

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

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Filed:	August 27, 2001
49 th Day:	Waived
Staff:	Randall Stemler and Robert. Merrill
Staff Report:	November 30, 2001
Continued	
Hearing Date:	December 14, 2001
Commission Action:	

REVISED 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:	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:
DOCUMENTS**

**1) Mendocino County CDB No. 36-2000; and
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 of conformity 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 fifteen (15) parcels, one of which would be reserved as a common septic leach field parcel serving two of the other 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 policies 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 the protection of 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 the protection of 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 the approval of 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) 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 13, 2001 of the County's Notice of Final Action.

3. Continuance of Hearing.

The public hearing on the appeal was originally scheduled for the Commission meeting of October 11, 2001, in San Diego. Prior to the scheduled hearing, the applicants submitted a letter requesting a continuance of the hearing to the December Commission meeting in San Francisco because of an inability to be represented at the San Diego meeting.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date the appeal of a locally issued coastal development permit is filed. The appeal on the above-described decision was filed on August 27, 2001. The 49th day fell on October 15, 2001. The only Commission meeting within the 49-day period was the October meeting in San Diego. At the October 11, meeting, the Commission discussed the applicants' request for a continuance of the hearing and the fact that the Commission had not yet received a written waiver of the 49-day deadline from the applicants. The applicants' agent was reached by telephone from the meeting, and the agent confirmed to Commission staff that the applicants had signed and mailed a written waiver of the 49-day deadline. The Commission then granted the continuance of the hearing and directed that the public hearing be continued to the December meeting in San Francisco. The written 49-day waiver was received on October 15, 2001, and had been signed by the applicants on October 9, 2001.

Since the October meeting, the Commission received a letter dated November 1, 2001 with attachments from Mr. Earl Latham, one of the applicants, responding to the staff report that had been published before the October 11, 2001 meeting. The letter is attached as Exhibit No. 11 of this revised staff report. The staff report has been revised to respond to Mr. Latham's letter.

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 15, one of which would be reserved as a common septic leach field parcels serving two of the other parcels. 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 to and along scenic coastal areas, be visually compatible with the character of surrounding areas, and in highly scenic areas, subordinate to the character of its setting. . All proposed divisions of land and 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 of the approximately 465-acre property (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 project 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 15 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. The appellants assert that the County's approval 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 approved project and the creation of 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 project, 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. 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 the conversion of lands suitable for agricultural use to 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 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. As approved, the number of parcels would be reduced from 21 to 15 (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 is 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.

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 reconfigured parcels encompass property within a highly scenic area designation, where development must be subordinate to the character of its setting. In addition, all proposed divisions of land and boundary line adjustments within "highly scenic areas" must be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of the resulting parcel(s) could not be consistent with the visual policies. 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 approved project 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 project 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 approved project could 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 project 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 parcel reconfiguration 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 land division or 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, there is a substantial issue whether further development of the parcels would be subordinate to the character of its setting, inconsistent with Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015(3). As there is a substantial issue whether development of the resulting parcels would be inconsistent with LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015(3), there is also a substantial issue whether the project, 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 Policies 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Section 20.504.015 (4).

In his letter dated November 1, 2001, applicant Earl Latham indicates that one must consider the future needs for expansion of the town of Albion when considering the visual impact of the parcels that would be reconfigured as a result of the approved project near the northwest corner of the property adjacent to the south of Albion Ridge Road (Parcels L and M). Mr. Latham indicates that future rezoning of these parcels could provide for future development of such uses as a new post office, a fire station, a committee center, a restaurant, an antique store, a laundromat, a museum, and parking.

Some of the uses that the applicant suggests might be developed on these parcels in the future, such as a fire station, could involve potentially large and or tall structures that could be visually prominent in these locations. A substantial issue exists as to whether such structures could be designed to be subordinate to the character of its setting as required by LUP Policy 3.5-1. As noted above, LUP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(4) state that proposed divisions of land and boundary line adjustment within "highly scenic areas" must be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of the resulting parcels could not be consistent with the visual policies. The policy does not create exceptions for civic uses or other development that might be considered desirable to the public or others. Thus, consideration that the future development of the parcels might satisfy the needs of the town does not affect whether the approved project is consistent with the visual resource policies of the certified LCP. Furthermore, as the applicant is suggesting that future development of the parcels should include particular development types that may not be subordinate to the character of its setting as required

by the certified visual resource policies of the LCP, and as the County did not adopt specific written findings analyzing the consistency of any potential future development on the approved reconfigured parcels with the LCP visual resource policies, a substantial issue is raised as to whether the approved reconfiguration of parcels is consistent with the provisions of LUP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(4).

Therefore, the Commission finds that the approved project as approved raises a substantial issue of conformance with 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 reconfigured parcels. 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 the newly reconfigured parcels. 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 would reconfigure 21 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 prior to approving the coastal development permit application.

The County findings for approval 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 newly reconfigured parcels would 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.

In his letter of November 1, 2001, applicant Earl Latham makes a number of observations about the potential availability of water to serve each of the reconfigured parcels that would result from the approved project. For some parcels, the letter notes that adjacent parcels have viable wells that are apparently serving existing residences on the parcels and are as close as 200 feet away from potential building sites on the reconfigured

parcels. For other parcels, the letter notes that the parcels include building sites that previously had homes with water utilities. For yet other parcels, the letter notes that the parcels front on live streams from which surface water might be used if need be. Finally, the letter indicates that two of the reconfigured parcels have water from the Albion Mutual Water Company.

