

CALIFORNIA COASTAL COMMISSION

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Filed: August 27, 2001
49th Day: October 15, 2001
Staff: Randall Stemler
Staff Report: September 28, 2001
Hearing Date: October 11, 2001
Commission Action:

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-01-049

APPLICANT: Earl Latham, et al.

AGENT: Bud Kamb

PROJECT LOCATION: In the town of Albion, lying north and south of Albion Ridge Road (CR#402), east of Highway 1 and north of Salmon Creek; Mendocino County (APNs 123-200-07, 123-180-02, 123-350-04, 123-190-16, 123-190-22, 123-190-23, 123-150-35, 123-160-04, 123-360-02, 123-360-04, 123-370-04, 123-360-05, 123-350-03, 123-370-07, 123-370-05, 123-370-08, 123-250-35, 123-250-37, and 123-150-37).

PROJECT DESCRIPTION: Coastal Development Boundary Line Adjustment to re-configure 21 legal parcels as recognized by Certificates of Compliance #CC 27-92 and #CC 1-2000.

APPELLANTS: (1) Commissioners Sara Wan and John Woolley

(2) Sierra Club Mendocino/Lake Group, Attn:
Ron Guenther; Mendocino Coast Watch, Attn:
Roanne Withers

SUBSTANTIVE FILE: 1) Mendocino County CDB No. 36-2000; and
DOCUMENTS 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Commission staff recommends that the Commission find that the development, as approved by the County, raises substantial issues with the local government's action and its consistency with the certified LCP, and that the Commission hold a de novo hearing.

The development, as approved by the County, consists of a boundary line adjustment to re-configure twenty-one (21) legal parcels (recognized by Certificates of Compliance #CC 27-92 and #CC 1-2000) into sixteen (16) buildable parcels. Appellants contend that substantial issues are raised in regard to seven issues.

Staff recommends that the Commission find that the project as approved, raises substantial issue of conformance with the certified LCP and the public access policy of the Coastal Act with respect to contentions raised concerning protection of visual resources, proof of adequate water, proof of adequate sewage disposal capacity, protection of ESHA resources, consideration of traffic impacts, protection of prime agriculture land, and protection of potential prescriptive rights of public access. Staff also 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 from the applicant to determine if the approved development can be found consistent with provisions of the certified LCP requiring proof of adequate water supply, demonstration of adequate sewage disposal capacity, delineation and protection of ESHA resources, prime agriculture protection, and protection of potential prescriptive rights of public access.

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 within one hundred feet of a wetland or stream, or those located within public trust lands such as areas designated highly scenic.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. 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: (1) it is located within 100 feet of a wetland or stream; 2) it is located in a sensitive coastal resource area designated as highly scenic; and (3) as a subdivision, it is not a principally permitted use.

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 applicant, the appellant and 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 appeals (Exhibit 9 and Exhibit 10) to the Commission in a timely manner on August 27, 2001 within 10 working days of receipt by the Commission on August 14, 2001 of the County's Notice of Final Action.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, 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 proper motion is:

MOTION

I move that the Commission determine that Appeal No. A-1-MEN-01-049 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-01-049 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. APPELLANTS' CONTENTIONS.

The Commission received two appeals of the County of Mendocino's decision to approve the development, which is located in the town of Albion, bordering Highway One to the east, and Albion Ridge Road to the north and south. The subject property consists of approximately 465 acres of mostly open rolling grassland, bisected in the southern portion by Little Salmon and Big Salmon Creeks. One of the two appeals was received from Coastal Commissioners Sara Wan and John Woolley. The second appeal was received from Ron Guenther representing the Mendocino and Lake Group of the Sierra Club, and Roanne Withers representing Mendocino Coast Watch. The project as approved by the County consists of a boundary line adjustment to re-configure 21 legal

parcels as recognized by Certificates of Compliance #CC 27-92 and #CC 1-2000. The adjustment would reduce the number of parcels from 21 to 16. Current parcel sizes range from lots less than 2,500 square feet to a parcel greater than 160 acres. The appellants' contentions are summarized below, and the full texts of the contentions are included as Exhibit Nos. 9 and 10.

Both appeals raise contentions involving inconsistency with the County's LCP policies regarding visual resources, adequate water supply, adequate sewage disposal capacity, and protection of environmentally sensitive habitat areas. Ron Guenther representing the Mendocino and Lake Group of the Sierra Club, and Roanne Withers representing Mendocino Coast Watch further assert inconsistencies with the County's LCP policies regarding traffic impacts, protection of prime agricultural land, and protection of potential prescriptive rights of public access.

1. **Visual Resources**

The appellants contend that the project as approved by the County raises a substantial issue in respect to compliance with a number of LCP policies and standards regarding visual resources and development within highly scenic areas. New development is required to be sited and designed to protect views along scenic coastal areas, and be visually compatible with the character of surrounding areas so as to be subordinate to the natural setting. All boundary line adjustments within highly scenic areas must be analyzed for consistency of potential future development with visual resource policies and standards.

The property is predominantly rangeland, and is almost entirely undeveloped except for a rustic garage, milk house, milk barn and a storage building. Views of the property from the town of Albion, from Albion Ridge Road, and from Highway One, both northbound and southbound, are dramatic. Between Albion Ridge Road and 200 feet north of Navarro Ridge Road and Highway One intersection, everything within view easterly of Highway One is designated highly scenic. Over 160 acres (more than a third of the subject property) is designated highly scenic. The appellants assert that a substantial issue of conformance exists with the visual policy for protecting highly scenic areas because the boundary line adjustment as approved would establish residential building sites in highly scenic areas that are visually prominent where they would not be subordinate to the character of their setting.

2. **Adequate Water Supply**

Several policies and standards within the County's LCP address both general and specific requirements for assessing and demonstrating the existence of an adequate water supply. The appellants contend that there is no proven on-site water supply available to serve the 16 re-configured parcels. The property is located in a "Critical Water Resource" area as identified in the 1982 California Department of Water Resources report entitled,

Mendocino County Coastal Groundwater Study. The subject property is in a known area of insufficient water, there is no service by a community water system, and there is no evidence in the local record for the project that any well has been drilled to test whether sufficient ground water exists to serve future development of the site. Thus, the appellants assert that the approval of this boundary line adjustment raises a substantial issue in regard to LCP policies and standards requiring proof of adequate water for new development.

3. **Adequate Septic Capacity**

The appellants point to the County's LCP policies and standards requiring a demonstration of adequate septic capacity prior to approval of a coastal development permit. Specifically, land divisions and lot line adjustments shall be approved *only* where a satisfactory site for a sewage system exists. Leach field approval requires a site evaluation to be completed for each proposed septic system. The appellants assert that a substantial issue arises in the absence of any demonstration of adequate capacity for any of the re-configured parcels, all of which will have to be served by septic systems.

4. **Environmentally Sensitive Habitat Area**

Buffers of sufficient size are required by LCP policies and standards to protect Environmentally Sensitive Habitat Areas from potential impacts resulting from future development. A minimum width of 100 feet is required unless the applicant can demonstrate that a narrower width is adequate to protect ESHA resources, and that the Department of Fish and Game concurs that the narrower buffer is appropriate. The appellants contend that a substantial issue exists regarding a lack of any evidence justifying reduced buffer widths, resulting in insufficient ESHA protection.

5. **Traffic Impacts**

The subject property borders Albion Ridge Road, which would serve as the access road for the newly re-configured parcels. Appellants point out that it is a very narrow county road used by all of the local residents as a connection to Highway One. The appellants contend that the capacity of Albion Ridge Road, its intersection with Highway One, and the capacity of Highway One itself, have not been considered in regard to the effect of the boundary line adjustment to create additional buildable parcels. The appellants assert that some of the existing parcels are not developable because of their size and shape. The appellants believe that the potential increase in use of Albion Ridge Road and Highway One, resulting from the approved boundary line adjustment, has not been considered as required by LUP Policy 3.8-1, raising a substantial issue of conformance of the project as approved with LUP Policy 3.8-1.

6. **Prime Agricultural Land**

The subject property is predominantly agricultural. More than 400 of the 465 acres is zoned with a rangeland (RL) designation. Of this, more than 100 acres is designated as prime agricultural land on the Albion LUP Map #18. Although a principally permitted use within an RL designation is single-family, the RL district is intended to encompass lands within the Coastal Zone which are suited for and are appropriately retained for grazing of livestock. The appellants refer to LCP policies and standards that protect agricultural use and contribute to agricultural viability. LUP Policy 3.2-15 states that all land divisions of prime agriculture lands designated RL shall require an approved master plan showing how the proposed division would affect agricultural use on the subject property. No such master plan was submitted or reviewed during the County's review of the project. In the absence of an approved master plan, the appellants contend that a substantial issue of conformance with LUP Policy 3.2-15 is raised regarding protection of prime agriculture land. The appellants also contend that the project as approved does not conform with the requirements of LUP Policies 3.2-4 and 3.2-5 concerning allowances on agricultural parcels for activities compatible with agriculture and for non-agricultural uses.

7. **Public Access**

The appellants assert historical public use of Middle Ridge Road, which loops through the subject property. The local record contains letters that document public use of Middle Ridge Road during the 1960s, 1970s, and early 1980s, including that portion of the road that runs through the subject property. Appellants believe that the project as approved raises a substantial issue of conformance with LCP and Coastal Act policies that protect potential prescriptive rights of public access.

B. **LOCAL GOVERNMENT ACTION.**

On July 27, 2001 the Coastal Permit Administrator for Mendocino County approved Coastal Development Boundary Line Adjustment #36-2000 (CDB #36-2000) for the subject development. The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on August 13, 2001 (Exhibit 5).

The County attached to its coastal permit a number of special conditions, including requirements that:

- (1) The applicant submit to the Department of Environmental Health a satisfactory site map detailing the location of the proposed "Common Leach Area" in relation to the Village of Albion Water Source;

- (2) The applicant maintain a development buffer of 50 feet from all areas designated Prime Agriculture as shown on the Local Coastal Plan Map #18-Albion;
- (3) Legal descriptions for each parcel provide a minimum frontage of 40 feet on a publicly maintained road, or provide a minimum 40 foot wide access easement from a publicly maintained road, to the satisfaction of the Mendocino County Department of Transportation;
- (4) Future development of the parcels labeled L and M on "Option 3" not exceed 2,500 square feet unless and until there is a change in zoning and land use to permit non-residential structures (e.g. commercial structures);
- (5) A deed restriction shall be recorded with the newly configured parcel deeds advising that future development of the parcels will be subject to the "highly scenic" and "community character" (including LUP Policy 4.9-2) criteria found in the Local Coastal Plan and zoning ordinance;
- (6) Any development on parcel L and M on Option 3 be sited such that the minimum front yard setback be the front building line, with the intent to have future development sited as close as possible to Albion Ridge Road, keeping the improvement clustered with the existing Albion village core.

C. PROJECT AND SITE DESCRIPTION.

The subject property consists of approximately 465 acres in the town of Albion, lying north and south of Albion Ridge Road (CR#402), east of Highway 1 and north of Salmon Creek, in Mendocino County (See Exhibits 1 and 2). On July 27, 2001, the Coastal Permit Administrator approved a boundary line adjustment to re-configure 21 legal parcels as recognized by Certificates of Compliance #CC 27-92 and #CC 1-2000. The adjustment reduces the number of parcels from 21 to 16 (See Exhibits 3 and 4). Current parcel sizes range from lots less than 2,500 square feet to a parcel greater than 160 acres. Access to the property is from Albion Ridge Road. The owner states that existing structures consist of a garage, milk barn, and a storage building which are located on both sides of Albion Ridge Road. Currently, there are one split-zoned parcel and two parcels that conform with zoning minimum parcel sizes. As approved, there will be one split-zoned parcel and six parcels which conform with zoning.

The agricultural property is located within a large area east of Highway One that is designated highly scenic. Between Albion Ridge Road and 200 feet north of Navarro Ridge Road and Highway One intersection, everything within view easterly of Highway One is designated highly scenic. More than 160 acres of the ~465 acre property fall

within the highly scenic designation and provide dramatic views of scenic coastal areas from Highway One and Albion Ridge Road.

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.

All of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding:

- (1) The protection of visual resources;
- (2) The demonstration of adequate water supply;
- (3) The demonstration of adequate septic capacity;
- (4) The protection of environmentally sensitive habitat areas;
- (5) Consideration of traffic impacts and highway capacity;
- (6) Protection of prime agricultural land;
- (7) Public access.

The Commission finds that all these seven 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 indicate simply that the Commission will

hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

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

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

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

Allegations Raising Substantial Issue

a. Visual Resources

The approved boundary line adjustment encompasses property within a highly scenic area designation, where development must be subordinate to the character of its setting. The appellants contend that the approved project raises a substantial issue regarding conformance with requirements of Mendocino County LUP policies relating to the protection of visual resources. Specifically, the appellants contend that the boundary line adjustment is inconsistent with LCP Policies 3.5-1, 3.5-2, 3.5-3, 3.5-4, 3.5-6, and Coastal Zoning Ordinance Sections 20.504.015, and 20.484.010.

LCP Policies:

Policy 3.5-1 states in applicable part, "*The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a protected resource of public*

importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting."

Policy 3.5-2 states in applicable part, "*...communities and service centers along the Mendocino Coast including Westport, Caspar, Little River, Albion, Elk and Manchester shall have special protection to the extent that new development shall remain within the scope and character of existing development by meeting the standards of implementing ordinances."*

Policy 3.5-3 states in applicable part, "*...All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies."*

Policy 3.5-4 states in applicable part, "*Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists."*

Policy 3.5-6 states in applicable part, "*Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible."*

Coastal Zoning Ordinance Section 20.504.015 states in applicable part, "*Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes..."*

- (3) *New development shall be subordinate to the natural setting...*
- (4) *All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this chapter.*
- (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area...*

- (6) *Minimize visual impacts of development on terraces by the following criteria: (a) avoiding developments in large open areas if alternative site exists; (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms...*

Discussion:

The approved boundary line adjustment would re-configure twenty-one (21) parcels. A table in the County staff report specifically discusses twelve (12) of the twenty-one existing parcels, ranging from 5,000 to 25,000 square feet in size adjacent to the developed Town of Albion. The County staff report raises significant doubts that these twelve parcels could be developed in their present configuration, because the current alignment of Albion Ridge Road cuts across the northerly portions of most of these parcels, significantly reducing the buildable area as approved by the County. These twelve parcels would become three (3) totaling approximately 10 acres, including a common leach field. The remaining parcels would be re-configured to parcels ranging in size from 7 to 186 acres in size. Because twelve of the existing twenty-one parcels are allegedly not developable, the net effect of the boundary line adjustment would be to adjust lot lines to allow for development of homes within a highly scenic area where such development might not otherwise occur. These parcels occupy open grasslands, and are close to and prominently visible from Highway One, Albion Ridge Road, and the community of Albion.

