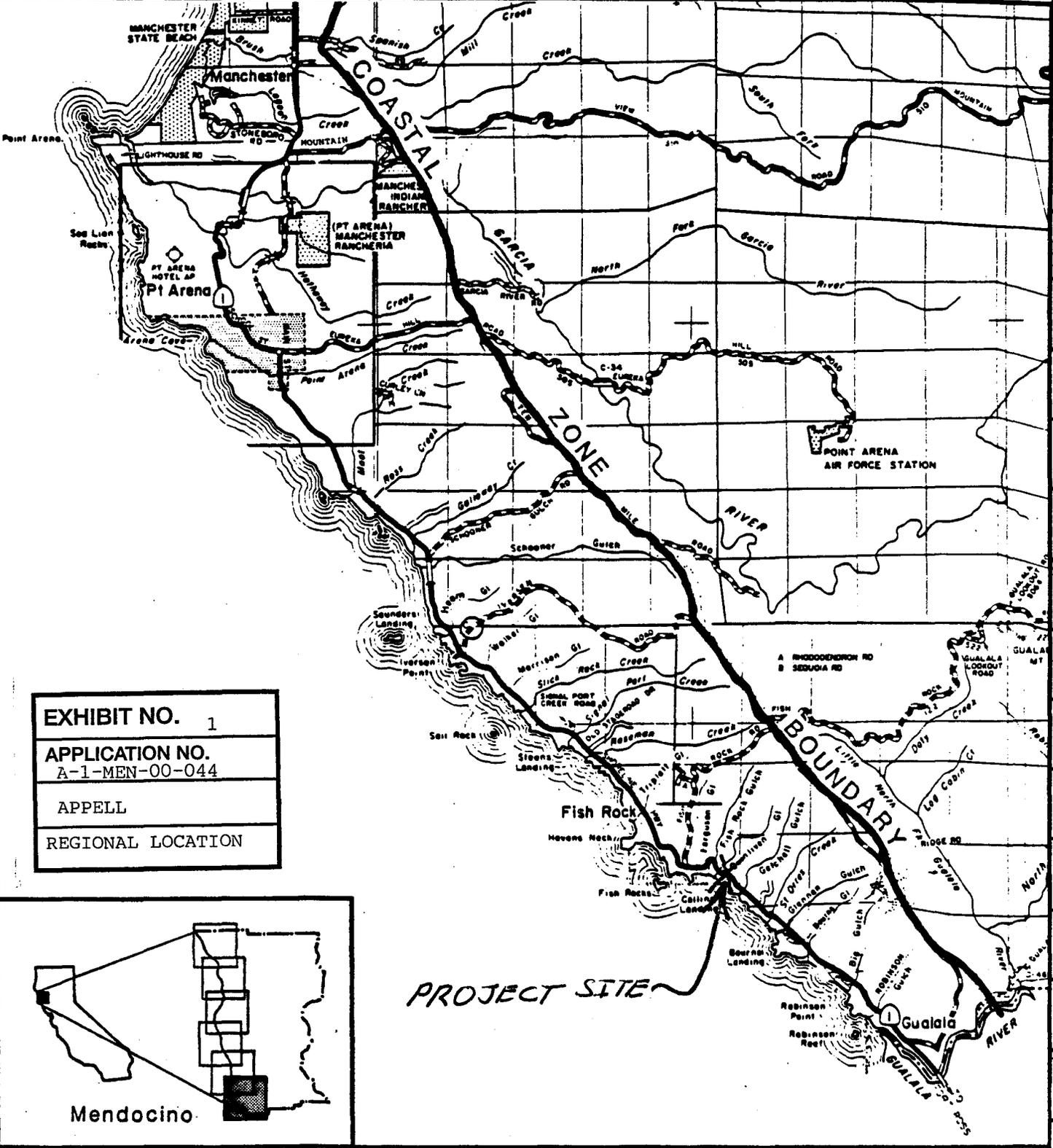
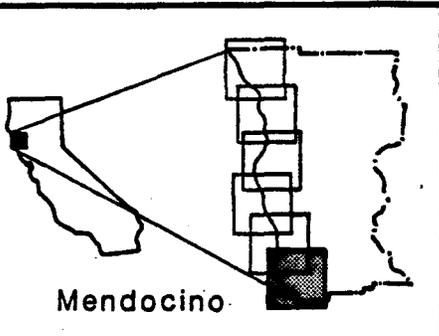


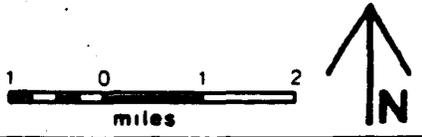
EXHIBIT NO. 1
APPLICATION NO. A-1-MEN-00-044
APPELL
REGIONAL LOCATION



PROJECT SITE

California Coastal Commission

LOCATION MAP



RMR-40-DL

Woodys Ln  
Forest Ct.  
Meadow Ln.

Boy View Dr.