Although this information provided by the applicant suggests that some or all of the reconfigured parcels may likely be able to demonstrate that adequate water is available to serve future development of the parcels, the information does not, by itself, demonstrate that adequate water is, in fact, available for each parcel. The fact that viable wells exist on adjacent parcels does not guarantee that water would be found on the parcels involved in the approved project. Groundwater conditions can change from place to place. The fact that old wells may exist on some of the reconfigured parcels does not establish that the old wells currently have adequate water to meet current Health Department standards. The output of a well can change over time and wells can even run dry. The ability to use surface water is subject to the need to secure certain discretionary permits from the State Water Resources Control Board, Division of Water Rights. Although the Albion Mutual Water Company indicates they agree to provide two residential and one commercial water hook up to the applicants, they also note that none of the applicants' unimproved property is currently within the water company's service area. Adjustments of the water service area boundaries are subject to discretionary approvals of the Local Agency Formation Commission and may require an LCP amendment to be certified by the Coastal Commission. Furthermore, as noted above, the County's findings for approval do not discuss the information presented by the applicant or any other information that might serve as evidence that adequate water is available to serve the reconfigured parcels consistent with LCP policies.

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, land divisions and 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.

Before the proposed parcel reconfiguration 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. However, 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 two 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 two (2) of the buildable parcels involved would require review by the County Department of Environmental Health as a condition of approval.

In his letter of November 1, 2001, the applicant suggests that demonstration of adequate septic capacity of the reconfigured parcels should not be necessary, given the size of the parcels involved and with technical advancements in the septic system design. Although the relatively large size of many of the parcels involved in the project increase the likelihood that suitable locations for septic system leach field lines could be found, this fact alone does not guarantee that each of the parcels involved in the lot reconfiguration actually has adequate septic capacity. The need to demonstrate septic capacity is particularly great in regard to the parcel that is to be reserved as a common leach field parcel to serve two other parcels near the northwest corner of the property, as the arrangement is unusual and as the volume of sewage that would need to be accommodated at this site is much greater because it must serve two developable parcels. LUP Policy 3.8-7 and Coastal Zoning Code Section 20.532.095 require that site evaluations for septic capacity shall be satisfactorily completed before approval of land divisions and lot line adjustments. These policies do not make exceptions for large reconfigured parcels. Thus, the fact that large parcels are involved does not demonstrate consistency of the project as approved with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.532.095.

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 lot reconfiguration 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 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.

In his letter of November 1, 2001, the applicant suggests that given the large size of the parcels involved, it would not be difficult to establish 100-foot buffers with future development. Although the relatively large size of many of the parcels involved in the project increases the likelihood that suitable 100-foot buffers from future development of

the parcels and ESHA, this fact alone does not guarantee that each of the parcels involved in the lot reconfiguration actually has suitable building sites that can be located at least 100 feet from any ESHA that might exist on the property. This is of particular concern with the subject property because of the other constraints that would affect the siting of future development of the parcels, including the necessity to locate development consistent with the siting limitations of the visual resource policies of the LCP. For example, options for siting future homes are severely constrained by the need to avoid development within the large open spaces of the highly scenic areas of the subject property consistent with LUP Policy 3.5-4. Knowledge of the extent of area on a proposed reconfigured parcel that must be reserved for protection of ESHA and ESHA buffer is crucial for determining if sufficient area exists to establish a building envelope that would fully comply with the siting limitations of the visual resource policies. Policy 3.1-32 of the LCP ESHA policies and Policy 3.5-3 of the LCP visual resource policies do not allow the approval of land divisions and lot line adjustments that would not provide for parcels that can provide for the required ESHA buffers and can accommodate future development consistent with the visual resource policies. Without a demonstration that 100-foot buffers from ESHA could be provided for future development of each of the parcels involved in the project, a substantial issue is raised of conformance of the approved project with the LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020.

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 approved project 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.

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 the 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. resulting from 15 additional lots resulting from the approved boundary line adjustment were not reviewed. The County's adopted findings for approval of the project contain no specific findings relating to traffic impacts on Albion Ridge Road, on its intersection with Highway One, and on Highway One itself. 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 [15]16(sic). This reduction of [six]five(sic) 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 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 [subsequently changed to two] and a common leach field parcel, each approximately 2 acres [the leach field parcel would be 2 acres, and the other two parcels would be approximately 4 acres each.]. 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 approved project would reduce the number parcels from 21 to 15

In his letter of November 1, 2001, the applicant suggests that in comparison with the number of buildable parcels that the applicant believes could be established if the applicants had decided to seek additional certificates of compliance, future development of the parcel reconfiguration as approved does not create a significant traffic impact. Whether or not additional parcels could have been created through the certificate of compliance process does not affect whether the approved parcel reconfiguration would have traffic impacts. The fact that the applicant believes additional parcels have the potential to be created through the certificate of compliance process suggests that examining the cumulative impacts of the development and future lot reconfigurations is of even greater importance to achieve consistency with LUP Policy 3.8-1.

The appeal also 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 remains 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.

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 that 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 the Coastal Zoning Ordinance lists a single-family residence as a principally permitted use within the RL zoning district, 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 approved lot reconfiguration 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.