County staff determined that there would be a "visual impact to the town center and to the Highway One traveler" and recommended that the Coastal Permit Administrator deny Coastal Development Permit #CDB 36-2000 based on determinations discussed in the Coastal Policy Consistency Review that compatibility issues exist relative to town character and highly scenic resources. Staff cited inconsistency with LUP Policies 3.5-1, 3.5-2, 3.5-4 and 3.5-6.

Despite the County staff recommendation, the Coastal Permit Administrator approved the re-configuration of parcels as proposed. However, the Coastal Permit Administrator did not adopt specific written findings explaining the basis for his determination that the re-configuration of parcels as proposed is consistent with LUP Policies 3.5-1, 3.5-2, 3.5-4, and 3.5-6. The only statements dealing with visual resources included in the County's adopted Findings and Conditions for the approved coastal development permit are findings that the proposed boundary line adjustment is in conformance with the Coastal Element, and conditions requiring that a deed restriction be recorded with the newly configured parcel deeds advising that future development of the parcels will be subject to the "highly scenic" and "community character" criteria found in the Local Coastal Plan and zoning ordinance.

In effect, the County's action postponed detailed consideration of the visual impacts of the proposed boundary line adjustment and visual resources to the future when homes or

other development is proposed on the re-configured parcels. However, LUP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(4) specifically provide that the visual impacts of potential future development of the parcels must be analyzed for consistency with the visual resource policies of the LCP at the time a boundary line adjustment is approved.

LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015 provide that development in highly scenic areas must be subordinate to the character of its setting. The policies also provide guidance on how to ensure that new development is subordinate to its setting in highly scenic areas. LUP Policy 3.5-4 and Coastal Zoning Ordinance Section 20.504.015 provide that buildings and building groups that must be sited in highly scenic areas shall be sited: (a) near the toe of a slope; (b) below rather than on a ridge; and (c) in or near a wooded area. These policies also state that the visual impacts of development on terraces must be minimized by avoiding development in large open areas if alternative site exists, and minimizing the number of structures and clustering them near existing vegetation, natural landforms or artificial berms. As proposed, many of the re-configured parcels would force future development on these parcels to be located in large open areas and along the ridgeline traversed by Albion Ridge Road. Without any County findings discussing how this arrangement of parcels is consistent with the above cited visual resource policies of the LCP, and because the new homes would not be screened by topographic variations, existing vegetation, or any intervening development, further development of the parcels would not be subordinate to the character of its setting, inconsistent with Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015(3). As development of the resulting parcels would be inconsistent with LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015(3), the boundary line adjustment, as approved, is also inconsistent with the requirements of LCP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(4) which state that no boundary line adjustment shall be approved if development of the resulting parcels would be inconsistent with the visual policies of the LUP and Coastal Zoning Ordinance. The project as approved by the County raises a substantial issue of conformance with LUP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015 (4).

Therefore, the Commission finds that the approved boundary line adjustment as approved raises a substantial issue of conformance to the visual resource policies of the certified LCP.

b. Adequate Water Supply

The appellants contend that there is no on-site proven water supply available to serve the 16 buildable parcels approved from the boundary line adjustment. The area is known to have insufficient ground water, there is no service by a community water system, and there is no evidence in the local record that a well has been drilled to test whether sufficient ground water exists to serve future development of the site. Several policies

within the County's LCP address both general and specific requirements for assessing and demonstrating that an adequate water supply will be available on lots resulting from a coastal development permit for the boundary adjustment. Thus, the appellants assert that a substantial issue exists regarding assurance that new development be located where there is a proven water supply adequate to accommodate the development.

LCP Policies:

Policy 3.8-1 states in applicable part, "*Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits...*

Policy 3.8-9 states in applicable part, "*Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June, 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised.*"

Policy 3.9-1 states in applicable part, "...*One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.*"

Section 20.532.095 of the Coastal Zoning Ordinance states in applicable part, "*The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*

- (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...

Discussion:

The LUP policies cited above require that the approving authority consider whether an adequate on-site water source to serve proposed development is available *before* approving a coastal development permit. The approved project is a boundary line adjustment of existing parcels and does not propose any physical development on the ground. Even though no development that would generate a need for water and other services is proposed in the current application, the certified LCP allows at least one residence on each of the adjusted parcels as a principally permitted use. Pursuant to LUP Policies 3.8-1, 3.8-9, 3.9-1 and Coastal Zoning Ordinance Section 20.532.095, the

capacity of the parcels, as adjusted to support such use, needs to be considered in conjunction with the coastal development permit for the boundary line adjustment.

The County findings for approval and the staff report do not indicate the property is served by any community water system, and do not indicate there are streams or other surface waters on the site sufficient to provide water supply. In fact, to the contrary, the Albion Mutual Water Company submitted a letter to the Coastal Permit Administrator on June 21, 2001 stating that: "*The Water Company distributes water within a specific boundary. None of the parcels involved in this reconfiguration request is currently within the Water Company service boundary.*" (Exhibit 7) In large rural areas of the Mendocino County coastal zone not served by a community water system or with available surface water, domestic water supplies must come mainly from groundwater wells. As noted in the background section on Water Supply in Chapter 3.8 of the LUP, some areas of the coastal zone do not have adequate ground water to serve even existing development, necessitating the hauling of water during the late summer and fall of dry years.

The California Department of Water Resources has been conducting an ongoing coastal-wide groundwater study. The study produced a report entitled, "Mendocino County Coastal Groundwater Study," published in 1982. The report establishes areas of Sufficient, Marginal, Critical, and Critical Bedrock Water Resource areas, and recommends Land Use Densities in these areas.

The Mendocino County Coastal Groundwater Study identifies the subject property as being within a "Critical Water Resource area" (CWR). The land-use density recommendations of the Groundwater Study state in applicable part, the following:

The determination of availability of ground water for a specific development requires professional judgement and interpretation of all available data. This study, though not site specific, has identified coastal areas of differing ground water availability... From this information, general guidelines can be drawn to aid the planner in reviewing proposed developments. It is recommended that: ...Areas designated CWR (Critical Water Resources) shall have a minimum lot size of 5 ac and demonstration of "proof of water." All lots less than 5 ac shall be required to demonstrate 'proof of water' and may require an environmental impact statement. [emphasis added]

Requirements for Establishing Water Supply Adequacy

The LUP policies cited above require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit. Policy 3.8-1 states that availability of water shall be considered when considering applications for development permits. Policy 3.8-9 requires that approval of the creation of parcels be contingent on a demonstration of proof

of an adequate water supply during dry summer months, and that the ground water table and surrounding areas not be adversely affected. Policy 3.9-1 states that one housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate, water capacity exists, and the determination of service capacity shall be made prior to the issuance of a coastal development permit. Coastal Zoning Ordinance Section 20.532.095 states that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

As set forth above, the Mendocino County Coastal Groundwater Study recommends that development proposed on parcels in CWR-designated areas be required to demonstrate "proof of water." However, no technical evidence was discussed in the County findings for approval to establish whether adequate groundwater supplies are available to serve residential and other development that might be proposed on the adjusted parcels in the future. In addition, no evidence that a community water system or adequate surface water is available to serve the development was discussed in the County findings for approval. Before the proposed boundary line adjustment could be found consistent with LUP Policies 3.8-1 and 3.8-9, and Coastal Zoning Code Section 20.532.095 requiring that an adequate water supply would be available to serve the proposed development, technical data would need to be supplied to verify the volume, potability, and proposed source of water.

Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance with the LCP policies regarding provision of water adequate to serve new development.

c. Adequate Septic Capacity

In compliance with LCP policies and standards, boundary line adjustments shall be approved *only* where adequate sewage disposal capacity exists. No evidence was given that parcels resulting from the approved reconfiguration actually possess adequate capacity. The appellants contend that the project as approved raises a substantial issue in this regard.

LCP Policies:

Policy 3.8-1 states in applicable part, "*Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits...*

LUP Policy 3.8-7 states, "*Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers*

and issuance of conditional certificates of compliance shall be approved only where ... a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979."

Policy 3.9-1 states in applicable part, "*...One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.*"

Section 20.532.095 of the Coastal Zoning Ordinance states in applicable part, "*The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that: ... (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...*

Discussion:

Similar to the LUP policies that address domestic water supplies, the LUP policies cited above require that the approving authority consider whether an adequate site to develop an on-site sewage disposal system to serve proposed development is available *before* approving a coastal development permit. Policy 3.8-7 states that a site evaluation shall be satisfactorily completed *before* approval of land divisions, lot line adjustments, mergers and certificates of compliance. Policy 3.9-1 states that one housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that the determination of service capacity shall be made *prior* to the issuance of a coastal development permit. Coastal Zoning Ordinance Section 20.532.095 states that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

In general, a site may be approved for development of an onsite sewage disposal system if it can be found that: (1) it is at least 100 feet from any well, water body, or major break in terrain; (2) it is located on ground with less than a 30 percent slope or where there is less than 5 feet of soil below the trench if the natural grade exceeds a 20 percent slope; and (3) it meets established soil depth, texture and percolation rate criteria.

It should be noted that no technical data was discussed in the County's findings for approval regarding the actual soil and slope conditions in terms of septic system suitability. Instead, the County simply conditioned the permit to require that a detailed site map for the common leach field proposed for four of the parcels as adjusted be submitted to the County Department of Environmental Health for review. The County approval did not identify evidence which demonstrates that suitable septic capacity actually exists for future development on the parcels as adjusted *prior* to approval of the project. In addition, only four (4) of the buildable parcels involved would require review by the County Department of Environmental Health as a condition of approval. Before the proposed boundary line adjustment could be found consistent with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.532.095, the requirements that adequate sewage utilities are available to serve the entire proposed development must be met, and technical data must be supplied to demonstrate the suitability of specific areas for onsite sewage disposal.

Therefore, the Commission finds that the project as approved by the County raises a substantial issue of conformance with the LCP policies cited above requiring sewage disposal capacity adequate to serve new development.

d. Protection of Environmentally Sensitive Habitat Areas

The appellants contend that the approved boundary line adjustment would not establish sufficient buffers as required in the following LCP policies and standards to protect ESHA on the property.

LCP Policies:

Policy 3.1-1 states: *"The various resources designations appearing on the land use maps represent the best information available at this time and therefore create a presumption of accuracy which may be overcome only with additional information that can be shown to be a more accurate representation of the existing situation than the information that has been used to determine these boundaries. Such showing shall be done in the context of a minor amendment to the land use 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 plant 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. The width of the buffer area shall be a*

minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 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 50 feet in width... [emphasis added]

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..."

Policy 3.1-32 states, "Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7."

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part, "New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area..."

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. [emphasis added]*

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 20.496.010 of the Coastal Zoning Ordinance 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 20.496.015 of the Coastal Zoning Ordinance states in applicable part, (A) 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 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...*" and should include a topographic base map, an inundation map, a vegetation map, and a soils map.

Discussion:

A map was submitted with the permit application delineating wetland ESHA. According to a letter in the local record addressed to Mr. Alan Falleri, Chief Planner for Mendocino County, from Gordon McBride, and dated March 28, 2001, he stated that he, "*obtained from Mr. Latham [the applicant] an aerial photograph of his property near the town of Albion and marked the areas that appear to be sensitive habitat above the 220 foot contour. On March 27 Mr. Latham and I revisited the site and ground truthed the areas I had identified in the aerial photographs. As a result of the study of the aerial photograph and site revisit Mr. Latham has prepared the accompanying map showing the areas of sensitive habitat that must be avoided should development ever be proposed on any of the parcels as reconstituted by the proposed boundary line adjustment. His map also shows the fifty foot buffer around each of these areas, which I recommend to protect the sensitive habitat from disturbance or development.*" (Exhibit 6)

This map depicted 50-foot buffers for protecting identified wetlands from the proposed development, and in one instance (Parcel E), located a building envelope for development on the parcel. Based on the scale of the map submitted, this building envelope is within 100 feet of a watercourse ESHA. Other building envelopes identified in the local record overlap with sensitive ESHA resource areas. None of the maps supplied identify sensitive areas by type.

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 default width of the buffer area shall be a minimum of 100 feet measured from the outside edge of the ESHA.

Accordingly, the LCP includes a provision for reducing the buffer width down to as small as 50 feet only if the applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and the County planning staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The County approval does not include any evidence supporting a reduced buffer. Without such evidence, a minimum 100-foot buffer width from the outside edge of all wetland areas is appropriate for this project, not a 50-foot buffer as submitted and approved by the County.

Due to the relatively large size of the subject property, approximately 465 acres, and the abundant ESHA mapped on the property (see Exhibit 6), the significance of the ESHA resources affected by the County's action is great. The Commission finds that the project as approved raises a substantial issue of conformance with LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 because the lot line adjustment would not provide for the establishment of 100-foot buffers between future development on the parcels and existing ESHAs, no evidence has been provided that all the necessary criteria for reducing the buffer to a width less than 100 feet have been satisfied .

e. Traffic Impacts

The appellants contend that traffic impacts resulting from additional buildable parcels were not reviewed or considered as required by LCP Policy 3.8-1, and that in absence of this consideration raises a substantial issue.

LCP Policy:

Policy 3.8-1 states in applicable part, "*Highway 1 capacity...shall be considered when considering applications for development permits.*"

Discussion:

The coast's ability to accommodate major new development depends, in part, upon the availability of transportation, utility, and public service infrastructure. In considering transportation infrastructure, appellants raise the issue that Albion Ridge Road is a very

narrow county residential road. It provides the only access to Highway One for all residents living in the area and up the ridge. It would also serve as the access road for all of the buildable parcels resulting from the approved development on the subject property. Currently, it is impacted by traffic congestion contributed to by the Albion store and gas station, post office and hardware store. Traffic impacts on Albion Ridge Road, on its intersection with Highway One, and on Highway One itself resulting from 16 additional buildable lots resulting from the approved boundary line adjustment were not reviewed. The County's adopted findings for approval of the project and the county staff report contain no specific findings relating to traffic. In addition, there is no indication in the local record that traffic impacts were considered pursuant to the provisions of LCP Policy 3.8-1 that require Highway One capacity to be considered.

The County staff report did note that the "boundary line adjustment will not create any new parcels. As proposed, the adjustment will reduce the number of parcels from 21 to 16. This reduction of five parcels lessens the development potential for this property." However, in the discussion under item #8 of the Coastal Policy Consistency Review section of the County staff report, County staff expressed doubt that of the 21 existing parcels, 12 vacant parcels being reconfigured into 5 parcels (4 of which would be buildable, and one which would serve as a common septic leach field) could be developed in their present configuration. *"Mr. Latham is proposing to re-configure 12 vacant parcels of approximately 7,500 square feet each, lying along the south side of Albion Ridge Road, leaving four residential parcels and a common leach field parcel, each approximately 2 acres. The 12 existing parcels were created many years ago as lots in the Albion village, but were apparently never developed. Because the current alignment [of] Albion Ridge Road cuts across the northerly portions of most of these parcels, significantly reducing the buildable area, staff is doubtful that they could be developed in their present configuration."* If it is true that 12 of the 21 existing parcels may not be developable, then the project as approved would increase future density despite the fact that the boundary line adjustment "will reduce the number parcels from 21 to 18."