RR-5-PD  
RR-1-PD

RR-5  
SR 6.000  
PF

RR-10

RR-5

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SITE

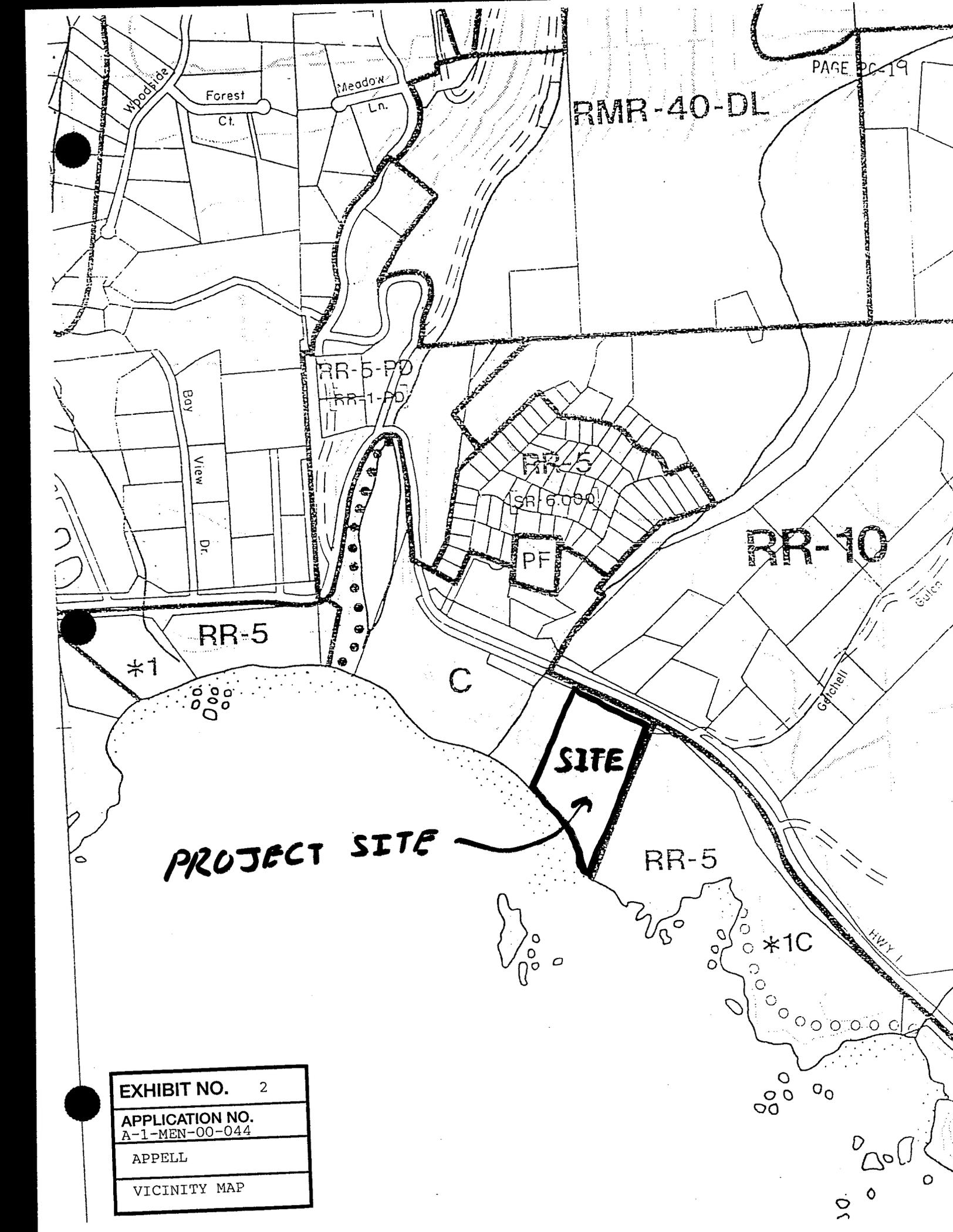
PROJECT SITE

RR-5

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HWY 1

EXHIBIT NO.	2
APPLICATION NO.	A-1-MEN-00-044
APPELL	
VICINITY MAP	



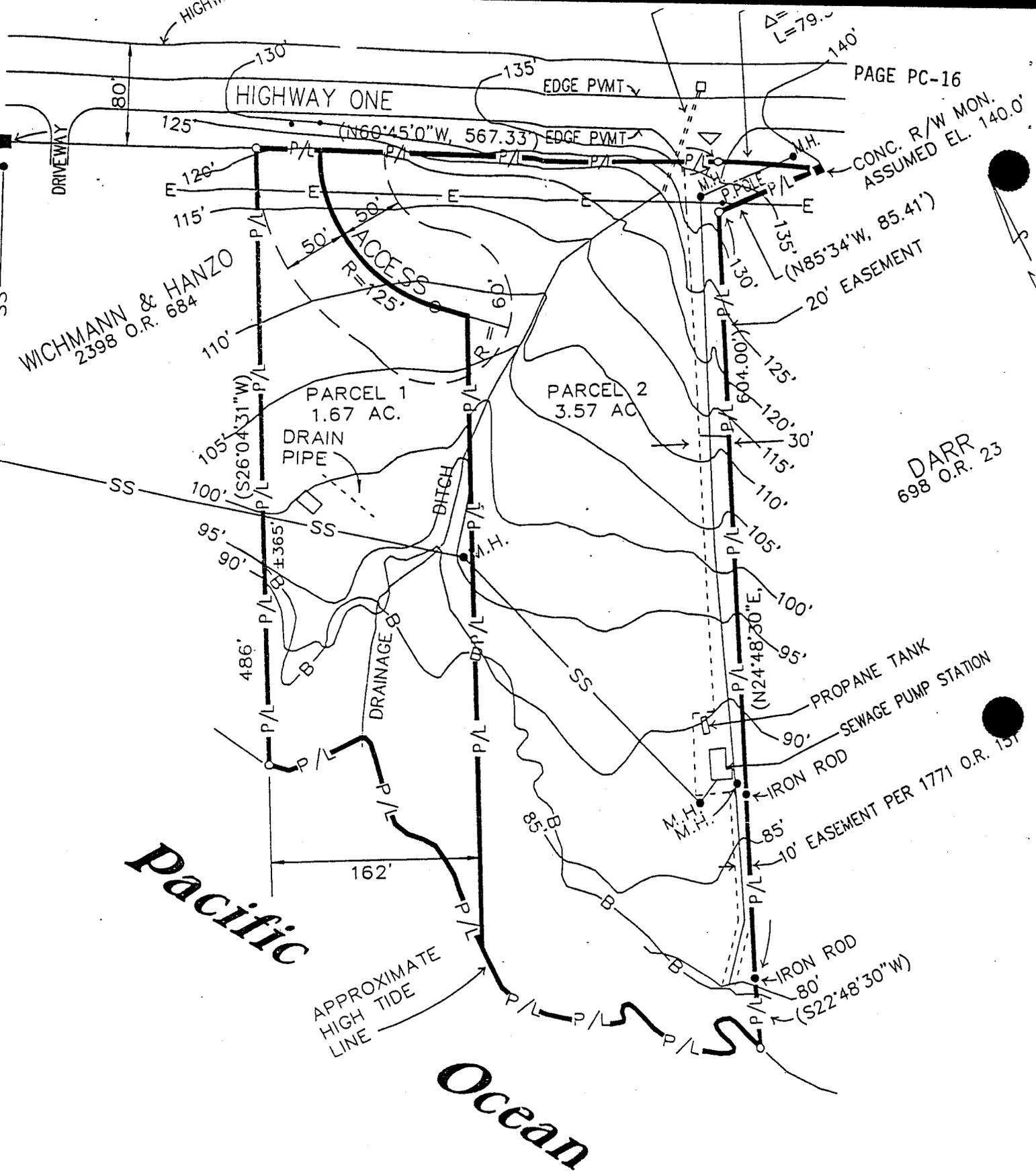


EXHIBIT NO. 3
APPLICATION NO. A-1-MEN-00-044
APPELL
PROPOSED LAND DIVISION



COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES  
501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR  
Telephone 707-463-4281  
FAX 707-463-5709  
pbs@co.mendocino.ca.us  
www.co.mendocino.ca.us/planning

RECEIVED  
SEP 01 2000

August 29, 2000

CALIFORNIA  
COASTAL COMMISSION

**NOTICE OF FINAL ACTION**

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

**CASE#:** CDMS 16-99 (Revised)

**DATE FILED:** April 6, 2000

**OWNER:** LOUIS AND DEBRA APPELL

**AGENT:** DAVID PAOLI

**REQUEST:** Coastal Development Minor Subdivision to create two lots of 1.67+- acres and 3.57 acres. The project will also include extension of water and sewer services, and other underground utilities, and development of an access road to each parcel.

**LOCATION:** In the Coastal Zone, in the Community of Anchor Bay, between Highway One and the Pacific Ocean, 400+- feet northwest of the intersection of Highway One and Getchell Gulch Road (Private); AP# 144-070-13 (formerly 144-070-02).

**PROJECT COORDINATOR:** Frank Lynch

**ACTION TAKEN:**

The Planning Commission, on August 3, 2000, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

**Attachments**

cc: Louis and Debra Appell  
David Paoli  
Law Offices of John Ruprecht  
Coastal Commission  
Assessor

<b>EXHIBIT NO.</b>	4
<b>APPLICATION NO.</b>	A-1-MEN-00-044
<b>APPELL</b>	
<b>NOTICE OF FINAL ACTION</b>	(1 of 19)

**MENDOCINO COUNTY PLANNING COMMISSION  
DRAFT MINUTES  
AUGUST 3, 2000**

**5A. CDMS 16-99 – APPELL – In Anchor Bay**

Request: Coastal Development Minor Subdivision to create two lots of 1.67+- acres and 3.57 acres. The project will also include extension of water and sewer services, and other underground utilities, and development of an access road.

Mr. Lynch reviewed the staff report and correspondence.

Mr. David Paoli, Agent for the project, handed out a map showing the access road design. He also displayed an aerial map of the proposed property to show coastal access trails. He showed a video displaying the old cut of the existing access trail. He noted that all the trails and stairs in the video are privately owned.

Commissioner Barth questioned if the trailer park allows access for day use. She also noted that Anchor Bay is hard on restaurants and questioned what would be the proposed use of the parcels created.

Mr. John Ruprecht, Legal Counsel of the owners, felt that the issue of coastal access should not be addressed at the subdivision level. He felt that the coastal access would have severe safety issues. He also noted that the existing trail bisects the property.

In response to Chairman McCowen, Mr. Paoli noted that building envelopes would have to be 50 feet away from the bluff. The building envelope for Parcel 1 would have to be close to the access road and the building envelope for Parcel 2 could be farther off the highway.

Mr. Ruprecht noted that coastal access at the campground is approximately 700 feet from the Appell property so coastal access is close..

The public hearing was declared open.

Jim Lotter, Gualala Municipal Advisory Council (GMAC), noted that GMAC approved the project at first with conditions. When the recommended conditions were not met, GMAC recommended denial. He also noted that the Citizen Advisory Committee (CAC) in 1985 noted that this area is a prime area for beach access in Anchor Bay. He stated that the campground has no deeded easement and without an agreement from the property owner there could be a lack of access to the Anchor Bay beach. He also expressed concerns of the road configuration into Highway 1. He felt that a 15 percent grade would have sight distance problems. He would like to see a lower slope, longer road constructed. He also noted that the staff report had no provisions for sidewalks. If no agreement was made with the property owners, there could be no connection to the Gualala-Anchor Bay trail. He noted that years ago someone cut a road to launch boats from the beach. He felt that it would take little effort to restore the trail. In response to Commissioner Barth, Mr. Lotter felt that Condition Number 16 was vague.

In response to Commissioner Barth's, Mr. Lynch reviewed the Coastal Trails Map that showed access to trails on the area.