In his letter of November 1, 2001, the applicant suggests that the requirements of LUP Policy 3.2-15 that an agricultural master plan be prepared does not apply to the

applicant's parcel reconfiguration, as the applicants' development is a lot line adjustment and not a land division as those terms are defined in Mendocino County Code Section 17-17. The applicant's suggestion itself raises a substantial issue of whether the project is in conformance with the policies and standards of the certified LCP. The code section the applicant refers to is not part of the Mendocino Coastal Zoning Ordinance and is not otherwise part of the certified LCP. Thus, Title 17 is not part of the standard of review for the project. The certified LCP does not contain specific definitions of the terms land division, subdivision, boundary line adjustment, or lot line adjustment. However, the terms land division and lot line adjustment are often used interchangeably within LCP policies. For example, LUP Policy 3.1-32 states: "Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area ..." (emphasis added). Thus, the LCP as certified can be interpreted as including lot line adjustments as a subset of land divisions, contrary to the applicant's interpretation. In addition, given that the approved project does not merely make minor adjustments between parcels but rather completely reconfigures and reestablishes existing parcels in other locations on the subject property, a substantial issue is raised as to whether the approved development is really a boundary line adjustment or a land division.

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 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal

resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area.

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.

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 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 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 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 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 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 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 applicant provides a significant amount of information with his letter of November 1, 2001 bearing on the question of whether prescriptive rights of public access may have accrued over the property or not. The local record and the County's findings do not include or address much of this information, raising a substantial issue as to whether the project is in conformance with the provisions of LUP Policy 3.6-27 that require thorough investigations where evidence of historic public use indicates the potential for the existence of prescriptive rights of public access.

E. Information Needed for de Novo Review of Application

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

consistent with the certified LCP and the public access and 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 lot reconfiguration, 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, a 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. Consistent with LUP Policies 3.1-32 and 3.8-7, the certified LCP uses the terms land division and lot line adjustments interchangeably. Therefore, the required master plan needs to be prepared and submitted.

Therefore, in order to assess whether prime agriculture land is protected pursuant to LUP Policy 3.2 et. seq., an agricultural use master plan for the project site and including all of the land owned by the applicant needs to be prepared and submitted to the Coastal Commission in conjunction with the proposed permit application. In addition, all property within and adjacent to the proposed project 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 capacity of the proposed project to accommodate future development

consistent with the policies in the LCP concerning the adequacy of water supply and sewage disposal capacity, the protection of ESHA and Prime Agriculture resources, and the protection of highly scenic areas.

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
11. Applicants' Correspondence
12. General Correspondence

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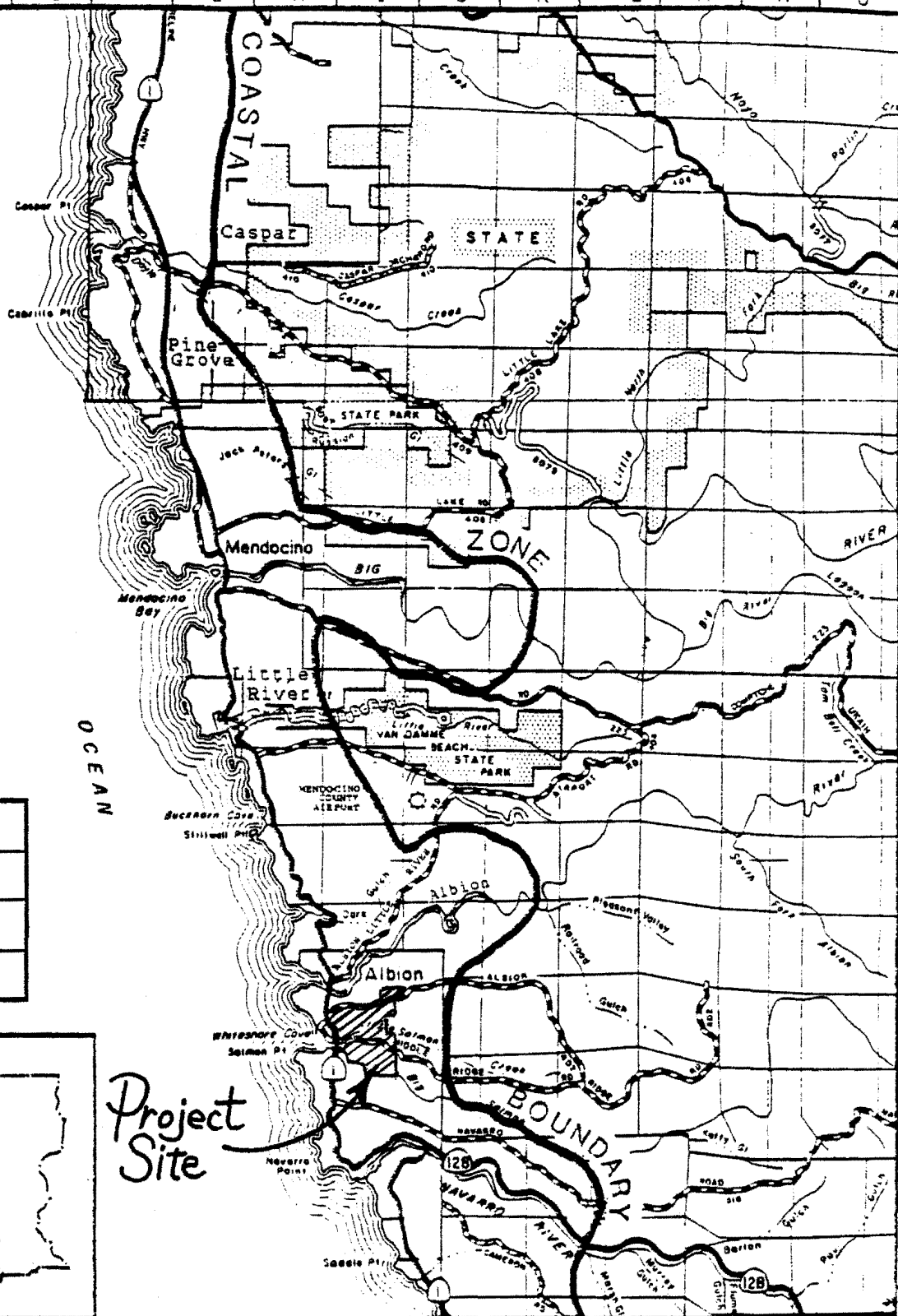
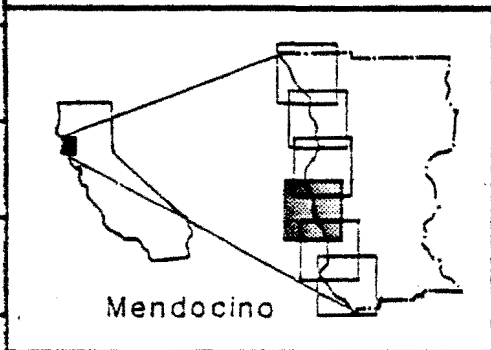