The contention raises an issue of statewide significance as Section 30254 state that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Cumulative density increases that adversely affect Highway One capacity could lead to traffic congestion and pressure to add traffic lanes to the highway. As the record contains no evidence that the County in its action on the project considered the effects of the development on Highway One capacity, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.8-1 that requires Highway One capacity to be considered when considering development permits, and in the absence of such consideration, assert that a substantial issue exists.

f. Protection of Prime Agriculture

The appellants contend that the project as approved is inconsistent with LCP policies providing for the protection of prime agriculture. In asserting this contention, they cite requirements under several LUP policies they believe were not met.

LCP Policies:

Policy 3.2-4 refers to use by other than principally permitted uses, and states in part:

"Zoning regulations shall not discourage compatible activities that enhance the economic viability of an agricultural operation. These may include cottage industry, sales of farm products, timer harvesting, not subject to the Forest Practices Act and limited visitor accommodations at locations specified in the plan. Visitor accommodations shall be secondary to the agricultural activity. Proposed projects shall be subject to a conditional use permit. Granting of the permit shall require affirmation findings to be made on each of the following standards. The project shall:

- *maximize protection of environmentally, sensitive habitats;*
- *minimize construction of new roads and other facilities;*
- *maintain views from beaches, public trails, roads and views from public viewing areas, or other recreational areas;*
- *ensure adequacy of water, sewer and other services;*
- *ensure preservation of the rural character of the site;*
- *maximize preservation of prime agricultural soils; and*
- *ensure existing compatibility by maintaining productivity of on-site and adjacent agricultural lands."*

Policy 3.2-5 refers to conversion of lands suitable for agricultural use to non-agricultural use, and states, *"All other lands suitable for agricultural use shall not be converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands."*

Policy 3.2-15 states, *"All land divisions of prime agriculture lands designated AG or RL shall require an approved master plan showing how the proposed division would affect agricultural use on the subject property and the overall operation. The County shall make the following findings during master plan review and before approving land divisions: (1) the division will protect continued agricultural use and contribute to agricultural viability; (2) the division will not conflict with continued agricultural use of the subject property and overall operation; (3) the division is only for purposes allowed in AG or RL designations; (4) the divisions will not contribute to development conflicts with natural resource habitat and visual resource policies. In approving master plans, the County will require conservation easements, covenants against any further land*

divisions or other similar guarantees to ensure long-term agricultural uses for the affected parcel."

Discussion:

The subject property is predominantly agricultural. More than 400 of the 465 acres is zoned with a rangeland (RL) designation. Of this, more than 100 acres is designated as prime agricultural land on the Albion LUP Map #18. Although a principally permitted use within an RL designation is single-family residence, the RL district is intended to encompass lands within the Coastal Zone which are suited for and are appropriately retained for grazing of livestock.

The appellants refer to LCP policies and standards that protect agricultural use and contribute to agricultural viability. Of the LUP policies cited above, only Policy 3.2-15 is applicable in this case. The other two LUP policies, 3.2-4 and 3.2-5, do not apply to the development as approved. Policy 3.2-4 prescribes standards that must be met before activities compatible with agricultural operations can be allowed on agricultural lands. No such activities are proposed. Policy 3.2-5 sets criteria to be met for conversion of agricultural lands. The applicant is not proposing to convert prime agriculture land to other uses. Although the boundary line adjustment would facilitate the future development of houses, a single family house is allowed under the LCP on agricultural parcels as an agricultural use. However, LUP Policy 3.2-15 is applicable because it clearly states that all land divisions of prime agriculture lands designated RL *shall* require an approved master plan showing how the proposed division would affect agricultural use on the subject property and overall operation. No agricultural land use master plan was provided as required under LUP Policy 3.2-15. In the absence of this approved master plan, the Commission finds that the project as approved raises a substantial issue of conformance with LUP Policy 3.2-15.

g. Public Access

The appellants contend that historical and physical evidence exists to indicate that potential prescriptive rights may be present on the property for access across the property and via roads or trails on adjoining property to the ocean. The appellants claim that Middle Ridge Road, a portion of which is on the subject property, has historically been used for public access. Letters in the local record indicate public use of this gravel road to gain access to the coast in the 1960s, 1970s, and early 1980s.

Coastal Act and LCP Provisions

a. Coastal Act Access Policies

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both

the Coastal Act and the certified LCP. Coastal Act Sections 30210, 30211, 30212, and 30214 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 states:

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 states:

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 states, in applicable part:

- (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.*

Section 30214 states:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

- (1) *Topographic and geologic site characteristics.*
 - (2) *The capacity of the site to sustain use and at what level of intensity.*
 - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
 - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*
- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

b. LCP Provisions

LUP Policy 3.6-5 states:

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 non-profit land trust may be helpful and should be explored in the future. If other methods of 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 areas, 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 Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued. *[emphasis added]*

LUP Policy 3.6-27 states:

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 permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner that minimizes risks to life and property, or (3) such siting is necessary for consistent with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site. *[emphasis added]*

Note: This policy is implemented verbatim at Section 20.528.030 of the Coastal Zoning Code.

Sections 4.9-9 and 4.9-10 of the LUP's Coastal Access Inventory states:

Salmon Creek

Location: Old Highway 1 behind Gregory's Restaurant (County Road 401, also known as Spring Grove Road.

Ownership: Private: offers of dedication for lateral, blufftop access 0.5 miles south of the creek have been recorded by Shaffron-Pfeffer and Chesson-Hollowed as a condition of permit approval.

Existing Development: Northern two-thirds of road is paved, excellent blufftop views. Southern part is unimproved, narrow, one-lane road leading to sandy beach..

Policies:

4.9-9: Offers to dedicate an access easement for vertical and lateral pedestrian access along Spring Grove Road south to Salmon Creek Beach shall be required as a condition of permit approval.

4.9-10: Access offers by Shaffron-Pfeffer and Chesson-Hollowed on the south side of Salmon Creek shall be relinquished because existing development would prevent completion of a blufftop trail using dedication offers and because adequate access will exist nearby at Salmon Creek.

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

Discussion:

The appellants claim that a roadway that cuts across the property known as Middle Ridge Road has been used by the public historically to gain access through the property and to the coast at Salmon Creek. Middle Ridge Road runs roughly east-west across the property from the southern end of Albion Ridge Road to the confluence of Big Salmon Creek and Little Salmon Creek about 1/8 mile from the ocean where a dirt/gravel driveway leads under the Highway One Salmon Creek Bridge to Whitesboro Cove. Middle Ridge Road also joins with Spring Grove Road near the confluence of the two streams. Spring Grove Road extends north along the west side of Highway One, climbing up from the creeks to join Highway One at Albion. LUP Policy 4.9-9 states that offers to dedicate an access easement for vertical and lateral pedestrian access along Spring Grove Road south to Salmon Creek Beach shall be required as a condition of permit approval. Portions of the proposed route from Spring Grove Road to Salmon Creek Beach are on the western edge of the applicant's property.

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 half 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.

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.

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 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 eastern portions of Middle Ridge Road are more than 1,000 yards of the sea and the most western portions of the road are within 1,000 yards of the sea. For the eastern portions more than 1,000 yards from the sea, the required five-year period of use must have occurred prior to March of 1972 to establish public rights. For the western portions within 1,000 yards of the sea, 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.

Another section of the Civil Code, Section 813, 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 local record contains no evidence that such a notice has been recorded against the property.

LUP Policy 3.6-27 requires an investigation of potential prescriptive rights whenever "evidence" of historic public use indicates the potential for the existence of prescriptive rights. The local record for the project contains two (2) letters from individuals claiming that they have used Middle Ridge Road in the past as if it were public. Many of the individuals indicate that they used the road to gain access to the Coast at Salmon Creek Beach. Therefore, evidence of historic public use exists that indicates the potential for the existence of prescriptive rights of public access.

In its action on the project, the County did not require public access as a condition of approval. The County reviewed the issue of whether potential prescriptive rights of public access exist but did not conduct a prescriptive rights investigation using the procedures established within the in the Attorney General's Implied Dedication Prescriptive Rights Manual. In his action to approve the project, the County Coastal Permit Administrator included a finding stating the following:

"That while ultimately it would take court review and action to determine possible existence of potential coastal access, staff analysis, which provides the functional equivalent of the procedures established within the "Implied Dedication and Prescriptive Rights Manual Relating to California Coastal Commission Matters," does not clearly conclude that prescriptive coastal access rights exist."

The Attorney General's Prescriptive Rights Manual describes the methods that should be used in a prescriptive rights investigation. Such methods include reviews of existing title documents, contacting government agencies, on-site inspections, and interviews of persons familiar with past and current uses of the property. The Manual indicates that the most important source of implied dedication evidence is the interview, and that an in-depth investigation entails locating and interviewing many potential testimonial witnesses. The Manual states that the information obtained from the investigation should be compiled in a written initial report. The Manual states that "The basic goal of an implied dedication investigation is to acquire enough information about the subject property so that the investigator can make an informed conclusion as to the possibility of implied dedication rights in the property. In addition, the investigator must be able to support his conclusion by a report which details the history of public use of the property." The Manual also states that "enough information should be contained within the Report to provide a basis for the Attorney General's Office to make a judgement, either hat the evidence does or does not sustain a finding of implied dedication, or that an in depth investigation is needed."

According to a memo dated July 27, 2001, attached as pages 4-5 of Exhibit 5, County staff did review information about potential prescriptive rights of public access. County staff conducted a site visit with the applicant, reviewed information presented by the applicant, discussed the issue of whether Middle Ridge Road had ever been owned by a public agency with the County Department of Transportation, had conversations with several knowledgeable Albion residents who have expressed continued interest in the

project, and reviewed correspondence from concerned neighbors and residents. However, there is no indication that the County prepared a survey questionnaire to distribute to potential testimonial witnesses or attempted to locate and interview more than the "several" witnesses referred to in the memo.

The memo concludes its discussion about potential prescriptive rights of public access with the following paragraph. "Based on my site view, the above noted information supplied by the owner, closure of the roadway in the middle 1980's by the property owner, discussion with Department of Transportation, conversations (and written comment from residents of Albion and various documentation supplied by the Trust for Public Lands, it appears that no prescriptive rights may exist. There is evidence that the roadway was used prior to the 1980's, however no documentation has been supplied by those claiming prescriptive use that would support this claim. The above information indicates that while the claim may be made that prescriptive use may exist, no Court decision with regards to this access to the property have been made." (emphasis added)

The County's review of the prescriptive rights issue presents considerable evidence that prescriptive rights of public access has not accrued over the property since the mid-1980s when the landowners took various steps to control public use of the property. However, with regard to use of the site prior to the 1980's, the County memo states "there is evidence that the roadway was used prior to the 1980's," but dismisses this evidence by stating that "no documentation has been supplied by those claiming prescriptive use that would support this claim." Yet letters in the local record for the project from individuals state that they used the roadway for public access use in the 1960s and 1970s. The County's conclusion implies that it is the responsibility of those who might have used the roadway for public access purposes prior to the 1980s to send documentation to the County rather than for the County to actively investigate whether potential prescriptive use has occurred. The level of investigation performed by the County of use prior to 1980 does not conform with the direction in the Attorney General's Manual that implied dedication investigation acquire enough information about the subject property so that the investigator can make an informed conclusion as to the possibility of implied dedication rights in the property. By suggesting that public use may have occurred prior to the 1980s and not actively investigating whether such use occurred by distributing surveys to potential users and applying all of the methods outlined in the Attorney General's Manual, the County did not investigate the use of the property prior to the 1980s to an extent that enabled them to make an informed conclusion as to the possibility of implied dedication. Furthermore, the fact that prescriptive rights of public access have not yet been determined to exist by a court does not mean that potential prescriptive rights of public access do not exist on the property. It is the absence of any judicial determination that heightens the need for a thorough prescriptive rights investigation.

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. Middle

Ridge Road and other portions of the applicant's property are a key means of accessing Salmon Creek Beach.

Therefore, as the letters in the local record for the project describing use by individuals of Middle Ridge Road to gain access to the coast in the 1960s and 1970s provides evidence of potential use of the property for public access, and as the County did not thoroughly investigate prescriptive rights of public access for the period prior to the 1980s in accordance with the methods and guidance 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.

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.

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 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 recreation policies of the Coastal Act. Following is a discussion of the information needed to evaluate the development.

Demonstration of Proof of Water

As discussed previously, LUP Policies 3.8-1, 3.8-9, 3.9-1, and Coastal Zoning Code Section 20.532.095 require that the approving authority consider whether an adequate on-site water source to serve proposed development is available *before* approving a coastal development permit.

Therefore, a hydrological study involving the drilling of a test water well(s) or other demonstration of proof of water is needed to evaluate whether adequate water will be available to serve future development of the adjusted parcels, consistent with the certified LCP.

Demonstration of Adequate Sewage Disposal Capacity

As discussed previously, LUP Policies 3.8-1, 3.8-7, 3.9-1, and Coastal Zoning Code Section 20.532.095 require that the approving authority consider whether adequate sewage disposal capacity exists to serve the proposed development.

Therefore, for each of the buildable parcels resulting from the boundary line adjustment, site evaluations are needed to determine adequate service capacity as defined by established requirements for appropriate soil depth, texture, and percolation rates.

Buffers for Environmentally Sensitive Habitat Areas

As discussed previously, LUP Policies require minimum 100 foot buffers protecting ESHA resources *unless* it can be demonstrated that 100 foot buffers are not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. Such demonstration must include evidence that the Department of Fish and Game concurs with the reduction of the buffer width.

Therefore, for all buffers around ESHA resources that are proposed to be less than 100 feet in width, evidence must be provided from the California Department of Fish and Game that such reduction is warranted and will not result in disruption of the ESHA.

Some information relating to biological resources was obtained from aerial photographs, and from a map prepared by the applicant. Based on this information, and some ground truthing performed by Gordon McBride, ESHA wetland delineations were derived, and 50 foot buffers were recommended. However, pursuant to LCP requirements, full biological survey by a professional qualified to perform wetland delineations needs to be performed. The survey should identify all sensitive habitat areas by type. Finally, suitable building envelopes need to be designed for all buildable parcels that protect ESHA and provide an area for potential development of a dwelling, outbuildings, wells, septic leach fields, driveways and other related development.

Protection of Prime Agricultural Land

As discussed previously, LUP Policy 3.2-15 requires all land divisions of prime agriculture lands designated rangeland (RL) to prepare, and submit for approval, a master plan showing how the proposed division would affect agricultural use on the subject property. Therefore, the required master plan needs to be prepared and submitted.