In response to Commissioner Calvert, Mr. Lotter noted that GMAC did not receive information about the new proposed road changes.

In response to Commissioner Lipmanson, Mr. Lotter stated that GMAC had no objection to the parcel division because it is permitted by zoning regulations.

Ms. Rixanne Wehren, California Land Trust, felt that the trails should be addressed at the subdivision stage and not at a later time. She also noted that this parcel is the only direct access to the ocean.

The public hearing was declared closed.

RECESS: 10:31 a.m. - 10:44 a.m.

In response to Chairman McCowen, Mr. Ruprecht noted that in the staff report on Page PC-7 that "No existing or proposed access is depicted on the adopted Local Coastal Program maps for this property." He felt that to restore the coastal access trail it would not be easy because of the bluff.

In response to Commissioner Calvert, Mr. Lotter noted that the pump house station road would be dangerous to be used for access onto the highway.

Chairman McCowen questioned about a restriction to use the pump station road only for service. Mr. Paoli felt that the sidewalk issue should be addressed when the type of development is known.

Chairman McCowen quoted a newspaper article stating that many houses will be destroyed over the next 60 years due to ocean erosion. Mr. Falleri noted that staff could not impose a greater setback from the bluff than a professional's opinion.

Commissioner Nelson noted that the study noted that the risks for ocean erosion are greater in the Los Angeles area or in other communities with a low sea level elevation.

Commissioner Barth noted that Condition Number 3 requires building envelopes. Mr. Falleri noted the setbacks are stated in the Geologic Study prepared by Jim Glomb and Allen Gruen. Commissioner Barth felt that Condition Number 16 is adequate to address the trail issue at the development stage.

Mr. Falleri noted that staff supports addressing any items early but felt that if the parcel were residential, no public access should be granted. He felt that the trail issue should be addressed at the development stage. He also noted that a residence would need a use permit and a commercial project would need a Coastal Development Permit (CDP) which would address the trail issue if needed.

Mr. Ben Kageyama, Department of Transportation, noted that the pumphouse station access has an island so traffic has to turn right to get onto the highway and turn right to get off the highway. He felt that the access is not dangerous because of the left turn restriction.

Chairman McCowen felt that the coastal access trail issue can be addressed at the development stage.

Commissioner Nelson felt that the property owners should make the decision for the location of the trail access if the property were to be developed commercial.

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In response to Chairman McCowen, Mr. Lynch noted there is no condition for a front highway easement to insure a walkway for the public along the highway. Mr. Lynch noted that there is room for a public sidewalk along the highway if needed in the future.

Commissioner Lipmanson moved to deny the project on the grounds of the unknown use of the land and failure to provide for the trail access. He had concerns about Policy 3.6-6 requiring access points to be at frequent rather than infrequent intervals along the coast. The motion failed for the lack of a second.

In response to Chairman McCowen's request to change Condition Number 16, Mr. Zotter noted it would depend on the nature of the commercial use whether a public easement to the ocean could be imposed.

Upon motion by Commissioner Barth, seconded by Commissioner Nelson and carried by the following roll call vote, IT IS ORDERED that the Planning Commission adopts a Negative Declaration and approves #CDMS 16-99 making the following findings and subject to the following conditions of approval:

**Environmental Findings:** The Planning Commission finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project, therefore, a Negative Declaration is adopted.

**General Plan Findings:** Pursuant to Section 66473.5 of the California Government Code, the Planning Commission finds the proposed subdivision, together with the provisions for its design and improvement is consistent with the applicable goals and policies of the General Plan.

**Department of Fish and Game Findings:** Because this subdivision would create additional density and intensity of land use and would contribute to the overall reduction in wildlife populations and habitat from a cumulative standpoint, the de minimis finding can not be made for this project. The project is, therefore, subject to the Fish and Game fee of \$1,275.00.

**Coastal Development Permit Findings:** The Planning Commission finds that the application and supporting documents contain information and conditions sufficient to establish, as required by the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.
8. The Environmentally Sensitive Habitat Area as identified will not be significantly degraded by the proposed development, there is no feasible less environmentally damaging alternative and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

**Coastal Land Division Findings:** As required by Section 20.532.100(C), the Planning Commission further finds that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septic disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and
4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and
5. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.

**Project Findings:** The Planning Commission, making the above findings, approves #CDMS 16-99, subject to the following conditions of approval further finding pursuant to California Government Code Section 66445(e), that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement.

**CONDITIONS OF APPROVAL:**

For a Minor Subdivision which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing a Parcel Map.

ALL CONDITIONS OF APPROVAL MUST BE MET PRIOR TO EXPIRATION OF TWENTY-FOUR (24) MONTHS FROM DATE OF APPROVAL, UNLESS RENEWED PURSUANT TO THE MENDOCINO COUNTY CODE.

1. Subdivision improvements plan shall be accompanied by a drainage report prepared by a Civil Engineer. The report shall provide hydrology and hydraulic data necessary to support the design and location of drainage facilities necessary for compliance with Section 17-57(C) of the County Division of Land Regulations and with Chapters 20.492 and 20.500 of the Coastal Zoning Ordinance.

2. Surface drainage facilities appurtenant to the subdivision road shall be designed and constructed in accordance with the following minimum standards:
  - a) Culverts shall be ~~designed~~ designed to accommodate a "10-year" storm with no head at the inlet;
  - b) Minimum culvert size shall be 18 inch diameter, or an equivalent arch pipe;
  - c) Roadside ditches shall be designed to accommodate a "100-year" storm without encroaching onto the traffic lane;
  - d) Drainage easements for culverts shall be minimum width of 10 feet;
  - e) Drainage easements for ditches shall have a minimum width of 20 feet;
  - f) Minimum allowable ditch grade shall be 0.5 percent;
  - g) Ditch lining or other acceptable measures may be required to control erosion where ditch grade exceeds 5 percent.

Extension of the existing highway culvert shall require written approval of the California Department of Transportation. Roadway and site drainage shall be contained and conveyed in an impermeable non-erosive device, such as a paved ditch or pipe, and shall outlet at satisfactory point of disposal, as determined by the Department of Transportation and Planning and Building Services be in accordance with the Geotechnical Investigation by Jim Glomb, dated August 24, 1998.

3. Prior to filing a Parcel Map, the subdivider shall submit an Exhibit Map which shall identify building envelopes as determined by the Geologic Study, prepared by Jim Glomb and Allan Gruen, dated August 24, 1998.
  - A. Areas outside these building envelopes shall be labeled "Not an approved Building Site".
  - B. A note shall appear on the Parcel Map that future development shall be limited to those building envelopes depicted on the Exhibit Map on file with the Department of Planning and Building Services.
4. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$1,275.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to August 18, 2000. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
5. There shall be provided an access easement of 100 feet in width (as per tentative map) from a publicly maintained road, to each parcel being created. Documentation of access easement shall

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- be provided to the Mendocino County Department of Transportation for their review prior to final approval.
6. If a Parcel Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.
  7. If approval of the tentative map is conditioned upon certain improvements being made by the subdivider, the subdivider shall notify the Mendocino County Department of Transportation when such improvements have been completed.
  8. Access to Parcels 1 and 2 shall be restricted along State Highway One, except at the proposed road approach ~~and at the sewer pump station access.~~
  9. If a Parcel Map is filed, all natural drainage and water courses shall be shown as easements on the final parcel map. Minimum width shall be twenty (20) feet, or to the high water level plus five (5) feet horizontal distance, whichever is greater (All parcels 5 acres and less).
  10. Eighteen (18) foot wide road within the access easement including four (4) inch minimum rock base, one hundred twenty-five (125) foot minimum radius of horizontal curve, grade not to exceed twelve (12) ~~fifteen (15)~~ percent, drainage culverts where necessary. Road improvements shall be constructed in accordance with improvement plans prepared by a civil engineer, and in substantial conformance with the Geotechnical Investigation prepared by Jim Glomb, dated 24 August 1998. Improvement plans shall be approved by the Mendocino County Department of Transportation.
  11. A turnaround be constructed within a 60-foot radius easement (as per tentative map) at terminus of access easement to the satisfaction of the Mendocino County Department of Transportation.
  12. Pursuant to encroachment permit procedures administered by the California Department of Transportation, subdivider shall construct a standard private road approach at the intersection of the subdivision road onto State Highway One. Subdivider shall include with the improvement plans submitted for approval, documentation from the California Department of Transportation to indicate that the design of the road approach as shown on the improvement plans is satisfactory.
  13. The subdivider shall comply with those recommendations in the Department of Forestry letter dated August 2, 1999 and South Coast Fire District letter dated October 5, 1999 or other alternatives as acceptable to the Department of Forestry (CDF #382-99) and the South Coast Fire District. Written verification shall be submitted from the Department of Forestry and the South Coast Fire District to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry and the South Coast Fire District.
  14. Where land divisions lie either partially or wholly within 500 feet of a public water and/or sewer systems, the subdivider shall submit to the Division of Environmental Health, a letter from the district(s) or agency's stating that: (1) services (and main extensions, where required) have been installed to the satisfaction of the district or agency, to serve each lot in said subdivision and connected to the system providing the service (Mendocino County Code 17.55 and 17.56).