EXHIBIT NO.	1
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
REGIONAL LOCATION	



Project Site

LOCATION MAP



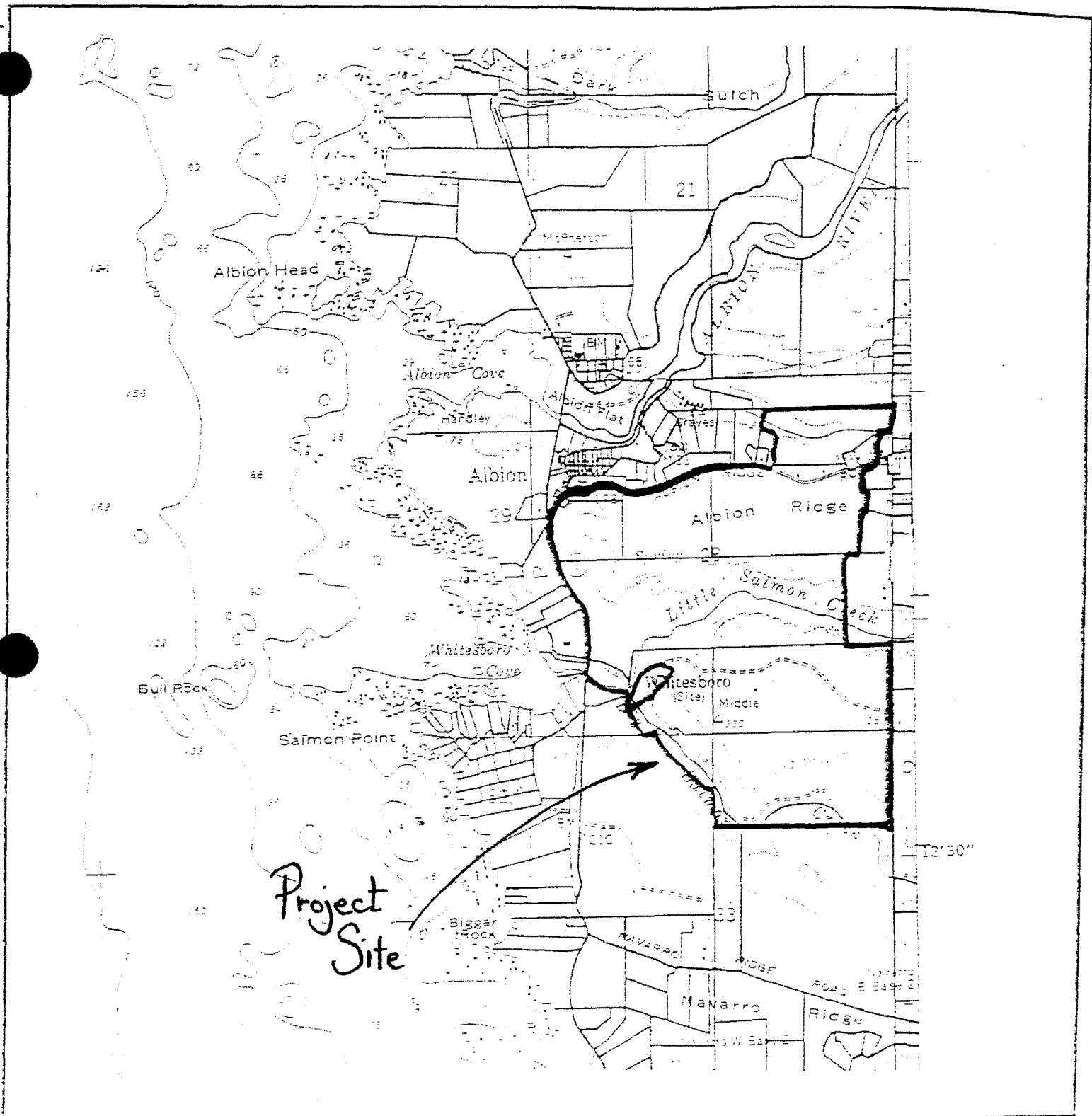


EXHIBIT NO.	2
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
VICINITY MAP	

Parcel	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000	1001	1002	1003	1004	1005	1006	1007	1008	1009	1010	1011	1012	1013	1014	1015	1016	1017	1018	1019	1020	1021	1022	1023	1024	1025	1026	1027	1028	1029	1030	1031	1032	1033	1034	1035	1036	1037	1038	1039	1040	1041	1042	1043	1044	1045	1046	1047	1048	1049	1050	1051	1052	1053	1054	1055	1056	1057	1058	1059	1060	1061	1062	1063	1064	1065	1066	1067	1068	1069	1070	1071	1072	1073	1074	1075	1076	1077	1078	1079	1080	1081	1082	1083	1084	1085	1086	1087	1088	1089	1090	1091	1092	1093	1094	1095	1096	1097	1098	1099	1100	1101	1102	1103	1104	1105	1106	1107	1108	1109	1110	1111	1112	1113	1114	1115	1116	1117	1118	1119	1120	1121	1122	1123	1124	1125	1126	1127	1128	1129	1130	1131	1132	1133	1134	1135	1136	1137	1138	1139	1140	1141	1142	1143	1144	1145	1146	1147	1148	1149	1150	1151	1152	1153	1154	1155	1156	1157	1158	1159	1160	1161	1162	1163	1164	1165	1166	1167	1168	1169	1170	1171	1172	1173	1174	1175	1176	1177	1178	1179	1180	1181	1182	1183	1184	1185	1186	1187	1188	1189	1190	1191	1192	1193	1194	1195	1196	1197	1198	1199	1200	1201	1202	1203	1204	1205	1206	1207	1208	1209	1210	1211	1212	1213	1214	1215	1216	1217	1218	1219	1220	12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COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

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

1-MEN-01-065

August 7, 2001

RECEIVED
AUG 13 2001

NOTICE OF FINAL ACTION

CALIFORNIA
COASTAL COMMISSION

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

CASE#: CDB 36-2000

DATE FILED: April 25, 2000

OWNER: EARL LATHAM ET AL

AGENT: BUD KAMB

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.

PROJECT COORDINATOR: Mary Lynn Hunt

ACTION TAKEN:

The Coastal Permit Administrator, on July 27, 2001, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

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

Attachments

cc: Earl Latham
Bud Kamb
Coastal Commission
Assessor

EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-01-049
LATHAM ET AL.	
NOTICE OF FINAL ACTION	(1 of 12)

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

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.
12. 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.

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.

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."

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 derives 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.

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;

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

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.

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. 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.