The California Land Conservation Act of 1965 (also called the Williamson Act) was created to preserve the maximum amount of prime agricultural land by basing property taxes on agricultural yield rather than speculative land value. In return, owners accept a ten-year restriction on the use of their property. County approval of the boundary line adjustment did not discuss if Williamson Act agricultural preserve status exists for the subject property.

Therefore, in order to assess whether prime agriculture land is protected pursuant to LUP Policy 3.2 et. seq., an agricultural use master plan needs to be prepared and submitted to the Coastal Commission for approval. In addition, all property within the approved boundary line adjustment area, or adjacent to the approved boundary line adjustment area, needs to have its agricultural preserve status (Type I, II, or III) identified.

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 information as to 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.

Without the above information, the Commission cannot reach a final determination concerning the appropriateness of the configuration of the approved boundary line adjustment to accommodate future development consistent with the highly scenic policies in the LCP, concerning the adequacy of water supply or sewage disposal capacity, or whether ESHA or Prime Agriculture resources would be sufficiently protected.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Existing Parcel Configuration
4. Proposed Parcel Configuration
5. Notice of Final Action (11 pages)
6. ESHA map and letter (2 pages)
7. Letter from the water company
8. Zoning Map
9. Appeal No. 1—Commissioners Wan and Woolley
10. Appeal No. 2—Ron Guenther for Sierra Club, and
Roanne Withers—Mendocino Coast Watch

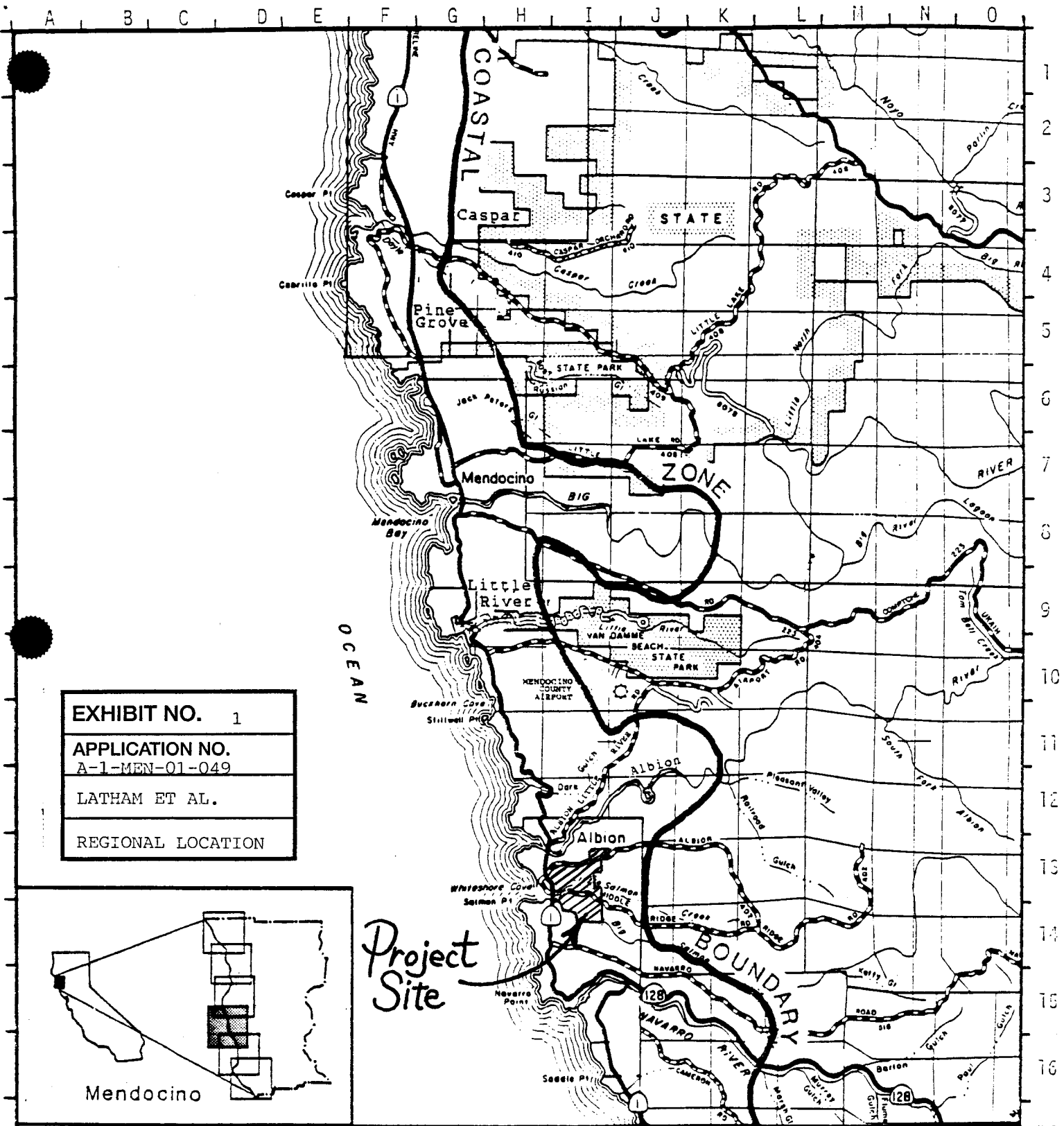
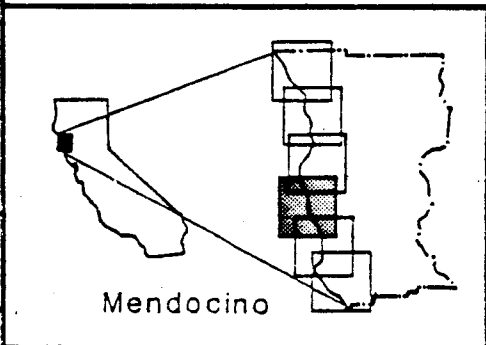


EXHIBIT NO.	1
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
REGIONAL LOCATION	



Project Site

LOCATION MAP



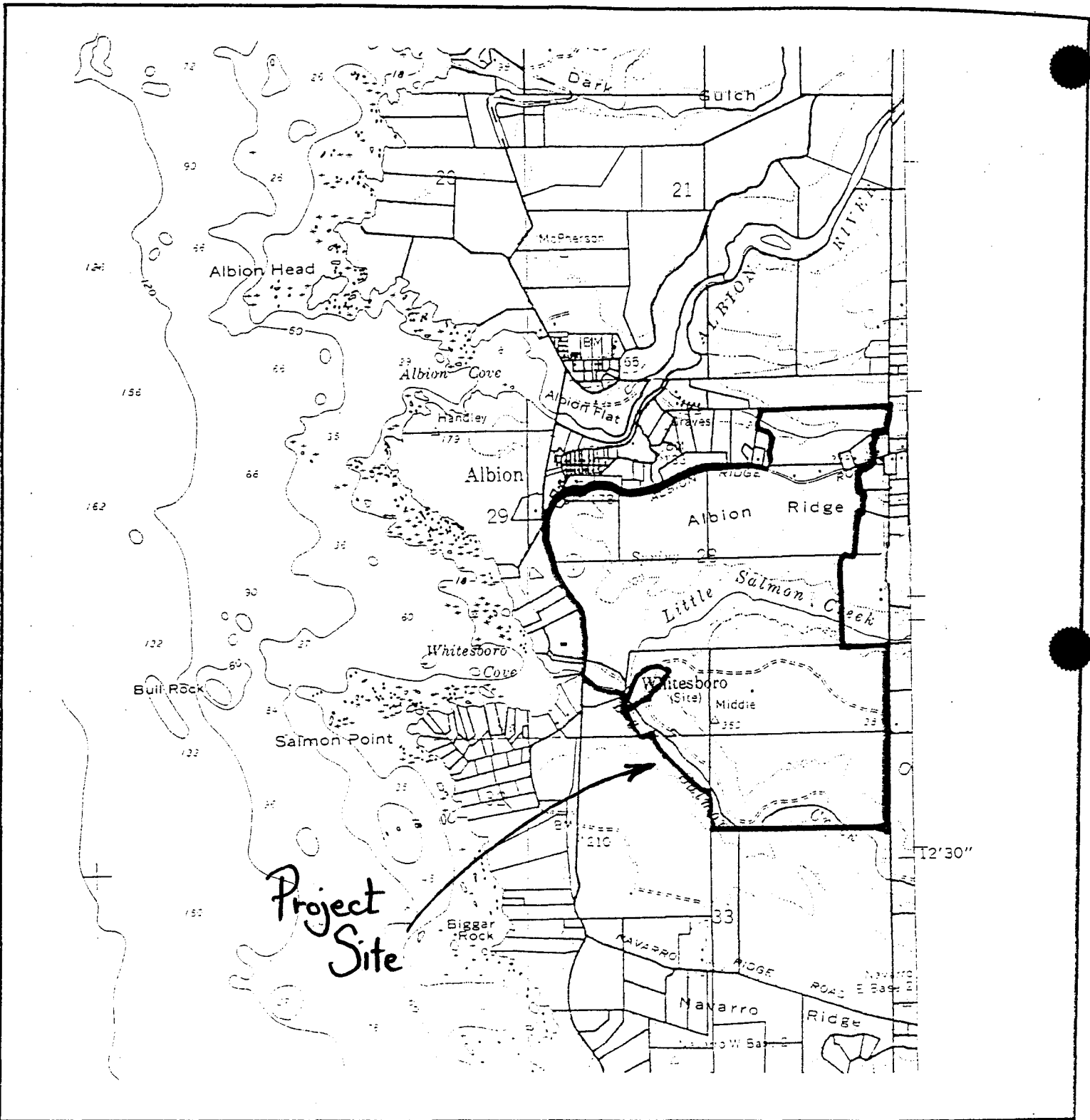
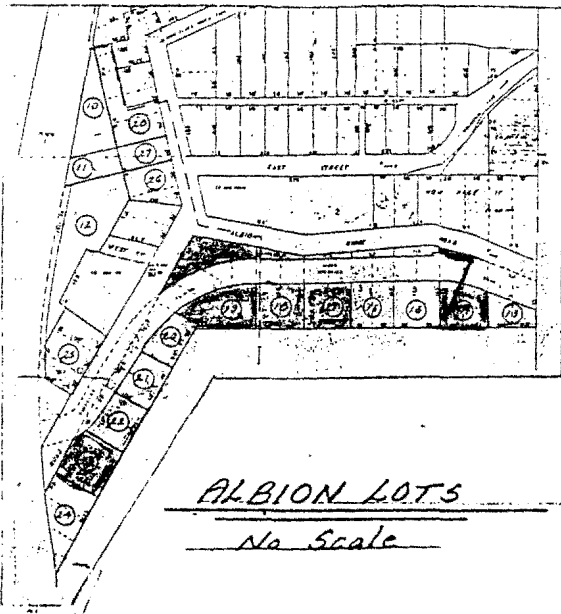


EXHIBIT NO.	2
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
VICINITY MAP	



ALBION LOTS

No Scale

EXISTING

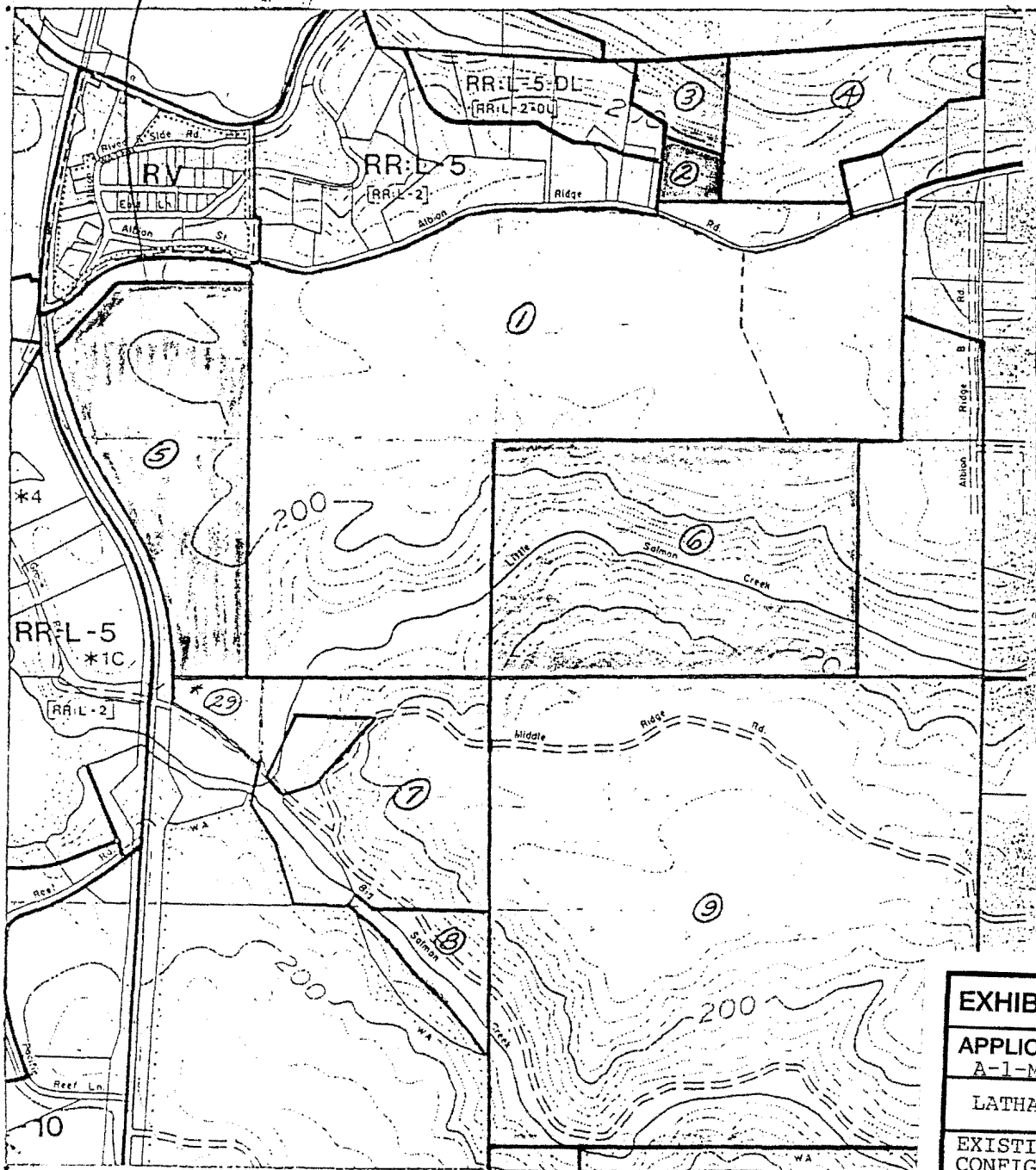


EXHIBIT NO. 3
APPLICATION NO. A-1-MEN-01-049
LATHAM ET AL.
EXISTING PARCEL CONFIGURATION

Parcel	2	3	A	5	6	7	B	:	13-24	E					
Acres	139	2	6	20	37	60	32	6	160	3	465				
<u>1223 CC's</u>															
Parcel	A	B	C	D	E	F	G	H	I	J	K	L-M	N	E	
Acres	52	11	21	10	12	45	37	22	20	186	7	8	10	24	465