15. The subdivider shall submit to the Department of Planning and Building Services a landscaping plan for the area to be developed with highway access and the banks of the fill area of that access. The plant species selection ~~shall~~ should be limited to native species indigenous to the area and shall not interfere with coastal views at maturity. Said plan should be prepared by a qualifies individual. The plan should provide a mechanism (infrastructure) to provide for the plants to become established and maintained.
  
16. A note shall be placed on the Parcel Map that states that future commercial development of the parcels may require that a public access easement to and/or along the ocean be offered.

AYES: Calvert, Berry, Nelson, Barth, McCowen

NOES: Lipmanson

ABSENT: Little

OWNER: LOUIS AND DEBRA APPELL  
1331 VIA COLONNA TERRACE  
DAVIS CA 95616

AGENT: DAVID PAOLI  
PO BOX 737  
FORT BRAGG CA 95437

REQUEST: Coastal Development Minor Subdivision to create two lots of 1.67+- acres and 3.57 acres. The project will also include extension of water and sewer services, and other underground utilities, and development of an access road to each parcel.

LOCATION: In the Coastal Zone, in the Community of Anchor Bay, between Highway One and the Pacific Ocean, 400+- feet northwest of the intersection of Highway One and Getchell Gulch Road (Private); AP# 144-070-13 (formerly 144-070-02).

TOTAL ACREAGE: 5.3+- acres

ZONING: C:FP

ADJACENT ZONING: North: C  
East: Highway One/RR:L:10  
South: RR:L:5  
West: Ocean

GENERAL PLAN: Commerical

SURROUNDING LOT SIZES: North: 2.6+- acres  
East: 1.0+- acre  
South: 12.35+- acres  
West: Ocean

EXISTING USES: Vacant except for existing sewer lines and sewer district pump station

SURROUNDING LAND USES: North and East: Residential  
South: Vacant  
West: Ocean

SUPERVISORIAL DISTRICT: 5

GOV. CODE 65950 DATE: November 4, 2000

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA: Boundary Line Adjustment #B 105-91 was approved which reconfigured the subject property to its current configuration. Subdivision #S 1-98, which would have created six parcels, was submitted by the same applicant but subsequently withdrawn prior to a public hearing. Subsequent to the major division, Coastal Development Minor Subdivision #CDMS 16-99 was originally submitted as a four parcel division. However, the applicant withdrew that application prior to the public hearing, evidently, because of a number of design issues that caused staff to recommend denial of the application.

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**PROJECT DESCRIPTION:** The applicant is proposing to subdivide an oceanfront 5.3+- acre parcel into two parcels, located on the west side of Highway One, just south of the existing commercial core of the community of Anchor Bay. The site is the furthest southward extension of the commercially zoned area of Anchor Bay. These two lots are proposed to be 1.67+- acres and 3.57+- acres. The two parcels will have frontage along Highway One, and are oriented to provide each with some ocean frontage. Both parcels are to be accessed by a 100 foot wide by 230 foot long easement, ending in a 60 foot radius turnaround. Water and sewer service will be provided to each parcel, as well as electrical, telephone and cable service, all of which will be provided underground.

The property is zoned Commercial, with a portion within the Flood Plain Combining District, although the area identified as being subject to periodic inundation is the tidal area west of the bluff. While the site is zoned Commercial, immediate surrounding land uses are residential, with the commercial "core" of Anchor Bay lying approximately 700 feet to the north. The property is vacant except for a 600+- square foot pump station building, and an underground sewer main line that transverses the property and goes on to serve the commercial and residential areas beyond the property, including the commercial center of Anchor Bay and the Anchor Bay Subdivision. An access road serving the pump station, with an improved encroachment onto the highway exists along the southern boundary of the property. A note on the tentative map states that the proposed use will be a mix of residential and commercial uses.

The site consists of a gentle southwesterly sloping terrain, vegetated by native grasses and larger pines. At the westerly bluff, which rises approximately 60 to 80 feet from the ocean, remnants of an old road cut descends southerly from the northwest corner of proposed Parcel 1 across the bluff face. The cut fades at a point approximately 15 to 20 feet above the ocean/beach area. A small beach is located along the westerly edge of Parcel 1, which coincides with a natural drainage. No beach access is available at this point due to the steep bluff face.

#### ENVIRONMENTAL REVIEW:

Earth and Drainage (Items 1B, 1C, 1G and 3C): Pursuant to provisions of the County Code, a Geotechnical Investigation Report, prepared by Jim Glomb, Engineering Geologist, and Allen Gruen, Geotechnical Engineer, was submitted with the previous major subdivision application. The report addresses general geologic conditions, proposed cut and fill necessary to create access and building pads, bluff retreat, and makes recommendations regarding construction standards that should be adhered to. A minimum of a 50 foot setback from the seacliff is recommended. The report points out that an existing drainage system, the outflow from the highway culvert and a drain pipe located on proposed Parcel 1 that was installed sometime ago, needs to be contained and directed into a more formal drain system such as a paved ditch or pipe. Currently, storm water sheets across the upper portions of the property and eventually forms a small drainage course which outfalls at the top of the bluff. The report states:

"The potential for erosion, future landslides or slope instability can be significantly reduced by proper collection and disposal of surface water runoff."

This report concludes that such water should not be connected to any subsurface drainage system, but should be collected into a drainage system that should outlet at the base of the bluff in order to minimize erosion. However, Mendocino County Code (MCC) Section 20.500.020(B), which deals with development in "hazard areas," states that:

"No new development shall be allowed on the bluff face except such developments that would substantially further the public welfare including staircase accessways to beaches and pipelines to serve coastal dependent industry."

In discussing the issue with the project's agent, it was concluded that water could be collected within some type of channeled stream course, and disposed through the existing, natural outfall, but that this area can be reinforced with rip-rap or some other acceptable means to protect the existing bluff face. Condition Number 1 requires development of a drainage plan to provide consistency with both the mandates of the Mendocino County Code and the geotechnical requirements of the project. Condition Number 2 requires that road drainage facilities be designed

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appropriately, and Condition Number 3 requires that a note be placed on the parcel map to note the required bluff setback.

Plant and Animal Life (Items 4B and 5D): A review of all existing data resources did not reveal any unique or protected flora or fauna on the property, or the immediate vicinity. A botanical survey conducted on the property for the Boundary Line Adjustment done in 1991 did not reveal any rare or endangered species within the area now subject of this division request. While the site does have storm drainage passing through the property, no unique or protected habitat was observed. The Department of Fish and Game did not comment on the project. Finally, it should be noted, that the Statewide Interpretive Guidelines, Appendix D, which provides criteria for identifying wetlands and environmentally sensitive habitat areas, provides an exemption for man-made drainage ditches.

While the existing outfall may be a natural drainage path, much of the water that drains through it is from off-site sources, directed by man-made drainage improvements. The mitigation proposed by the Geotechnical Report and in Conditions Number 1 and 2, noted above, should not significantly impact any wildlife or plantlife resources.

The project will, however, from a cumulative standpoint, contribute incrementally to the loss of wildlife habitat resources. Therefore, staff believes the project is subject to the wildlife impact fees imposed by the State for the recordation of the environmental document. Therefore, Condition Number 4 is recommended.