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

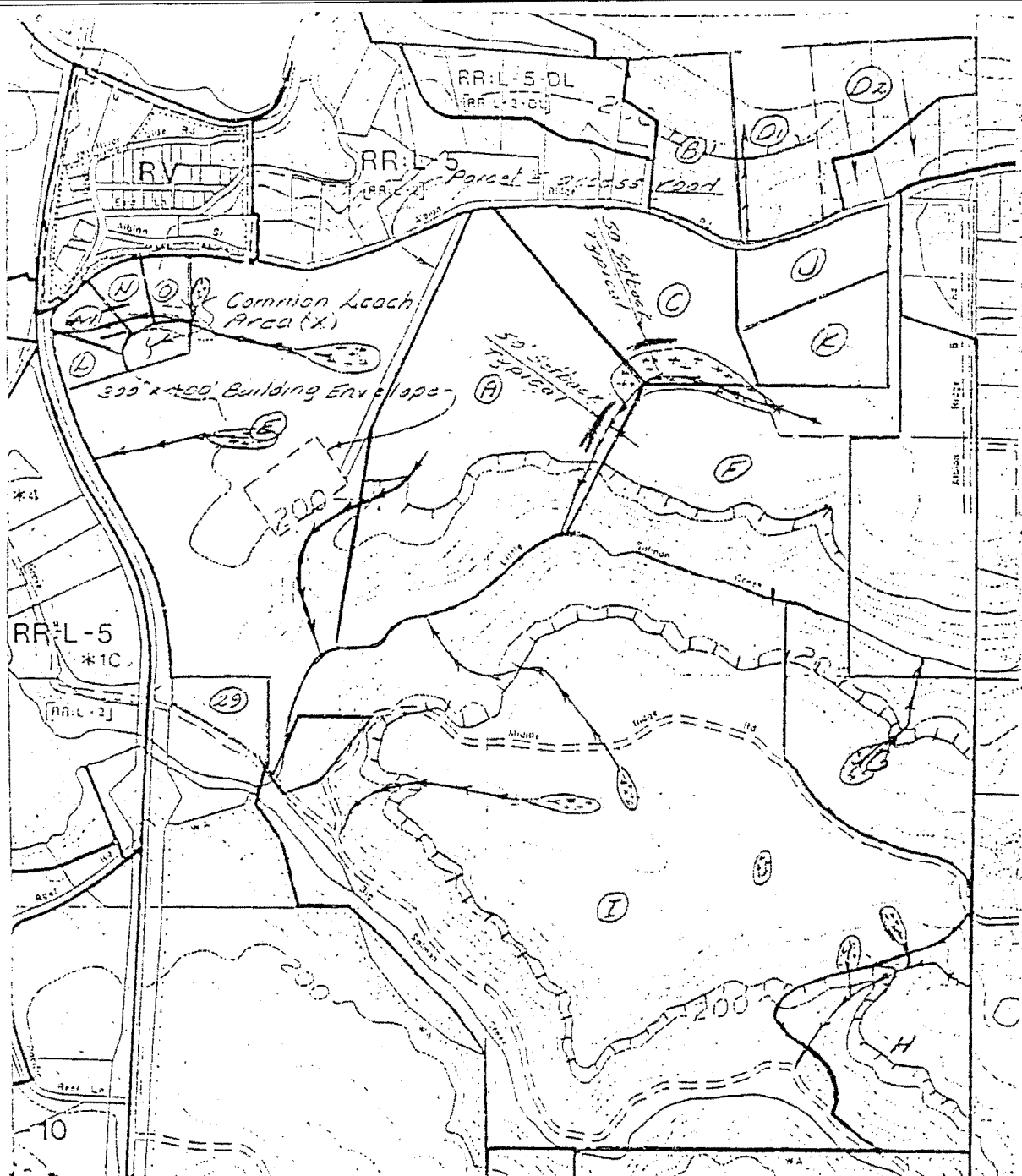
Mary Lynn Hunt
MARY LYNN HUNT
PLANNER I

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
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		



B.L.A. 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. MCKIBBEN.

Notes:

Gordon E. McKibben MARCH 28, 2001

No development allowed:

Sldg Area

• Below 220' Contour noted:
(except Parcels L, M, N & O)

• Within 50' of sensitive habitat areas noted:



Parcel E shows a specific building envelope of 1000'.

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

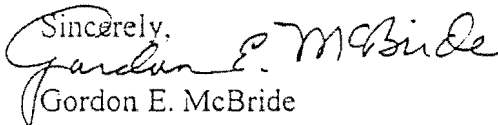
Mr. Alan Falleri
Chief Planner
County of Mendocino
Department of Planning and Building Services
501 Low Gap Road, Room 1440
Ukiah, CA 95482

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 ENVIRONMENT & NATURAL RESOURCES
JUN 2 2001
BY MAIL DELIVERED BY MAILING SERVICE
ALBION, CA 95410