BLA Requested

Note:
 No change in CC's
 10, 11, 12, 25, 26, 22, 20 & 29
 D2 - BLA to property to South

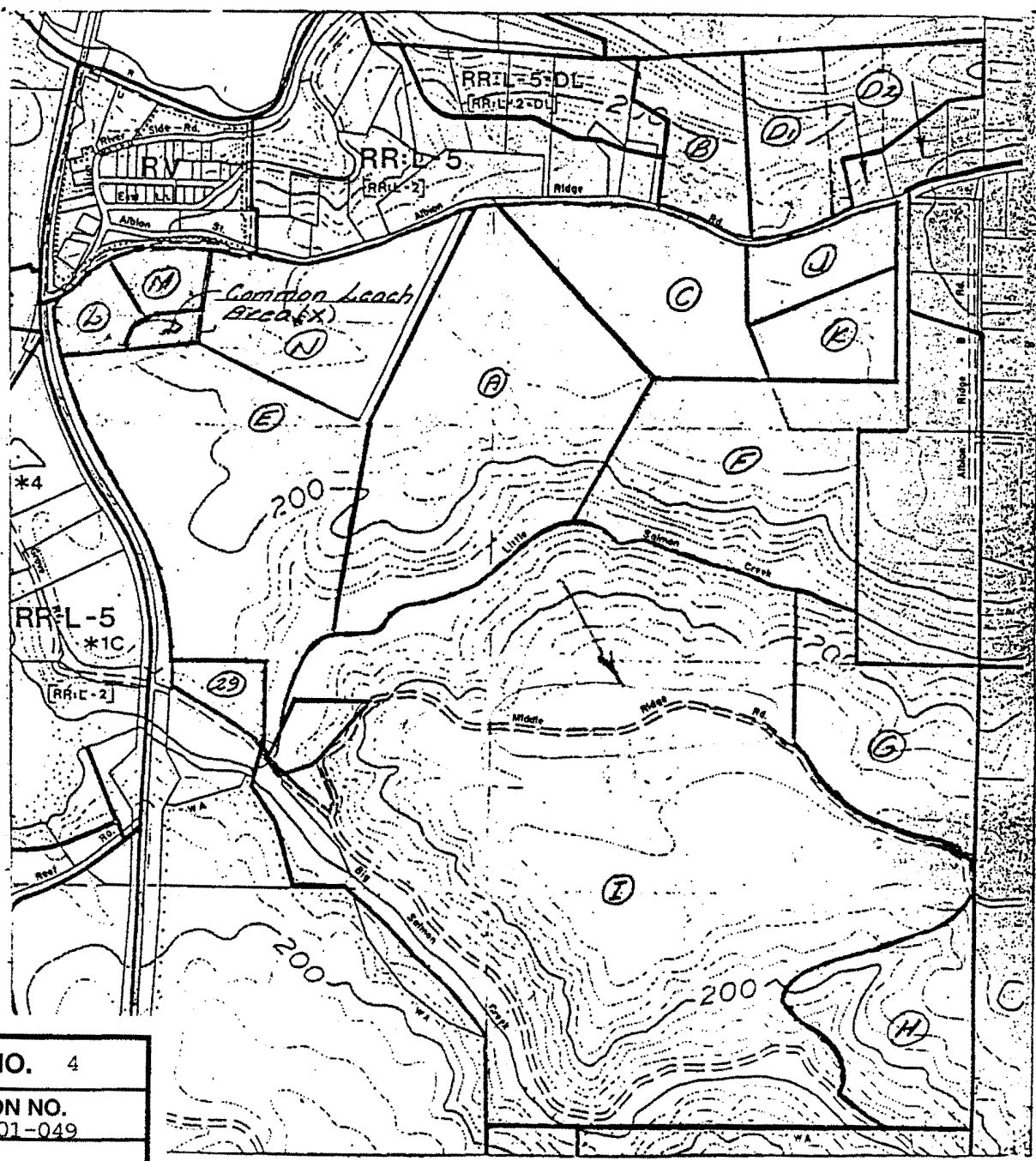


EXHIBIT NO. 4
APPLICATION NO.
 A-1-MEN-01-049
LATHAM ET AL.
PROPOSED PARCEL
CONFIGURATION

BLA REQUESTED
 1" = 600'

REV. 6-29-01

EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
NOTICE OF FINAL ACTION (1 of 11)	

FINAL FINDINGS AND CONDITIONS
#CDB 36-2000 - LATHAM
JULY 27, 2001

RECEIVED
 SEP 06 2001
 CALIFORNIA
 COASTAL COMMISSION

FINDINGS

1. The proposed boundary line adjustment is in conformance with the Coastal Element; and,
2. The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities.
3. The proposed boundary line adjustment 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 boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA).
5. The proposed boundary line adjustment 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.
9. The proposed use is compatible with the long-term protection of resource lands.
10. That while ultimately it would take court review and action to determine possible existence of potential coastal access, staff analysis, which provides the functional equivalent of the procedures established within the "Implied Dedication and Prescriptive Rights Manual Relating to California Coastal Commission Matters," does not clearly conclude that prescriptive coastal access rights exist.

CONDITIONS OF APPROVAL:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. This application is valid for 24 months from the effective date. No extensions can be granted.
2. That for each proposed adjusted parcel, provide one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

"Any and all lands and any and all interest thereto lying within the following described real property" (perimeter description of the adjusted parcel(s).)

and.

"This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment #CDB 36-2000 and is intended to create no new parcel."

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have reviewed the documents and accepted them as correct, we will notify you. DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S) BY THIS DEPARTMENT IN WRITING.

PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with their exact names).

4. Per Mendocino County Code Section 17-17.5(I)(2):

"That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustment have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made."

The enclosed Certificate of the Official Redeeming Officer must be certified by the Treasurer-Tax Collector and a copy returned to the Department of Planning and Building Services.

4. After you have been given clearance to record the new documents, you must send a copy of the recorded deed(s) to the Department of Planning and Building Services. Upon receipt of this information, you will receive a Completion Certificate.
5. Applicant shall submit to the Department of Environment Health to their satisfaction, a detailed site map showing the location of the proposed "Common Leach Area" in relation to the Village of Albion Water Source.
6. Applicant shall maintain a development buffer of 50 feet from all areas designated Prime Agriculture as shown on the Local Coastal Plan Map #18-Albion.
9. If cultural resources are encountered in the course of future ground disturbance, work should immediately cease, the Mendocino County Archaeological Commission notified and a professional archaeologist consulted per Section 22.12.090 Discoveries of the Mendocino County Code.
10. Legal descriptions for each parcel shall provide a minimum frontage of 40 feet on a publicly maintained road or provide a minimum 40 foot wide access easement from a publicly maintained road, to the satisfaction of the Mendocino County Department of Transportation.
11. That future development of the parcels labeled L and M on "Option 3" not exceed 2500 square feet unless and until there is a change in zoning and land use to permit non-residential structures (e.g. commercial structures).
12. A deed restriction shall be recorded with the newly configured parcel deeds advising that future development of the parcels will be subject to the "highly scenic" and "community character" (including LUP Policy 4.9-2) criteria found in the Local Coastal Plan and zoning ordinance.
13. That any development on parcel L and M on Option 3 be sited such that the minimum front yard setback be the front building line, with the intent to have future development sited as close as possible to Albion Ridge Road, keeping the improvement clustered with the existing Albion village core.

2 of 11

MENDOCINO COUNTY MEMORANDUM

TO: FILE - CDB 36-2000
FROM: FRANK LYNCH
SUBJECT: POSSIBLE CONDITIONS
DATE: JULY 27, 2001

On this date I approved the above noted item subject to the alternative findings and conditions listed within the staff report, with the following additional items:

Additional Finding:

That while ultimately it would take court review and action to determine possible existence of potential coastal access, staff analysis, which provides the functional equivalent of the procedures established within the "Implied Dedication and Prescriptive Rights Manual Relating to California Coastal Commission Matters," does not clearly conclude that prescriptive coastal access rights exist.

Additional Conditions:

10. Legal descriptions for each parcel shall provide a minimum frontage of 40 feet on a publicly maintained road or provide a minimum 40 foot wide access easement from a publicly maintained road, to the satisfaction of the Mendocino County Department of Transportation.
11. That future development of the parcels labeled L and M on "Option 3" not exceed 2500 square feet unless and until there is a change in zoning and land use to permit non-residential structures (e.g. commercial structures).
12. A deed restriction shall be recorded with the newly configured parcel deeds advising that future development of the parcels will be subject to the "highly scenic" and "community character" (including LUP Policy 4.9-2) criteria found in the Local Coastal Plan and zoning ordinance.
13. That any development on parcel L and M on Option 3 be sited such that the minimum front yard setback be the front building line, with the intent to have future development sited as close as possible to Albion Ridge Road, keeping the improvement clustered with the existing Albion village core.

3 of 11

MENDOCINO COUNTY MEMORANDUM

TO: COASTAL PERMIT ADMINISTRATOR
FROM: MARY LYNN HUNT, PLANNING & BUILDING SERVICES PLANNER I
SUBJECT: CDB 36-2000 LATHAM
DATE: JULY 27, 2001

Access

On Wednesday July 18, 2001 I conducted a Site-View of the subject property with regards to access issues raised at the previous meeting. Mr. Latham and myself walked the property from the locked gate at the end of Middle Ridge Rd through the property along an old roadway to a locked gate at the bottom of the hill at Spring Grove Rd. I observed the following:

- Both Gate entrances were posted with Keep Out signs. Mr. Latham pointed out that he never removed a sign when placing a new one. The signs did show various signs of aging.
- There were no visible signs of foot traffic on the old roadway to indicate that the trail is being used. In many areas, if Mr. Latham had not been leading the way, I would not have found the roadway at all.
- Along the way, Mr. Latham pointed out various areas of the proposed parcels, which he felt would make suitable building sites with regards to access and visual appearance both offsite, and to the subject property owner.
- While going through a wooded area, Mr. Latham pointed out that he had to cut some branches out in order to walk through. He stated that he and his wife walk this route occasionally.
- At the bottom of the hill near Salmon Creek we had to go through a heavily brushy area to cross Little Salmon Creek. This was not a visible crossing and would not be possible if the water were higher.

Prior to the site view, I sat down with Mr. Latham to go over all the material that he supplied supporting his claim that there is no Prescriptive Access over his family's property. Mr. Latham supplied the following documentation; which has been made a part of this file.

- Use of Anderson Property – written in 1994, also portion of family minutes discussing trespassing signs
- Events on Anderson Property – Documentation of all events from 1/14/89 to present.
- Use of Estate Property – Documentation of all permission given since 1-5-89. Mr. Latham also showed me the individual written permission slips for all entries. I told him I would not need a copy of these due to the volume (6-8" thick) and that the documentation supplied would be sufficient
- Portion of brochure for Albion State Park, Map showing access as "Proposed"
- Portion of Appraisal Report, section highlighted "Implied Dedication".
- Copy of pictures taken 2/11/89 showing "Keep Out" at Spring Grove Rd.
- Actions to Eliminate Public Access – Statements as to how Public Access have been controlled.

I discussed this item with the County Department of Transportation with regards to the roadway being used as a county road. The County Surveyor researched to the best of his ability the history of this roadway. He could find no evidence that this was ever a county maintained roadway.

Conversations with several knowledgeable Albion residents who have expressed continued interest in this project, written correspondence from concerned neighbors/residents of Albion have stated that access to the property was closed in the middle 1980's, with fencing, gating and signing. In the above noted Appraisal Report prepared by Dean Strupp and Associates (dated 5/25/01) for the The Trust for Public Land, the following statement was made.

"Implied Dedication

Our interview with the Albion Park Enthusiasts and Earl Latham, the property owners representative, indicate that implied dedication is highly unlikely due to proper signage and limited historic prescriptive use including Middle Ridge Road which becomes private property at the entrance to proposed parcel I."

4 2 11

It should also be noted that the Coastal Access Site Map prepared by The Trust for Public Land indicate that several "Proposed Access Sites" for the Andersen Ranch are proposed, one of which is that portion from Middle Ridge Rd to Spring Grove Rd.

The Local Coastal Plan discusses prescriptive rights as follows:

"Prescriptive rights of access established by a court determination of historic public use of the property have been proven at some locations and probably exist at many others. In California, the court must find that the public has used the land for five years as if it were public land:

- without asking or receiving permission from the owner,
- with the actual or presumed knowledge of the owner,
- without significant object or bona fide attempts by the fee owner to prevent or halt such use.

The rule that the owner may lose rights in real property if it used without consent for the prescriptive, 5-year period drives from common law and has been supported in recent case law (Gion vs. City of Santa Cruz, 1970 2 Cal. 3d29). It should be noted that if a property owner wished to terminate public use of his or her land, those claiming right to use it must initiate legal action to re-acquire access.

Property owners are protected by the California Civil Code, Section 813, 1008, 1009, which define the steps needed to prevent a prescriptive easement from being established, including posting signs along the property line or publishing a notice in the newspaper that right to pass is subject to permission and control of the owner. Despite this legal protection, some owners who were once willing to allow informal access to friends or to an occasional visitor have now become concerned about prescriptive rights and are no longer permitting access through their property. Thus several informal access points along the Mendocino Coast have been closed in recent years."

Based on my site view, the above noted information supplied by the owner, closure of roadway in the middle 1980's by the property owner, discussion with Department of Transportation, conversations (and written comments) from residents of Albion and various documentation supplied by The Trust for Public Lands, it appears that no prescriptive rights may exist. There is evidence that the roadway was used prior to the 1980's, however no documentation has been supplied by those claiming prescriptive use that would support this claim. The above information indicates that while the claim may be made that prescriptive use may exist no Court decisions with regards to this access to the property have been made.

Option 3 - Proposed Parcel Configuration

At the previous Subdivision Committee Meeting the committee voted approval 2-1 of Proposed Parcel Configuration Option 3 submitted by the property owner. Staff has now reviewed this proposal with regards to the issue of relocating those 2+- acre proposed parcels south of the town center.

Option 3 now proposes to reduce the number of proposed parcels from the town center from four parcels (2+- acres each) (plus a common leach area) to two parcels (4+- acres each) (plus a common leach area) and a larger parcel (10+- acre approx) moved easterly along Albion Ridge Rd. This now reduces the number of parcels lying south of Albion Ridge Rd from 18 parcels to 12 parcels plus a common leach area parcel.