Land Use (Item 8A): The property is zoned Commercial, however, the tentative map states that the project will be a mix of residential and commercial uses. Residential uses are conditionally permitted (i.e. a use permit is required) within a Commercial zoning designation. The zoning provides an avenue for single family, duplex and multifamily development to be placed on such properties, while the use permit process certainly may limit such potential. The Gualala Municipal Advisory Council (GMAC) has submitted a series of letters regarding each of the subdivision requests proposed by this applicant (the six, then four, now two parcel subdivisions - attached) which expresses concern regarding the project design, access and improvement standards, coastal access, appropriateness of subdividing land designated commercial without more of a comprehensive development plan, and a concern about the expressed intent to have the ultimate development be residential. In assessing the GMAC's comments, the Planning Commission should consider the narrative contained within Coastal Element Section 4.12, which states the following in describing the community of Anchor Bay:

"The cluster of subdivisions at Anchor Bay occupies high bluffs on either side of Fish Rock Creek. However, Anchor Bay's compact commercial area turns its back on the Pacific and does not take advantage of the views. Overnight accommodations or a restaurant with a view deck should be built on the bluff top. Anchor Bay's proximity to Gualala, 3.5 miles south, limits the need and opportunity for additional businesses."

This policy seems to state divergent goals in considering the comments of the GMAC. While the policy would encourage a visitor serving facility, be it a restaurant or overnight accommodations, within the commercial area, it also states there is little need for new commercial businesses within the community. The lot design, as currently proposed, would not preclude any larger scale commercial development, however, the issue of what the ultimate development will be, is not in and of itself germane to the specific subdivision request. Future use permit and/or coastal permit review, if any, would assess the issues of balance of residential versus commercial needs.

The project lies within Market Area Number 5 as defined by the Coastal Element. Per Mendocino County Code Section 20.524.010, no new parcels may be created within any market area until at least 50 percent of the parcels therein are developed. Based on the most current information available, more than 50 percent of existing parcels are developed within this area, so no conflict exists.

Transportation (Items 12C and 12F): The individual lots will be accessed by means of a new roadway cul-de-sac that would be developed as part of the project. The subdivision road will intersect with Highway One at the northernmost portion of the lot in order to provide adequate site distance onto the highway. Due to the steep roadway slope along the southwesterly side of Highway One, the access roadway will have significant fill slopes, especially near the Highway. Staff understands that the fill slope must be approximately 12 to 15 feet in height to

meet the grade of the highway. The steep fill slopes are part of the reason the roadway easement is proposed to be 100 feet wide.

The roadway recommended to meet minor subdivision standards is an eighteen foot wide rocked roadway (although the subdivider may be constructing a road to a greater standard), 40 foot radius turnaround, and a road approach be built to Caltrans standards. Staff understands that Caltrans' encroachment standards would require that the final 20 feet of the subdivision road approach to the traveled way of the highway to have a grade no greater than 5%. This would respond to one of the concern suggested by GMAC's comments.

During the processing of the previous tentative maps, staff had expressed concern regarding the existing encroachment to the pump station access road, which is located at the southeast corner of the property. Due to poor sight distance staff had suggested that this encroachment be abandoned, and, alternatively, have access to the pump station be provided by means of connection with the access road serving the subdivision. However, given the current configuration of the project, with the access road not connecting to the access road serving the pump station, the subdivision road can no longer be considered as an alternative access route to this area of the project. Hence, no abandonment of the existing access is proposed.

Coastal Development Minor Subdivision #CDMS 16-99 was reviewed with regard to the State Route 1 Corridor Study using the 75/50 development scenario (representing the maximum reasonable buildout potential) with a horizon year of 2020. The project will access State Route 1 along road segment 3 (Ocean Drive to Iverson Road). Road segment 3 currently operates at LOS D, and is projected to operate at acceptable LOS E by 2020. Residential use would generate 3.12 peak hour trips (2 units X 0.78 peak hour trips per unit), less than a one percent decrease in the substantial reserve capacity of 352 peak hour trips before unacceptable LOS F is reached. The State Route 1 Corridor Study does not recommend any mitigation if the road segment remains at LOS E. The ultimate development potential could, however, be much greater in the future, dependent on the type of development proposed, such as any future use permit, coastal permit or division application. A determination of impact to highway capacity, specific to a defined development proposal, will be considered at such time.

A general analysis of potential commercial use of the proposed two parcels, at fifty percent lot coverage, developed with the most intense commercial use (highway commercial at 9.7 peak hour trips per 1000 square feet) would exceed reserve capacity and require mitigation. However, since all permitted uses in the Commercial zone will require a coastal development permit, traffic impacts can be evaluated when a specific use is proposed. Accordingly, no traffic study or mitigation is required at this time to address cumulative impacts to the highway. Conditions Number 5 through 12 are offered to address project specific concerns regarding development of access.

Public Services (Item 13A): The California Department of Forestry and Fire Protection has submitted comments regarding access and other standards that are applicable at the time the lots may be developed. While the recommended road standards will provide an equivalent level of improvement, review and clearance from the fire agency is recommended. The South Coast Fire Protection District also commented on the project with a recommendation that, if commercial uses are to be developed, then a flow of 2,000 gallons per minute will be necessary and two fire hydrants should be installed. However, if residential uses are developed that standard could be reduced to 1,750 gallons per minute and one hydrant. Staff would recommend that the District be allowed to negotiate an agreement with the developer to insure the appropriate fire standards, given the unanswered question of potential future uses (See Condition Number 13).

Utilities (Item 15A): The project will be served by the North Gualala Water Company for water service and the Mendocino County Waterworks No. 2 for sewer service. A sanitary sewer main line crosses the property from the pump station northeasterly toward the existing commercial development of Anchor Bay. This main will be placed within a 10 foot easement. Condition Number 14 is offered to insure appropriate individual lot connection to those services.

Aesthetics (Item 17A): The property lies between Highway One and the ocean, but is not within a designated "highly scenic" area. The property is within the "special community" of Anchor Bay, where, per MCC Section 20.504.020, new development shall be within the "scope and character" of the surrounding development, and

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"public coastal views are protected." The only "development" that will be visible as a result of the project will be the access road. Development of this road will require significant grading and vegetation removal. While the work will open up coastal views, the grading will be an obvious alteration to the area's land form. Staff would recommend after grading, that the slopes of the roadway be landscaped with native species. A landscaping plan should be submitted for review, approval and landscaping installed along the slope banks to blend the new roadway fill with the area (and to assist in erosion control). Plant species should be selected by a qualified individual to blend with the surrounding area, be native to the area, and not interfere with coastal views (See Condition Number 15).

Recreation (Item 18A): The tentative map submitted with the application notes that an easement exists over the property for "right for ingress and egress to and from the Pacific Ocean" and that this was conveyed to the Anchor Bay Subdivision in 1961. Specifically, the easement is described as follows within a Grant Deed executed on April 21, 1961:

A non-exclusive easement as an appurtenance to all the real property of the Grantee herein lying within Anchor Bay Subdivision Unit No. 1 as shown on the map filed for record in the office of the County Recorder in and for said County at Page 55 in Drawer No. 1 in Map Case No. 2 and lying within Section 18, T11N R 15W, M.D.B. & M. for use of pedestains and animals over all of the lands and property of the Grantor herein lying between State Highway No. 1 and the Pacific Ocean in said Mendocino County. The purpose of this conveyance is to establish for the benefit of the Grantee herein and its successors and assigns, rights of ingress and egress to and from the Pacific Ocean over the property of the Grantor herein.

However, this access can not be physically located on this property today. It could easily be perceived that the existing access road to the pump station building, which lies along the southern property boundary, would be a logical place to assume such access exists. However, no obvious signs of prescriptive use exist beyond the pump station to the ocean. As noted within the project description, at the northwest corner of the property, an old road cut seems to be evidenced which terminates at a point approximately 15 to 20 feet above a small beach. Again, in this area, no obvious signs of consistent past public use exists.

Staff would also note that north of the project site is the existing Anchor Bay shoreline access at Fish Rock Beach. Terminating on the parcel south of the project site, the LCP maps depict a proposed "Getchell Gulch Shoreline Access." This access terminates at the southeasterly corner of the project site, so it is not a bluff top access.

GMAC comments, in their letter of May 11, 2000, that coastal access would be a welcome amenity to this project. GMAC suggests that both direct ocean access, with a stairway down the bluff face, as well as access along the highway frontage may be appropriate. Mr. David Paoli, project agent, rebuts in a letter dated May 24, 2000, that the direct ocean access is not appropriate given the "active seacliff retreat" and the already existing neighboring access to the north. He does state that his clients are "willing to negotiate" possible access on the highway frontage.

There are a variety of land use policies and statutes related to the development of coastal access dedications. A summary would be as follows:

Mendocino County Coastal Element Policies.