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	

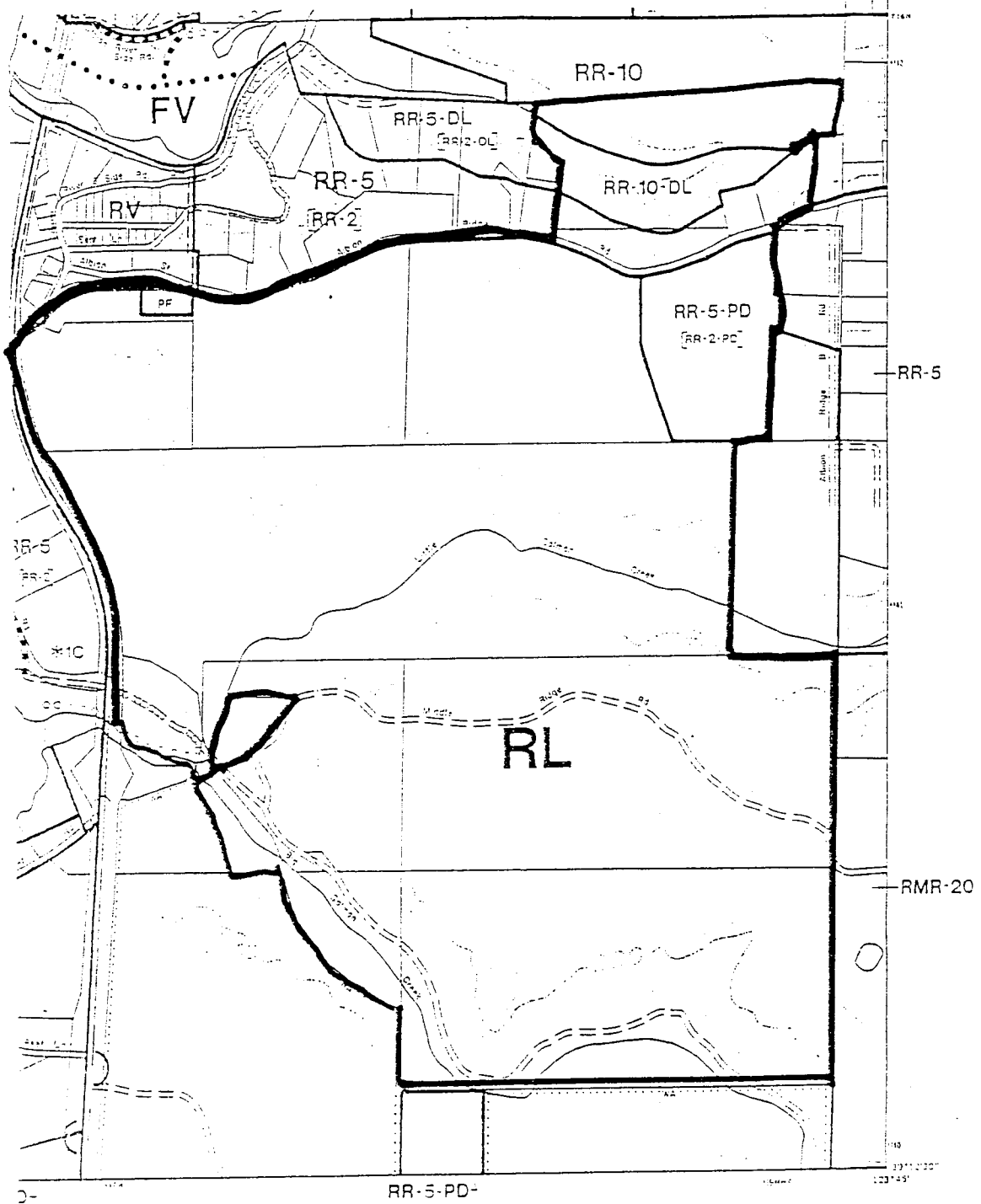


EXHIBIT NO. 8

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
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
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. 9

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

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.)

(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: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

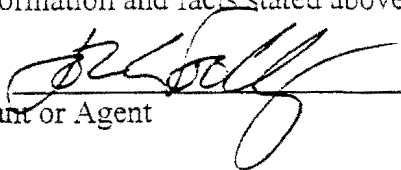
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

(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: _____

4 of 14

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.

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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."*

8 of 14

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

10 of 14

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.

13 of 14

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.

14 09 14

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET - SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7823
FACSIMILE (707) 445-7877

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

By FAX 4 pgs TOTAL
AUGUST 24, 2001

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
ORIGINAL & ATTACHMENTS 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) 961-1453 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 4.65 ACRES

3. Development's location (street address, assessor's parcel no., cross street, etc.): AREA IS NORTH & SOUTH OF ALBION RIDGE ROAD, EAST OF Hwy 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: 5/20/01

DISTRICT: North Coast

H5: 4/98

EXHIBIT NO. 10

APPLICATION NO.

A-1-MEN-01-049

APPEAL BY RON GUENTHER (SIERRA

CLUB) & ROANNE

WITHERS (COASTWATCH) (1 of 4)

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 INCONSISTENT

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 Wilkins, Mendocino Coastwatch



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 _____

3 of 4

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 water 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.