While the new proposal will reduce the number of building sites in close proximity to the town center there will still be a visual impact to the town center and to the Highway One traveler. As stated in the Staff Report for the project, staff is doubtful that those existing 12 lots in close proximity to the town center could be developed in their present configuration.

Option 3 is visually a better proposal than the original proposal, still Staff has concerns with regards to the two parcels located directly across from the town center. However, the voluntary reduction in the number of parcels (6 less parcels) lying south of Albion Ridge Rd. is very good from a planning standpoint. Staff would recommend that the Coastal Permit Administrator follow the Recommended Motion within the original Staff Report and deny CDB 36-2000.

5 9 11
2

REPORT FOR COASTAL DEVELOPMENT BOUNDARY LINE ADJUSTMENT

**#CDB 36-2000
JUNE 29, 2001
PAGE CPA-1**

OWNER: EARL LATHAM ET AL
PO BOX 730
ALBION CA 95410

AGENT: BUD KAMB
PO BOX 616
LITTLE RIVER CA 95456

REQUEST: Coastal Development Boundary Line Adjustment to re-configure 21 legal parcels as recognized by Certificates of Compliance #CC 27-92 and #CC 1-2000.

LOCATION: In the Coastal Zone, in the town of Albion, lying north and south of Albion Ridge Road (CR# 402), east of Highway 1 and north of Salmon Creek; AP# 123-200-07, 123-180-02, 123-350-04X, 123-190-16X, 123-190-22, 123-190-23, 123-150-35X, 123-160-04X, 123-360-02, 123-360-04, 123-370-04, 123-360-05, 123-350-03, 123-370-07, 123-370-05, 123-370-08, 123-250-35X, 123-250-37X, and 123-150-37X.

TOTAL ACREAGE: 465+- acres

EXISTING USES: Agricultural/vacant

SUPERVISORIAL DISTRICT: 5

DATE FILED: April 5, 2000

GOV. CODE 65950 DATE: November 9, 2001

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA: Certificates of Compliance #CC 27-92 and #CC 1-2000 recognized 29 legal parcels on the subject property. Southeast of the project site, Minor Subdivision #MS 13-89 was completed on December 14, 2000 establishing four parcels ranging in size from 20+- to 32.96+- acres. Coastal Development Boundary Line Adjustment #CDB 28-96 reconfiguring two of the parcels was approved by the Coastal Permit Administrator October 25, 1996, but the application was never completed.

PROJECT DESCRIPTION: Earl Latham et al are owners of a 465+- acre parcel extending east from Highway 1 along both sides of Albion Ridge Road. The Lathams are requesting this Coastal Development Boundary Line Adjustment to re-configure 21 legal parcels recognized by Certificates of Compliance #CC 27-92 and #CC 1-2000. The adjustment will reduce the number of parcels from 21 to 18. Current parcel sizes range from lots less than 2,500 square feet to a parcel greater than 160 acres. Access to the property is from Albion Ridge Road. The owner states that existing structures consist of a garage, milk house, milk barn and a storage building. The structures are located on both sides of Albion Ridge Road. Currently, there are one split-zoned parcel and two parcels which conform with zoning minimum parcel sizes. As proposed, there will be one split-zoned parcel and six parcels which will conform with zoning.

COASTAL POLICY CONSISTENCY REVIEW: Staff reviewed the project relative to coastal issues and determined the following:

1. The boundary line adjustment will not result in a change in density;

6 of 11

2. The boundary line adjustment will not create any new parcels. As proposed the adjustment will reduce the number of parcels from 21 to 18. This reduction of three parcels lessens the development potential for this property.
3. The parcels subject to the adjustment are situated within or in close proximity to environmentally sensitive habitat areas. Dr. Gordon McBride has reviewed the site and has prepared a map (see attached) showing the location of sensitive habitat areas. As provided for in Policy 3.1-7 of the Coastal Element of the General Plan, buffer areas shall be established which shall maintain a minimum of 100 feet as measured from the outside edge of the environmentally sensitive habitat areas. The buffer may be reduced to not less than 50 feet in width based upon the recommendations of a qualified botanist and approved by Planning and Building Services and the Department of Fish and Game. As shown on the exhibit map, adequate building areas and access routes are available on each parcel which will maintain the required ESHA buffers.

As noted on the Coastal Plan Map, areas of Prime Agricultural land exist on the subject property. Staff has determined there is adequate area for building sites and that all proposed development shall maintain adequate setback from these prime areas. Condition Number 7 will maintain for the protection of Prime Agricultural lands.

4. The adjustment will not result in parcels having an inadequate building site.
5. Currently there are two existing parcels, which conform to the minimum parcel size as required by zoning. The proposed configuration will increase the number of conforming parcels to six. No substandard lot will result from the adjustment.
6. The property subject to the adjustment is in an area designated CWR (Critical Water Resources) as identified in the Mendocino County Coastal Groundwater Study which states in part:

Areas designated CWR (Critical Water Resources) shall have a minimum lot size of 5 ac and demonstration of "proof of water". All lots less than 5 ac shall demonstrate "proof of water" and may require an environmental impact statement.

As this is an adjustment of parcel boundaries resulting in a reduction in the number of legal parcels and not the creation of additional parcels, staff has determined that the adjustment will not be in conflict with the Mendocino County Coastal Groundwater Study recommendation.

The project has been reviewed by the Environmental Health Department with regards to water and septic and Condition Number 6 will address any concerns they may have with regards to the location of the proposed "Common Leach Area" in relation to the Village of Albion Water Well site.

7. The boundary line adjustment is not located on property containing pygmy vegetation.
8. As shown on the Coastal Plan Map #18-Albion, that area "Between Albion Ridge Road and 200 feet north of Navarro Ridge Road and Highway 1 intersection everything within view easterly of Highway 1 is designated highly scenic". Staff appreciates the fact that the property owner has taken the initiative to voluntarily reduce the number of legal parcels at the northwest corner of the project area bordering Albion Ridge Road from twelve parcels (which may or may not be developable as they currently exist) to four parcels. However, the four proposed parcels and Common Leach Area parcel as proposed are in a highly visible area as viewed from Highway One, Albion Ridge Road, and from the Albion village. The Coastal Plan policies discuss the importance of protecting the visual resources as follows:

Policy 3.5-1 - State Highway 1 in rural areas of the Mendocino County coastal zone shall remain a scenic two-lane road. The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance

7 up 11

visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

Policy 3.5-2 - The Town of Mendocino is designated as a "special community". Development in the Mendocino Town shall maintain and enhance community character, as defined in the Mendocino Town Plan. Other communities and service centers along the Mendocino Coast including Westport, Caspar, Little River, Albion, Elk and Manchester shall have special protection to the extent that new development shall remain within the scope and character of existing development by meeting the standards of implementing ordinances.

Policy 3.5-4 - Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists. Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area. Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.

Policy 3.5-6 (portion) - Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible.

The town of Albion is characterized by older homes on small (50-foot wide, 5,000-10,000 square feet) parcels which are arranged in a close, compact community setting to the north of Albion Ridge Road. The village is perched at the toe of Albion Ridge overlooking the Albion River estuary to the north with an unobstructed vista across open rangeland extending to the ocean to the south and southwest. The view from the town to the east consists mostly of open grassy slopes with a few residences on larger (2-5 acre) parcels, again lying on the north side of the road. The view to the west to the ocean includes the Highway 1 bridge over the Albion River and an abandoned restaurant/deli/gas station, however, is dominated by a large knoll covered with native grasses.

Mr. Latham is proposing to re-configure 12 vacant parcels of approximately 7,500 square feet each, lying along the south side of Albion Ridge Road, leaving four residential parcels and a common leach field parcel, each approximately 2 acres. The 12 existing parcels were created many years ago as lots in the Albion village, but were apparently never developed. Because the current alignment Albion Ridge Road cuts across the northerly portions of most of these parcels, significantly reducing the building area, staff is doubtful that they could be developed in their present configuration.

Staff is concerned that the proposed parcels on the south side of Albion Ridge Road opposite the town (parcels labeled L, M, N, O and Common Leach Area on the map showing the proposed configuration) will promote development in a highly scenic area which will significantly affect views from Highway 1 and from the town of Albion. Also, future development on these "estate" size parcels would likely be larger more grandiose homes, which are becoming more prevalent along the coast. Such development would not be consistent with the scale and unique architectural character of the existing development.

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For these reasons, staff can not support the location of those five parcels. Staff believes that more appropriate locations for these parcels exist farther up Albion Ridge Road or along Albion Ridge "B" Road where compatibility with town character and highly scenic resources would not be issues.

9. The boundary line adjustment is located in a highly scenic area, therefore, the proposed boundary line adjustment is appealable to the Coastal Commission.
10. The California Historical Resources Northwest Information Center at Sonoma State University has reviewed the project with regard to archaeological and historical significance. An Archaeological Survey was prepared and accepted by the Mendocino County Archaeological Commission on April 11, 2001. No archaeological sites were discovered. The survey did document two historical sites, Whitesboro, the historic mill town, and a historical homestead on Middle Albion Ridge. The survey's Management Recommendations state in part "Given the overall status of the historical sites, they are not considered potentially significant historical resources and no future protection measures or mitigation from any proposed impacts is deemed necessary." Condition Number 8 will address any discoveries that development may reveal.

ENVIRONMENTAL RECOMMENDATION: The application is Categorically Exempt - Class 5a. Therefore, no further environmental review is required.

COASTAL ELEMENT CONSISTENCY RECOMMENDATION: The proposed project is not consistent with Policies 3.5-1, 3.5-2, 3.5-4 and 3.5-6 of the Coastal Element.

RECOMMENDED MOTION: The Coastal Permit Administrator denies Coastal Development Permit #CDB 36-2000, based on the project being inconsistent with Policies 3.5-1, 3.5-2, 3.5-4 and 3.5-6 of the Coastal Element of the General Plan with regard to the visual impacts as discussed in Coastal Policy Consistency Review, Item #8.

If the Coastal Permit Administrator should make the necessary findings to approve the request, the project will be subject to the following conditions of approval, finding that the application and supporting documents and exhibits contain sufficient information and conditions to establish, as required by the Coastal Zoning Code, that:

1. The proposed boundary line adjustment is in conformance with the Coastal Element; and,
2. The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities.
3. The proposed boundary line adjustment 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 boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA).
5. The proposed boundary line adjustment 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.

9 9 11

9. The proposed use is compatible with the long-term protection of resource lands.

CONDITIONS OF APPROVAL:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. This application is valid for 24 months from the effective date. No extensions can be granted.

2. That for each proposed adjusted parcel, provide one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.

3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

"Any and all lands and any and all interest thereto lying within the following described real property"
(perimeter description of the adjusted parcel(s).)

and,

"This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment #CDB 36-2000 and is intended to create no new parcel."

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have reviewed the documents and accepted them as correct, we will notify you. **DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S) BY THIS DEPARTMENT IN WRITING.**

PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with their exact names).

4. Per Mendocino County Code Section 17-17.5(I)(2):

"That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustment have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made."

The enclosed Certificate of the Official Redeeming Officer must be certified by the Treasurer-Tax Collector and a copy returned to the Department of Planning and Building Services.

4. After you have been given clearance to record the new documents, you must send a **copy** of the recorded deed(s) to the Department of Planning and Building Services. Upon receipt of this information, you will receive a Completion Certificate.
5. Applicant shall submit to the Department of Environment Health to their satisfaction, a detailed site map showing the location of the proposed "Common Leach Area" in relation to the Village of Albion Water Source.
6. Applicant shall maintain a development buffer of 50 feet from all areas designated Prime Agriculture as shown on the Local Coastal Plan Map #18-Albion.
9. If cultural resources are encountered in the course of future ground disturbance, work should immediately cease, the Mendocino County Archaeological Commission notified and a professional archaeologist consulted per Section 22.12.090 Discoveries of the Mendocino County Code.

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NOTE: APPLICANTS OR OTHER PERSONS WHO ARE DISSATISFIED WITH A DECISION OF THE COASTAL PERMIT ADMINISTRATOR FOR A COASTAL DEVELOPMENT PERMIT FOR A BOUNDARY LINE ADJUSTMENT MAY APPEAL THE ACTION TO THE BOARD OF SUPERVISORS. AN APPEAL MUST BE MADE IN WRITING ALONG WITH THE APPLICABLE FEE TO THE CLERK OF THE BOARD OF SUPERVISORS WITHIN TEN (10) DAYS OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION. THE APPEAL ISSUE WILL BE PLACED ON THE NEXT AVAILABLE BOARD OF SUPERVISOR'S AGENDA FOR CONSIDERATION, AND THE APPELLANT WILL BE NOTIFIED OF THE TIME AND DATE. APPEALS TO THE BOARD OF SUPERVISORS DO NOT NECESSARILY GUARANTEE THAT THE COASTAL PERMIT ADMINISTRATOR'S DECISION WILL BE OVERTURNED. IN SOME CASES, THE BOARD OF SUPERVISORS MAY NOT HAVE THE LEGAL AUTHORITY TO OVERTURN THE DECISION OF THE ADMINISTRATOR.