Policy 3.6-5 requires that access be obtained, either voluntarily or through a condition requiring an offer of dedication, for coastal development permits. In detail, it states that:

"Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a nonprofit land trust may be helpful and should be explored in the future. If other methods for obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking area, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form

and content approved by the Coastal Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued."

Policy 3.6-6 calls for access points to be at frequent rather than infrequent intervals along the coast.

Policy 3.6-9 requires an offer of dedication as a condition of permit approval where access is shown on the Coastal Plan Map.

Policy 3.6-11 requires that visitor accommodations and services provide access.

Policy 3.6-28 requires an offer of dedication as a condition of new development. Specifically, it states:

"New development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement, as required by other policies in this Chapter, for public use. Such offers shall run for a period of 21 years and shall be to grant and convey to the people of the State of California an easement for access over and across the offeror's property."

Policy 4.12-11 deals with public access in the Anchor Bay Campground. It states:

"A guarantee of continued fee access to the public as well as guests shall be acquired consistent with Policy 3.6-5 together with a provision for obtaining a non-fee accessway if the visitor serving facility should be changed to another use."

These policies are reiterated in Mendocino County Code Chapter 20.528.

Coastal Act Policies:

Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212.5. Wherever appropriate and feasible, public facilities, including parking areas and facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30212 (a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Subdivision Map Act. Sections 66478.1 to 66478.14 (summarized):

No local agency shall approve coastal or oceanfront subdivisions, or subdivisions along navigable streams, public waterways, public lakes or public reservoirs, unless public access is provided by fee or easement from a public highway "to that portion of the bank or stream bordering or lying within the proposed subdivision," or to "land below the ordinary highwater mark on any ocean coastline or bay shoreline within or at a reasonable distance from the subdivision."

Additionally, no local agency shall approve a subdivision that does not provide for dedication of a public easement, designed in extent, width, and character to achieve public use of the waterway, along a portion of the waterfront bordering or within the proposed subdivision.

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Reasonable access is to be determined by the local agency, considering: (1) mode of access; (2) size of subdivision; (3) common uses of bank or stream, or type and appropriate uses of coastline or shoreline; (4) likelihood of trespass and means of avoiding trespass. The subdivision need not be disapproved if access is not provided and the local agency finds that reasonable access is available nearby.

The subdivider is not required to improve access route(s) that benefit non-residents of the subdivision. Access route(s) may be conveyed or transferred to other agencies.

In light of the above, and in assessing the "nexus" between the development and the planning goal of encouraging coastal access, staff would summarize the project as follows:

- The project site is designated Commercial. As such a visitor serving facility may be conditionally granted.
- No development, aside from the subdivision of land, is proposed by this project.
- No existing or proposed public access is depicted on the adopted Local Coastal Program maps for this property, however, there is proposed access to the south and existing access to the north.
- A "private" access easement is possibly located on-site, however the language of the original deed granting same limits the use to the benefit of owners of homes within the Anchor Bay Subdivision.
- No solid proof of prescriptive is use evident.

Given the above, staff does not believe that the nexus to exact a public access easement can be made for this project. Staff would certainly encourage and welcome the subdividers voluntary negotiation with some entity to develop an access easement along the highway frontage to connect the Getchell Gulch Shoreline Access lying to the south as this could connect, through the commercial "core" of Anchor Bay, to the access point to the north. Further, the owner, or possible future owner, should be advised of the likely requirement for an access request in the future as a condition of any new visitor serving facilities, should any one of the sites be so developed in the future (See Condition Number 16).

**GENERAL PLAN CONSISTENCY REVIEW:** The proposed project is consistent with applicable goals and policies of the General Plan and Coastal Element.

**RECOMMENDED MOTION:** The Planning Commission finds:

**Environmental Findings:** The Planning Commission finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project, therefore, a Negative Declaration is adopted.

**General Plan Findings:** Pursuant to Section 66473.5 of the California Government Code, the Planning Commission finds the proposed subdivision, together with the provisions for its design and improvement is consistent with the applicable goals and policies of the General Plan.

**Department of Fish and Game Findings:** Because this subdivision would create additional density and intensity of land use and would contribute to the overall reduction in wildlife populations and habitat from a cumulative standpoint, the de minimis finding can not be made for this project. The project is, therefore, subject to the Fish and Game fee of \$1,275.00.

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**Coastal Development Permit Findings:** The Planning Commission finds that the application and supporting documents contain information and conditions sufficient to establish, as required by the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.
8. The Environmentally Sensitive Habitat Area as identified will not be significantly degraded by the proposed development, there is no feasible less environmentally damaging alternative and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

**Coastal Land Division Findings:** As required by Section 20.532.100(C), the Planning Commission further finds that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septic disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and
4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and
5. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.

**Project Findings:** The Planning Commission, making the above findings, approves #CDMS 16-99, subject to the following conditions of approval further finding pursuant to California Government Code Section 66445(e), that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement.

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CONDITIONS OF APPROVAL:

For a Minor Subdivision which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing a Parcel Map.

ALL CONDITIONS OF APPROVAL MUST BE MET PRIOR TO EXPIRATION OF TWENTY-FOUR (24) MONTHS FROM DATE OF APPROVAL, UNLESS RENEWED PURSUANT TO THE MENDOCINO COUNTY CODE.

- \*\* 1. Subdivision improvements plan shall be accompanied by a drainage report prepared by a Civil Engineer. The report shall provide hydrology and hydraulic data necessary to support the design and location of drainage facilities necessary for compliance with Section 17-57(C) of the County Division of Land Regulations and with Chapters 20.492 and 20.500 of the Coastal Zoning Ordinance.
- \*\* 2. Surface drainage facilities appurtenant to the subdivision road shall be designed and constructed in accordance with the following minimum standards:
  - a) Culverts shall be deigned to accommodate a "10-year" storm with no head at the inlet;
  - b) Minimum culvert size shall be 18 inch diameter, or an equivalent arch pipe;
  - c) Roadside ditches shall be designed to accommodate a "100-year" storm without encroaching onto the traffic lane;
  - d) Drainage easements for culverts shall be minimum width of 10 feet;
  - e) Drainage easements for ditches shall have a minimum width of 20 feet;
  - f) Minimum allowable ditch grade shall be 0.5 percent;
  - g) Ditch lining or other acceptable measures may be required to control erosion where ditch grade exceeds 5 percent.

Extension of the existing highway culvert shall require written approval of the California Department of Transportation. Roadway and site drainage shall be contained and conveyed in an impermeable non-erosive device, such as a paved ditch or pipe, and shall outlet at satisfactory point of disposal, as determined by the Department of Transportation and Planning and Building Services be in accordance with the Geotechnical Investigation by Jim Glomb, dated August 24, 1998.

- \*\* 3. Prior to filing a Parcel Map, the subdivider shall submit an Exhibit Map which shall identify building envelopes as determined by the Geologic Study, prepared by Jim Glomb and Allan Gruen, dated August 24, 1998.
  - A. Areas outside these building envelopes shall be labeled "Not an approved Building Site".
  - B. A note shall appear on the Parcel Map that future development shall be limited to those building envelopes depicted on the Exhibit Map on file with the Department of Planning and Building Services.
- 4. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County

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Department of Planning and Building Services. Said fee of \$1,275.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to August 18, 2000. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.

- \*\* 5. There shall be provided an access easement of 100 feet in width (as per tentative map) from a publicly maintained road, to each parcel being created. Documentation of access easement shall be provided to the Mendocino County Department of Transportation for their review prior to final approval.
6. If a Parcel Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.
7. If approval of the tentative map is conditioned upon certain improvements being made by the subdivider, the subdivider shall notify the Mendocino County Department of Transportation when such improvements have been completed.
- \*\* 8. Access shall be restricted along State Highway One, except at the proposed road approach and at the sewer pump station access.
9. If a Parcel Map is filed, all natural drainage and water courses shall be shown as easements on the final parcel map. Minimum width shall be twenty (20) feet, or to the high water level plus five (5) feet horizontal distance, whichever is greater (All parcels 5 acres and less).
- \*\* 10. Eighteen (18) foot wide road within the access easement including four (4) inch minimum rock base, one hundred twenty-five (125) foot minimum radius of horizontal curve, grade not to exceed fifteen (15) percent, drainage culverts where necessary. Road improvements shall be constructed in accordance with improvement plans prepared by a civil engineer, and in substantial conformance with the Geotechnical Investigation prepared by Jim Glomb, dated 24 August 1998. Improvement plans shall be approved by the Mendocino County Department of Transportation.
- \*\* 11. A turnaround be constructed within a 60-foot radius easement (as per tentative map) at terminus of access easement to the satisfaction of the Mendocino County Department of Transportation.
- \*\* 12. Pursuant to encroachment permit procedures administered by the California Department of Transportation, subdivider shall construct a standard private road approach at the intersection of the subdivision road onto State Highway One. Subdivider shall include with the improvement plans submitted for approval, documentation from the California Department of Transportation to indicate that the design of the road approach as shown on the improvement plans is satisfactory.
- \*\* 13. The subdivider shall comply with those recommendations in the Department of Forestry letter dated August 2, 1999 and South Coast Fire District letter dated October 5, 1999 or other alternatives as acceptable to the Department of Forestry (CDF #382-99) and the South Coast Fire District. Written verification shall be submitted from the Department of Forestry and the South Coast Fire District to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry and the South Coast Fire District.
- \*\* 14. Where land divisions lie either partially or wholly within 500 feet of a public water and/or sewer systems, the subdivider shall submit to the Division of Environmental Health, a letter from the district(s) or agency's stating that: (1) services (and main extensions, where required) have been