November 1, 2001

California Coastal Commission
North Coast District office
P.O. Box 4908
Eureka, CA 95502-4908

EXHIBIT NO. 11
APPLICATION NO. A-1-MEN-01-049
APPLICANT'S CORRESPONDENCE (1 of 28)

RECEIVED
NOV 08 2001

CALIFORNIA
COASTAL COMMISSION

Subject: Permit No A-1-Men-01-049 (Latham etal)

Attn: Randall Stemler

I have been working on a response to your September 28, 2001 staff report since talking to you and Bob Merrill on October 5, 2001. This letter / information is being submitted in a timely manner with the expectation that our hearing will be rescheduled for the Commission December meeting.

I am concerned over your conclusion that there is "substantial issue" on all seven points raised by the appellants. I feel there is no substantial issue on any of these seven points. The attached discussion of each makes my position very clear. There are many over lapping issues in these seven points and I will be cross referencing them where necessary.

As importantly, I feel you are not in your rights to request the information you do on pages 34, 35 and 36. My detailed response to this is covered along with my discussion of the seven points. However, the items of information I challenge are noted below. The notations in front of each point indicate the areas of detailed review.

- VR 1-2 Visual Resources. Building envelopes required on all parcels
- AWS 1-2 Adequate Water Supply. Drilling wells on all parcels to prove an adequate source of water
- ASC 1 Adequate Soil Capacity. Complete soils analysis on all parcels
- ESHA 1 Environmental Sensitive Habitat Areas. Complete biological study on all parcels including wetlands identification. The map we furnished identifying ESHA should be adequate.
- T 1-3 Traffic. Traffic Study
- PAL 1-2 Prime Agricultural Land. Agricultural master plan
- PA 1-9 Public Access. Public access should not be an issue. Your only task should be to determine that this development plan does "not interfere" with any "potential for existence of prescriptive rights."

I am attaching a single sheet showing both CC's and BLA to assist in review of my letter.