6-12-01
DATE

Mary Lynn Hunt
MARY LYNN HUNT
PLANNER I

MLH:sb
6/12/2001

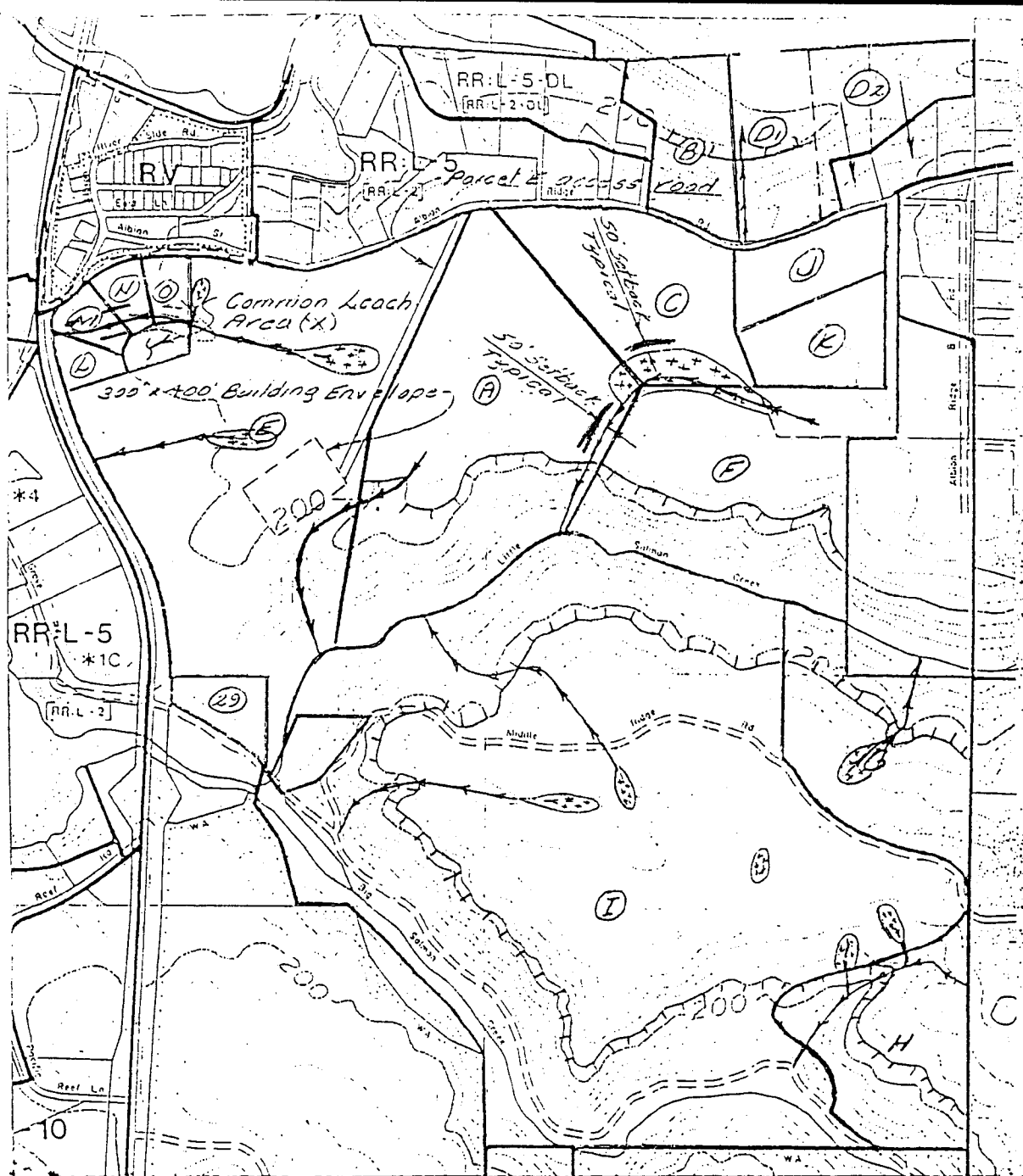
Categorically Exempt

Appeal Fee - \$600.00
Appeal Period: 10 days

REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
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Planning-Fort Bragg		X	
Department of Transportation			X
Env. Health-Fort Bragg			X
Building Inspection-Fort Bragg		X	
Coastal Commission	X		
Ag Commissioner	X		
Arch Commission			X
Sonoma State University			X
Native Plant Society	X		
Caltrans	X		
Dept. of Forestry		X	
US Fish & Wildlife Services	X		
Army Corp of Engineers	X		
Albion Fire District	X		

11 of 11



B.L.R. REQUESTED

1" = 600'

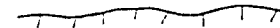
THIS MAP SHOWS THE AREA OF THE PROPOSED LATHAM BOUNDARY LINE ADJUSTMENT WITH EMPHASIS ON THE SENSITIVE HABITAT ABOVE THE 220' CONTOUR LINE. ANNOTATIONS BY GORDON E. McBRIDE.

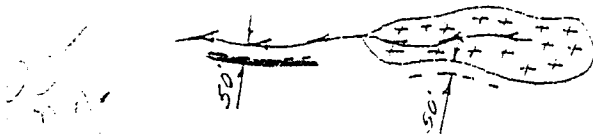
Notes:

Gordon E. McBride MARCH 29, 2001

No development allowed:

Sldy areas

- Below 220' Contour noted: 
- Within 50' of sensitive habitat areas noted:



Parcel E shows a specific building envelope & road.

EXHIBIT NO.	6
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
ESHA MAP AND LETTER	(1 of 2)

Botanical Surveys
GORDON E. McBRIDE, Ph.D.

March 28, 2001

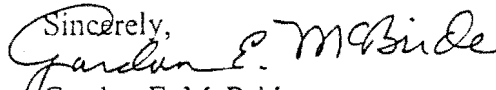
Mr. Alan Falleri
Chief Planner
County of Mendocino
Department of Planning and Building Services
501 Low Gap Road, Room 1440
Ukiah, CA 95482

RE: LATHAM BOUNDARY LINE ADJUSTMENT #CDB 36-00

Dear Mr. Falleri:

In our recent telephone conversation regarding the proposed Latham boundary line adjustment and your letter of February 26 to Mr. Bud Kamb you indicated the need for a map showing potential wetlands, rare plant habitat and/or riparian areas on the site, I obtained from Mr. Latham an aerial photograph of his property near the town of Albion and marked the areas that appear to be sensitive habitat above the 220 foot contour. On March 27 Mr. Latham and I revisited the site and groundtruthed the areas I had identified in the aerial photographs. As a result of the study of the aerial photograph and site revisit Mr. Latham has prepared the accompanying map showing the areas of sensitive habitat that must be avoided should development ever be proposed on any of the parcels as reconstituted by the proposed boundary line adjustment. His map also shows the fifty foot buffer around each of these areas, which I recommend to protect the sensitive habitat from disturbance or development.

I hope this map provides you with the information that you need to proceed with the boundary line adjustment. Please do not hesitate to contact me if I can provide any additional information.

Sincerely,

Gordon E. McBride

Albion Mutual Water Co.
P.O. Box 485
Albion, CA 95410

DEPT. OF ENVIRONMENTAL SERVICES
JUN 2 2001
BY
PLANNING SERVICES
ALBION, CA 95482

June 21, 2001

Frank Lynch
Coastal Permit Administrator
Mendocino County Planning Dept.
501 Low Gap Rd., Room 1440
Ukiah, CA 95482

Dear Mr. Lynch:

In response to a notice of public hearing, Case Number CDB 36-2000 by Earl Latham et al, the Board of Directors of the Albion Mutual Water Company, Incorporated, would like to clarify our involvement with the land in this case.

The Water Company owns deeded easements for two water wells, water treatment and storage facilities, and pipelines located on the land referred to.

The easements include the right to draw water for a specific number of commercial and residential water service hook-ups, including a specific number of hook-ups reserved for use by the heirs of Palle Anderson (Earl Latham et al).

The Water Company distributes water within a specific boundary. None of the parcels involved in this reconfiguration request is currently within the Water Company service boundary.

A copy of the easement deed is attached.

Sincerely,

Therman L. Sprock
Therman L. Sprock
President

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
LETTER FROM WATER COMPANY	

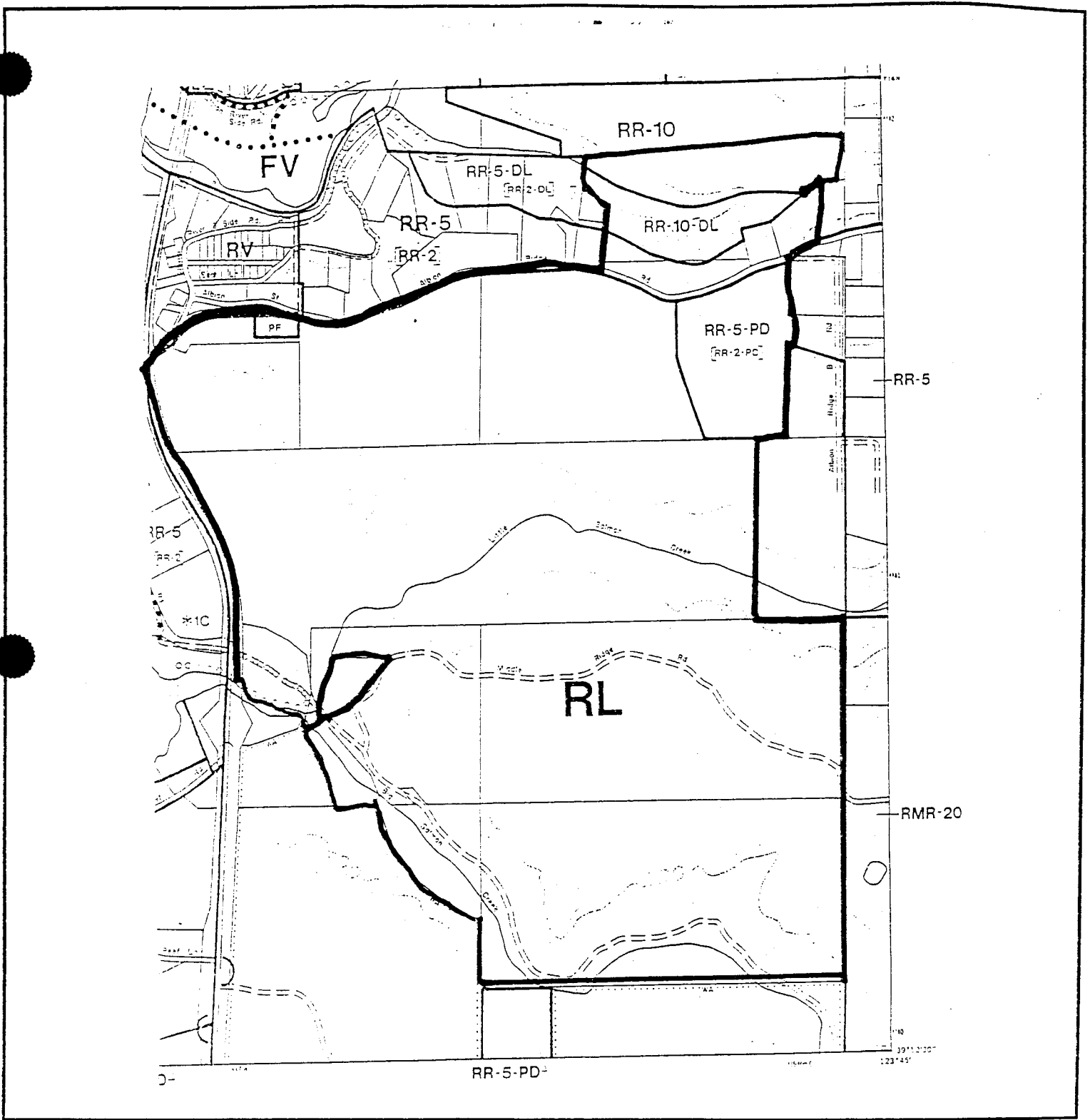


EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
ZONING MAP	

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908

RECEIVED
AUG 27 2001



APPEAL FROM COASTAL PERMIT CALIFORNIA
DECISION OF LOCAL GOVERNMENT COASTAL COMMISSION

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

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

<u>Commissioner Sara Wan</u>	<u>Commissioner John Woolley</u>
<u>22350 Carbon Mesa Road</u>	<u>825 5th Street</u>
<u>Malibu, CA 90265 (310) 456-6605</u>	<u>Eureka, CA 95501-1153 (707) 476-2393</u>
Zip Area Code Phone No.	Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: The County of Mendocino

2. Brief description of development being appealed: Coastal Development Boundary Line Adjustment to re-configure 21 legal parcels as recognized by Certificates of Compliance #CC 27-92 and #CC 1-2000

3. Development's location (street address, assessor's parcel no., cross-street, etc.): See Attachment A

4. Description of decision being appealed

a. Approval; no special conditions: _____

b. Approval with special conditions: CDB 36-2000

c. Denial: _____

Note: For jurisdiction with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-01-049

DATE FILED: 8/27/01

DISTRICT: North Coast

EXHIBIT NO. 10
APPLICATION NO. A-1-MEN-01-049
LATHAM ET AL.
APPEAL BY WAN & WOOLLEY (1 of 14)

5. Decision being appealed was made by (check one):

- a. Planning director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: July 27, 2001

7. Local government's file number (if any): CDB 36-2000

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Earl R. Latham et al.
P. O. Box 730
Albion, CA 95410

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Rixanne Wehern
P. O. Box 340
Albion, CA 95410
- (2) _____

- (3) _____

- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

20914

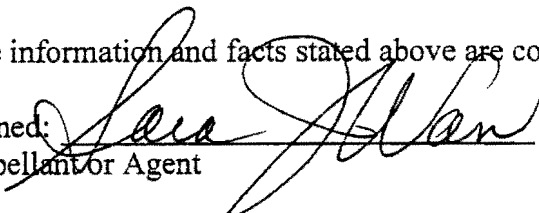
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

(See Attachment B)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: August 27, 2001

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

3414

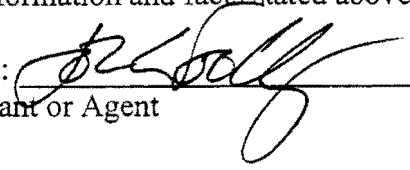
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(See Attachment B)

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SECTION V. Certification

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Signed: 
Appellant or Agent

Date: August 27, 2001

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

ATTACHMENT A

In the Coastal Zone, in the Town of Albion, lying north and south of Albion Ridge Road (CR #402), east of Highway 1, and north of Salmon Creek; assessor's parcel numbers: 123-200-07, 123-180-02, 123-350-04X, 123-190-16X, 123-190-22, 123-190-23, 123-150-35X, 123-160-04X, 123-360-02, 123-360-04, 123-370-04, 123-360-05, 123-350-03, 123-370-07, 123-370-05, 123-370-08, 123-250-35X, 123-250-37X, and 123-150-37X.

ATTACHMENT B

Reasons for Appeal

The boundary line adjustment as approved by Mendocino County is inconsistent with the certified Local Coastal Program (LCP), and raises substantial issues regarding; 1) visual resources; 2) adequate water supply and septic capacity; and 3) environmentally sensitive habitat area protection.

1) VISUAL RESOURCES

The boundary line adjustment encompasses property within a highly scenic area designation, and is in conflict with visual resource policies and standards contained in the Mendocino LCP, including Policies 3.5-1, 3.5-2, 3.5-3, 3.5-4, 3.5-6, and Coastal Zoning Ordinance Sections 20.504.015, and 20.484.010.

Policies

Policy 3.5-1 states in applicable part, *"The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a protected resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting."*

Policy 3.5-2 states in applicable part, *"...communities and service centers along the Mendocino Coast including Westport, Caspar, Little River, Albion, Elk and Manchester shall have special protection to the extent that new development shall remain within the scope and character of existing development by meeting the standards of implementing ordinances."*

Policy 3.5-3 states in applicable part, *"...All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies."*

Policy 3.5-4 states in applicable part, *"Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists."*

Policy 3.5-6 states in applicable part, *"Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible."*

Coastal Zoning Ordinance Section 20.504.015 states in applicable part, "Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes..."