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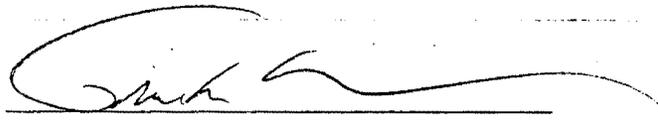
installed to the satisfaction of the district or agency, to serve each lot in said subdivision and connected to the system providing the service (Mendocino County Code 17.55 and 17.56).

- \*\* 15. The subdivider shall submit to the Department of Planning and Building Services a landscaping plan for the area to be developed with highway access and the banks of the fill area of that access. The plant species selection should be limited to native species to the area. Said plan should be prepared by a qualified individual. The plan should provide a mechanism (infrastructure) to provide for the plants to become established and maintained.
- \*\* 16. A note shall be placed on the Parcel Map that states that future commercial development of the parcels may require that a public access easement to and/or along the ocean be offered.

\*\*\*\*\*

THIS DIVISION OF LAND IS DEEMED COMPLETE WHEN ALL CONDITIONS HAVE BEEN MET, AND THE APPROVED PARCEL MAP OR UNILATERAL AGREEMENT IS RECORDED BY THE COUNTY RECORDER.

6/28/00  
DATE

  
FRANK LYNCH  
SUPERVISING PLANNER

FL:sb  
6/27/2000  
Negative Declaration

Appeal Fee - \$600.00  
Appeal Period - 10 days

\*\* Indicates conditions relating to Environmental Considerations - deletion of these conditions may effect the issuance of a Negative Declaration.

REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
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Planning - Ft Bragg	X		
Public Works			At SC
Env. Health			At SC
Building Inspection - Ft Bragg	X		
Coastal Commission	X		
Caltrans			X
CDF			X
Dept. of Health Services	X		
MTA		X	
GMAC			X
South Coast Fire Dist			X
Point Arena School Dist	X		
Mendocino Waterworks			X
N. Gualala Water	X		

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EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-00-044
APPELL	
1991 BOTANICAL SURVEY (1 of 5)	

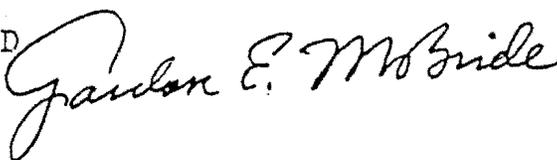
DATE: June 20, 1992

To: California Coastal Commission  
North Coast Area  
45 Fremont St. Suite 2000  
San Francisco, CA 94105-2219

and,

Mendocino County  
Department of Building and Planning Services  
589 Low Gap Road  
Ukiah, CA 95482

From: Gordon E. McBride, PhD  
30301 Sherwood Road  
Fort Bragg, CA 95437  
707 964 2922



Re: BOTANICAL SURVEY AS REQUIRED FOR APPLICATION FOR BOUNDARY  
LINE ADJUSTMENT AT 35630 SOUTH HIGHWAY 1, GUALALA, CA  
(AP# 140-070-11 AND 144-070-02 AND 144-070-10, MCCOY).

1. PROJECT DESCRIPTION: As it exists two parcels are involved:  
AP #140-070-11 is a 0.3+- acre parcel with a dwelling  
outbuildings, driveway, and a community water and septic  
system. AP#'s 144-070-02 and 144-070-10 are a 7.6+- acre  
parcel with no development except a gravel driveway and a  
sewer pumping station. With the proposed lot line adjustment  
two parcels will result: the northerly one, where the dwelling  
presently exists, would be 2.6+- acres and the southerly one  
would be 5.3+- acres.
2. AREA DESCRIPTION: The site is on the youngest coastal terrace,  
with the northern boundary being Quinliven Creek, the eastern  
boundary being State Highway 1, the southern boundary a  
surveyed line and the western boundary the Pacific Ocean. The  
majority of the site was probably originally vegetated by a  
North Coast Bishop Pine Forest, but segments of this have been  
cleared and now have the appearance of Coastal Terrace  
Prairie/Coastal Bluff Scrub. The bluff proper supports  
vegetation, however it is not Bluff Scrub. The beach supports  
no vegetation. Along Quinliven Creek the North Coast Bishop  
Pine Forest gives way to Coastal Redwood Forest and on the  
immediate banks of Quinliven Creek a modest Riparian Community  
(much overshadowed by the closed canopy of the Redwoods)  
exists. On the undeveloped portion of the southerly parcel  
there is a manmade drainage augmented by runoff concentrated

by a Caltrans culvert under State Highway 1. This drainage was dry at the time of the survey and has no appearance of a year round natural watercourse. Within the confines of the dwelling and associated yard there are numerous exotic and ornamental plants not considered in this report.

Components of the North Coast Bishop Pine Forest overstory include Bishop Pine (Pinus muricata) and Douglas Fir (Pseudotsuga menziesii). Mid level vegetation includes Hairy Manzanita (Arctostaphylos columbiana), Tan Oak (Lithocarpus densiflora), Coyote Brush (Baccharis pilularis), Madrone (Arbutus menziesii), Boxleaf Silktassel (Garrya buxifolia), and Black Huckleberry (Vaccinium ovatum). Groundcover includes Velvet Grass (Holcus lanatus), Yarrow (Achillea borealis), Blackberry (Rubus vitifolius), Cat's Ear (Hypochoeris radicata), Sanicula (Sanicula sp.), Modesty (Whipplea modesta), Bracken Fern (Pteridium aquilinum), Self Heal (Prunella vulgaris), Blue Eyed Grass (Sisyrinchium bellum), Poison Oak (Toxicodendron diversilobum), Pearly Everlasting (Anaphalis margaritacea), Dogtail Grass (Cynosurus echinatus), Quaking Grass (Briza maxima), Hedge Nettle (Stachys rigida), Douglas Iris (Iris douglasiana) and associated species.

The Coastal Terrace Prairie/Bluff Scrub community is composed of Velvet Grass, Quaking Grass (Briza maxima and B. minor), Wild Barley (Hordeum sp.), Redtop (Agrostis abla), Blue Eyed Grass, Birdsfoot Trefoil (Lotus caniculatus), Sow Thistle (Sonchus oleraceus), Oat (Avena sp.), Blackberry, Cat's Ear, Douglas Iris, Bull Thistle (Cirsium vulgare), Wiregrass (Juncus efusus var. pacificus), Plantain (Plantago major), Wax Myrtle (Myrica californica), Flax (Linum sp.), Oatgrass (Danthonia californica). Mule Ears (Wyethia glabra) and associated species.

Plants on the bluff face include Bishop Pine, Poison Oak, Hairy Manzanita, Wight's Paintbrush (Castilleja wightii), Tan Oak, Coffee Berry (Rhamnus californica), Blueblossom (Ceanothus sp.), Strawberry (Fragaria chilensis), Cow Parsnip (Heracleum lanatum), Delphinium (Delphinium menziesii), Live Forever (Dudleya sp.), Seaside Daisy (Erigeron glaucus) and associated species.

Most of Quinliven Creek Gulch is dominated by Redwood (Sequoia sempervirens), however a modestly developed riparian community exists along the flood plain of the Creek. Riparian species represented include Thimbleberry (Rubus parviflorus), Wild Ginger (Asarum caudatum), Cascara (Rhamnus purshiana) and associated species.

Within the manmade drainage ditch the following species are represented: Umbrella Sedge (Cyperus eragrostis), Watson's Fireweed (Eqilobium watsonii), Sedge (Carex obnupta), Willow (Salix sp.), Poison Oak and associated species.

3. SURVEY METHODOLOGY AND DATES: The site was surveyed on June 17, 1992. Rare and endangered plants anticipated on the site include the Supple Daisy (Erigeron supplex) and Mendocino Paintbrush (Castilleja mendocinensis). Reference populations of both species were found to be in bloom at the time of the survey.
4. RESULTS AND DISCUSSION: Neither the Supple Daisy nor the Mendocino Paintbrush were located on the site. No other rare and endangered plants were located on the site.

The riparian vegetation along Quinliven Creek is modestly developed, but should be protected from disturbance by an adequate buffer zone.

The plant species colonizing the man made drainage ditch would, along a natural watercourse, be interpreted as riparian. The fact that they are growing in a man made drainage ditch is incidental. The drainage ditch does not represent a natural watercourse and had no flowing water at the time of the survey. It appears to be the result of erosion caused by the concentrated runoff from a Caltrans culvert under State Highway 1 to the east. The plant species colonizing and stabilizing the ditch are, however, serving a critical role of minimizing erosion and should not be removed. Several options suggest themselves to further control or eliminate erosion on the site: (1) Rock coffer dams may be placed in the drainage ditch in such a way that waterflow during periods of heavy runoff is inhibited and the sediment load dropped. Should this option be pursued the landowner should not be faced with a riparian revegetation program to replace any vegetation that might be covered by rock. The plants will grow up through the rock and will quickly colonize the sediment deposited behind the rock dams. (2) The drainage may be placed completely underground in a culvert. This would most effectively control erosion associated with the drainage. Until such a time as the erosion is adequately addressed the ditch should not be disturbed in a way that will exacerbate erosion.

5. IMPACT ASSESSMENT AND MITIGATION MEASURES:

A. No mitigation measures are necessary for the protection of rare and endangered plant species. None are recommended.

B. The riparian community on the banks of Quinliven Creek should be protected from disturbance by a 50 foot buffer area measured from the edge of the riparian community which is essentially restricted to the flood plain of Quinliven Creek.

C. The edge of the bluff should be protected by a buffer zone determine by a qualified geologist.

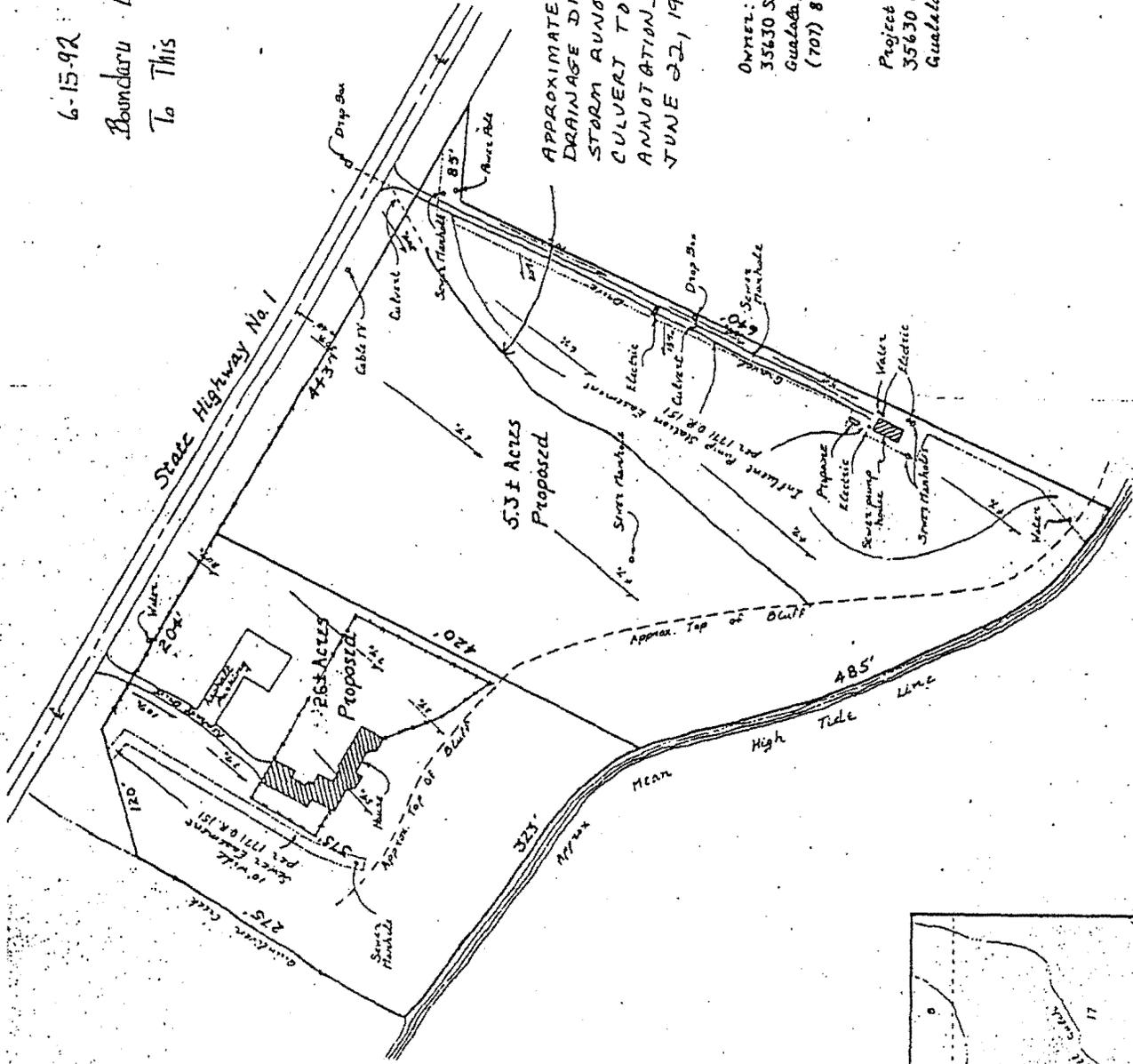
D. The erosion problems in the man-made drainage ditch in the southern portion of the site should be addressed by rock fill or culverting or other appropriate means as determined by a qualified engineer. In order to minimized erosion the vegetation on either side of the ditch should be protected by a 20 foot buffer area in which no disturbance is permitted. If the drainage is eventually placed in a culvert, the 20 foot buffer area can be eliminated once the disturbed area is revegetated and stabilized.

6. REFERENCES:

- Anon. 1985. Mendocino County General Plan - Coastal Element Ukiah.
- Hitchcock, A.S. 1950. Manual of the Grasses of the United States. U.S. Government Printing Office, Washington
- Holland, R.F. 1986. Preliminary Descriptions of the Terrestrial Plant Communities of California. California Department of Fish and Game, Sacramento
- Mason, H.G. 1959. A Flora of the Marshes of California Univ. of California Press, Berkeley
- Munz, P.A. and D. D. Keck. 1959. A California Flora Univ. of California Press, Berkeley.
- Smith, J.P. & K. Berg. 1988. Inventory of Rare and Endangered Vascular Plants of California. Ed. 4 California Native Plant Society, Sacramento

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Boundary Line Adjustment  
To This



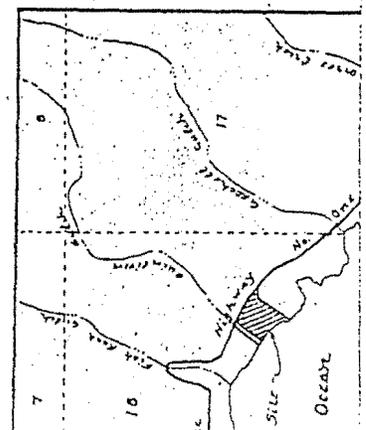
APPROXIMATE LOCATION OF MANMADE  
DRAINAGE DITCH THAT CONDUCTS  
STORM RUNOFF FROM CALTRANS  
CULVERT TO BLUFF AREA.  
ANNOTATIONS BY GORDON MCBRIDE AD  
JUNE 22, 1992

*Gordon L. McBride*

Owner: H. Richard McCoy  
35630 S Highway #1  
Guadalupe, Ca. 95445  
(707) 884-4304

Project Address:  
35630 S Highway #1  
Guadalupe, Ca. 95445

Proposed Parcel Configuration



595