- (3) *New development shall be subordinate to the natural setting...*
- (4) *All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this chapter.*
- (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area...*
- (6) *Minimize visual impacts of development on terraces by the following criteria: (a) avoiding developments in large open areas if alternative site exists; (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms..."*

Discussion

The approved boundary line adjustment would re-configure twenty-one (21) parcels. A table in the County staff report specifically discusses twelve (12) of the twenty-one existing parcels, ranging from 5,000 to 25,000 square feet in size. The staff report raises significant doubts that these twelve parcels could be developed in their present configuration, because the current alignment of Albion Ridge Road cuts across the northerly portions of most of these parcels, significantly reducing the buildable area as approved by the County. These twelve parcels would become four (4) approximate 10-acre parcels proposed to share a common leach field. The remaining nine (9) parcels would be re-configured to parcels ranging in size from 7 to 186 acres in size. Because twelve of the existing twenty-one parcels are not conforming, the net effect of the boundary line adjustment would be to adjust lot lines to allow for development of four homes within a highly scenic area where such development might not otherwise occur. These parcels occupy open grasslands and are close to Highway One and are prominently visible from Highway One, Albion Ridge Road, and the community of Albion. Because the new homes would not be screened by topographic variations, existing vegetation, or any intervening development, further development of the parcels would not be subordinate to the character of its setting, inconsistent with Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015(3). As development of the resulting parcels would be inconsistent with LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015(3), the boundary line adjustment, as approved, is also inconsistent with the requirements of LCP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(4) which state that no boundary line adjustment shall be approved if development of the resulting parcels would be inconsistent with the visual policies of the LUP and Coastal Zoning Ordinance.

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2) ADEQUATE WATER SUPPLY AND SEPTIC CAPACITY

The approval of this boundary line adjustment is inconsistent with certified LCP requirements for demonstrating the existence of adequate water supply, and adequate sewage disposal capacity, including but not limited to Policies 3.8-1, 3.8-7, 3.8-9, 3.9-1 and CZO 20.532.095.

Policies

Several policies within the County's LCP address both general and specific requirements for assessing and demonstrating that an adequate water supply and means of disposing of waste from eventual development will be available on lots resulting from a coastal development permit for the boundary adjustment.

Policy 3.8-1 states in applicable part, "*Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits...*

Policy 3.8-7 states, "*Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where ... a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.*"

Policy 3.8-9 states in applicable part, "*Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June, 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised.*"

Policy 3.9-1 states in applicable part, "*...One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.*"

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Section 20.532.095 of the Coastal Zoning Ordinance states in applicable part, "*The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*

(2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...

Discussion

The approved project is a boundary line adjustment of existing parcels and does not propose any physical development on the ground. Even though no development that would generate a need for water and other services is proposed in the current application, the certified LCP allows at least one residence on each of the adjusted parcels as a principally permitted use. Pursuant to LUP Policies 3.8-7, 3.8-1, 3.9-1 and Coastal Zoning Ordinance Section 20.532.095, the capacity of the parcels as adjusted to support such use needs to be considered in conjunction with the coastal development permit for the boundary adjustment.

The County findings for approval and the staff report do not indicate the property is served by any community water system, and do not indicate there are streams or other surface waters on the site sufficient to provide water supply. In large rural areas of the Mendocino County coastal zone not served by a community water system or with available surface water, domestic water supplies must come mainly from groundwater wells. As noted in the background section on Water Supply in Chapter 3.8 of the LUP, some areas of the coastal zone do not have adequate ground water to serve even existing development, necessitating the hauling of water during the late summer and fall of dry years.

The California Department of Water Resources has been conducting an ongoing coastal-wide groundwater study. The study produced a report entitled, "Mendocino County Coastal Groundwater Study," published in 1982. The report establishes areas of Sufficient, Marginal, Critical, and Critical Bedrock Water Resource areas, and recommends Land Use Densities in these areas.

The Mendocino County Coastal Groundwater Study identifies the subject property as being within a "Critical Water Resource area" (CWR). The land-use density recommendations of the Groundwater Study state in applicable part, the following:

The determination of availability of ground water for a specific development requires professional judgement and interpretation of all available data. This study, though not site specific, has identified coastal areas of differing ground water availability... From this information, general guidelines can be drawn to aid the planner in reviewing proposed developments. It is recommended that: ...Areas designated CWR (Critical Water Resources) shall have a minimum lot size of 5 ac and demonstration of "proof of water." All lots less than 5 ac shall be required to

demonstrate 'proof of water' and may require an environmental impact statement. [emphasis added]

Requirements for Establishing Water Supply Adequacy

The LUP policies cited above require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit. Policy 3.8-1 states that availability of water shall be considered when considering applications for development permits. Policy 3.8-9 requires that approval of the creation of parcels be contingent on a demonstration of proof of an adequate water supply during dry summer months, and that the ground water table and surrounding areas not be adversely affected. Policy 3.9-1 states that one housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate, water capacity exists, and the determination of service capacity shall be made prior to the issuance of a coastal development permit. Coastal Zoning Ordinance Section 20.532.095 states that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

As set forth above, the Mendocino County Coastal Groundwater Study recommends that development proposed on parcels in CWR-designated areas be required to demonstrate "proof of water." However, no technical evidence was discussed in the County findings for approval to establish whether adequate groundwater supplies are available to serve residential and other development that might be proposed on the adjusted parcels in the future. In addition, no evidence that a community water system or adequate surface water is available to serve the development was discussed in the County findings for approval. Before the proposed boundary line adjustment could be found consistent with LUP Policies 3.8-1 and 3.8-9, and Coastal Zoning Code Section 20.532.095 requiring that an adequate water supply would be available to serve the proposed development, technical data would need to be supplied to verify the volume, potability, and proposed source of water.

Sewage Disposal System Requirements

Similar to the LUP policies that address domestic water supplies, the LUP policies cited above require that the approving authority consider whether an adequate site to develop an on-site sewage disposal system to serve proposed development is available before approving a coastal development permit. Policy 3.8-7 states that a site evaluation shall be satisfactorily completed before approval of land divisions, lot line adjustments, mergers and certificates of compliance. Policy 3.9-1 states that one housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that the determination of service capacity shall be made prior to the issuance of a coastal development permit. Coastal Zoning Ordinance Section 20.532.095 states that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect

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the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

In general, the site may be approved for development of an onsite sewage disposal system if it can be found that: (1) is at least 100 feet from any well, water body, or major break in terrain; (2) is located on ground with less than a 30 percent slope or where there is less than 5 feet of soil below the trench if the natural grade exceeds a 20 percent slope; and (3) meets established soil depth, texture and percolation rate criteria.

It should be noted that no technical data was discussed in the County's findings for approval regarding the actual soil and slope conditions in terms of septic system suitability. Instead, the County simply conditioned the permit to require that a detailed site map for the common leach field proposed for four of the parcels as adjusted be submitted to the County Department of Environmental Health for review. The County approval did not identify evidence which demonstrates that suitable septic capacity exists for future development on the parcels as adjusted prior to approval of the project. In addition, only four (4) of the parcels involved would require review by the County Department of Environmental Health as a condition of approval. Before the proposed boundary line adjustment could be found consistent with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.532.095, the requirements that adequate sewage utilities are available to serve the proposed development must be met, and technical data would must be supplied to demonstrate the suitability of specific areas for onsite sewage disposal.

3) ENVIRONMENTALLY SENSITIVE HABITAT AREAS

The appellants contend that the project as approved is inconsistent with the ESHA protection policies and standards established under the certified LCP, including but not limited to the Mendocino County LUP policies 3.1-2, 3.1-7, 3.1-10, and Coastal Zoning Code Sections 20.496.020, and 20.484.010 as the permit would not establish sufficient buffers to protect ESHA on the property and the project could contribute to cumulative impacts on wildlife habitat.

Policies

Policy 3.1-1 states: *"The various resources designations appearing on the land use maps represent the best information available at this time and therefore create a presumption of accuracy which may be overcome only with additional information that can be shown to be a more accurate representation of the existing situation than the information that has been used to determine these boundaries. Such showing shall be done in the context of a minor amendment to the land use 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 plant 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. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 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 50 feet in width..." [emphasis added]

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..."

Policy 3.1-32 states, "Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7."

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part, "New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area..."

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. [emphasis added]

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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 20.496.010 of the Coastal Zoning Ordinance 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 20.496.015 of the Coastal Zoning Ordinance states in applicable part, (A) 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 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...*" and should include a topographic base map, an inundation map, a vegetation map, and a soils map.

Discussion

A map was submitted with the permit application delineating wetland ESHA. This map depicted 50-foot buffers for protecting identified wetlands from the proposed development, and in one instance (Parcel E), located a building envelope for development on the parcel. Based on the scale of the map submitted, this building envelope is within 100 feet of a watercourse ESHA.

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 default width of the buffer area shall be a minimum of 100 feet measured from the outside edge of the ESHA.

Accordingly, the LCP includes a provision for reducing the buffer width down to as small as 50 feet only if the applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and the County planning staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The County approval does not include any evidence supporting a reduced buffer. Without such evidence, a minimum 100-foot buffer width from the outside edge of all wetland areas is appropriate for this project, not a 50-foot buffer as submitted and approved by the County.

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Therefore, the project as approved is inconsistent with LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 because the lot line adjustment would not provide for the establishment of 100-foot buffers between future development on the parcels and existing ESHAs and no evidence has been provided that all the necessary criteria for reducing the buffer to a width less than 100 feet have been satisfied.

CONCLUSION

The Commission finds that the project as approved by the County, is inconsistent with, and raises a substantial issue, with respect to its conformance with LCP policies and Coastal Act policies pertaining to 1) the protection of visual resources; 2) the demonstration of adequate water supply and septic capacity; and 3) the protection of environmentally sensitive habitat areas.

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STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVID GOVERNOR

CALIFORNIA COASTAL COMMISSION

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By FAX 4 pgs TOTAL
AUGUST 24, 2001

APPEAL FROM COASTAL PERMIT ORIGINAL & ATTACHMENTS
DECISION OF LOCAL GOVERNMENT BY MAIL

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

RECEIVED
AUG 24 2001

SECTION I. Appellant(s)

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

- Sierra Club Mendocino/Lake Group, Ron Guenther, P.O. 2330, Fort Bragg, CA 95437 (707) 962-0645

- Mendocino Coastwatch, Roanne Withers, P.O. 198, Fort Bragg, CA 95437 (707) 961-1253
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Mendocino County

2. Brief description of development being appealed: COASTAL DEVELOPMENT BOUNDARY LINE ADJUSTMENT TO RECONFIGURE 21 CERTIFICATE OF COMPLIANCE PARCELS ON 465 ACRES

3. Development's location (street address, assessor's parcel no., cross street, etc.): AREA IS NORTH & SOUTH OF ALBION RIDGE ROAD, EAST OF HIGH 1, & NORTH OF SALMON CREEK

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: ✓

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: 12-1-MEN-01-049

DATE FILED: 8/24/01

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO.	11
APPLICATION NO.	A-1-MEN-01-049
APPEAL BY	RON GUENTHER (SIERRA CLUB) & ROANNE WITHERS (COASTWATCH)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- c. Planning Commission
- b. City Council/Board of Supervisors
- d. Other _____

6. Date of local government's decision: July 27, 2001 NOD UNKNOWN

7. Local government's file number (if any): CDB 36-2000

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

EARL LATHAM, et al, P.O. BOX 730, ALBION, CA 95410
BUD KAMB (AGENT), P.O. BOX 1010, LITTLE RIVER, CA 95454

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) _____
- (2) _____
- (3) _____
- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

THIS BOUNDARY LINE ADJUSTMENTS ARE INCONSISTANT

WITH THE FOLLOWING MENDOCINO COUNTY LCP/LUP

Policies: ESHA (3.1, et seq. ZONING CODE 20.496.020)

WATER & SEWER (3.8-1, et seq. ZONING Code 20.532.05)

VISUAL RESOURCES (3.5)

TRAFFIC IMPACTS

PRIME Ag (3.2)

PUBLIC ACCESS

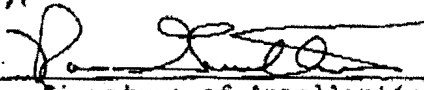
SEE ATTACHED: 1 PAGE

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Rianne Wilcox, Mendocino Coastal



Signature of Appellant(s) or
Authorized Agent

Date 8/24/01

NOTE: If signed by agent, appellant(s)
must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

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Attachment to Sierra Club/Mendocino CoastWatch Appeal of CDB 36-2000

The subject boundary line adjustments are inconsistent with the following LCP/LUP Policies:

1. Environmentally Sensitive Habitat Areas (Policies 3.1, et seq.; Zoning Code Section 20.496.020)

It is our understanding that the "common leach area" intended to serve some of the parcels is located entirely within a parcel reconfigured to contain all of an identified ESHA.

2. Availability of water and sewage disposal (Policies 3.8-1, -7, -9; 3.9-1; Zoning Code Section 20.532.05)

No water supply is identified for any of the reconfigured parcels. Additionally, siting for sewage disposal has not been reviewed in terms of water supply (potential wells).

3. Visual resources (Policies 3.5-1, -3, -4; Zoning Code Section 20.504.015)

The 465+ acre area is located in a Highly Scenic area. Building envelopes with consideration to ESHA areas were not identified, and story poles were not erected so county staff, and the public could review these in terms of the parcel re configuration.

4. Traffic Impacts

Albion Ridge road is a very narrow county residential road. It provides the only access to Hwy. 1 for all residents living in the area and up the ridge. It currently impacted by traffic congestion contributed by the Albion store & gas station, post-office, and hardware store. Traffic impacts on this road and Hwy 1 from an additional 18 buildable parcels has not been reviewed.

5. Prime Agricultural Land

Attached is a letter from Bud Kamb (the developer's agent) dated August 15, 2000 which states, in part, "Almost all of the land is Prime Ag, not just the schematic locations shown on the Land Use Map..." The county did not require an updated soils report.

None of the following requirements were met:

- (1) LUP Policy 3.2-4 lists(in part):
 - minimize construction of roads
 - ensure adequacy of water
 - ensure preservation of rural character of the site
 - maximize preservation of prime agricultural soils
- (2) LUP Policy 3.2-5 states (in part): Development must be concentrated consistent with Section 30250
- (3) LUP Policy 3.2-15 Lists the Findings that must be made by the county and requirement for an approved mater plan showing how the proposed division would affect agricultural use on the subject property and overall operation .

6. Public access

Historical county and state maps clearly show a public road (Middle Ridge Road) that connected with Albion Ridge Road (county road) at its most western terminus, traveled south and then east across subject area (in between Little Salmon Creek and Salmon Creek), to finally complete the circle by reconnecting with Albion Ridge Road at its eastern terminus. A portion of this road (2+ miles not on the subject parcel) is currently a county maintained road. Our historical notes for the area show a Mendocino County toll bridge franchise (connoting public ownership and dollars) within one mile south of Albion River (*The History of Mendocino County*, published in 1880). We are in the process of further documenting the public funds and public use of this road, and will forward this evidence to the Commission.

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of 4