Sincerely,

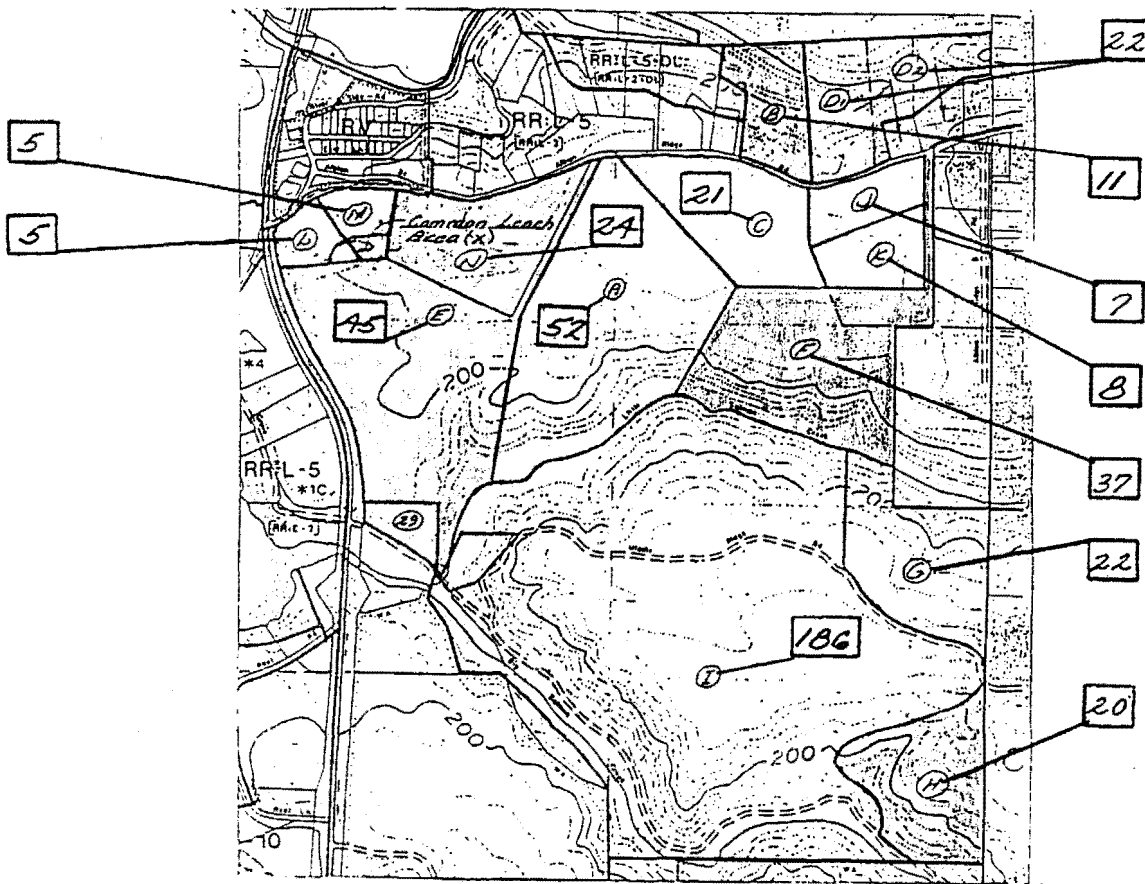


Earl R. Latham
P.O. Box 730 Albion CA 95410
707-937-5573

CC: All Commissioners
All Family Members
Bud Kamb

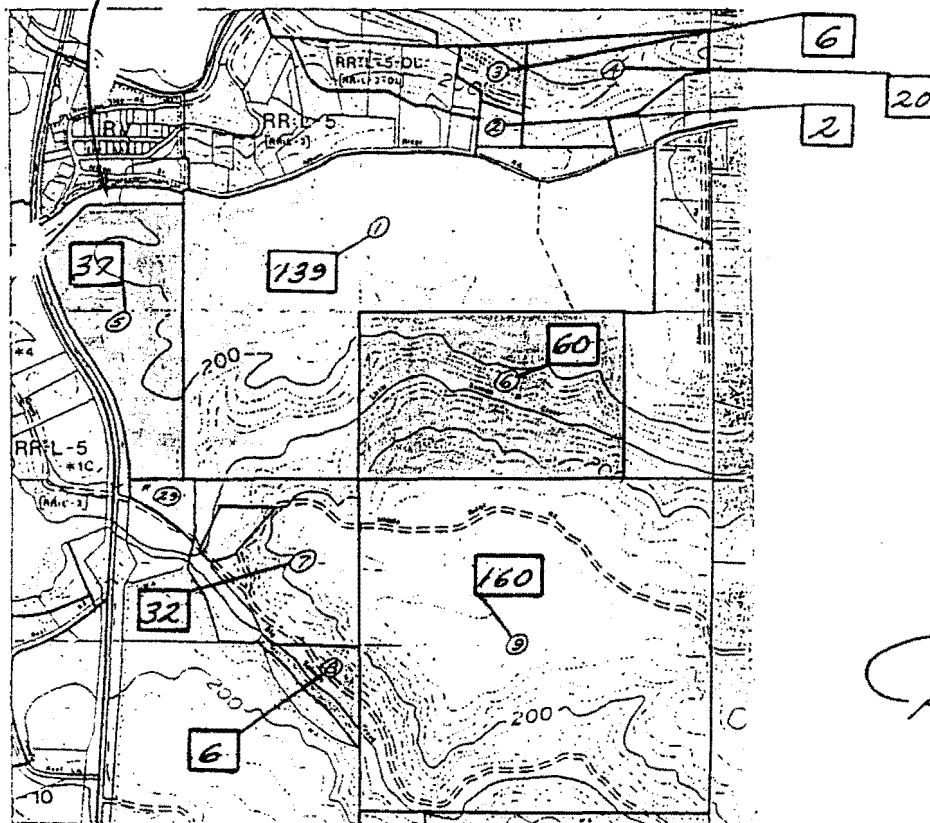
Attachments: CC/BLA Map
PO 1-3 Project Overview
Seven Areas of Discussion
C-1 (Conclusion)

2 of 28



BLA Plan

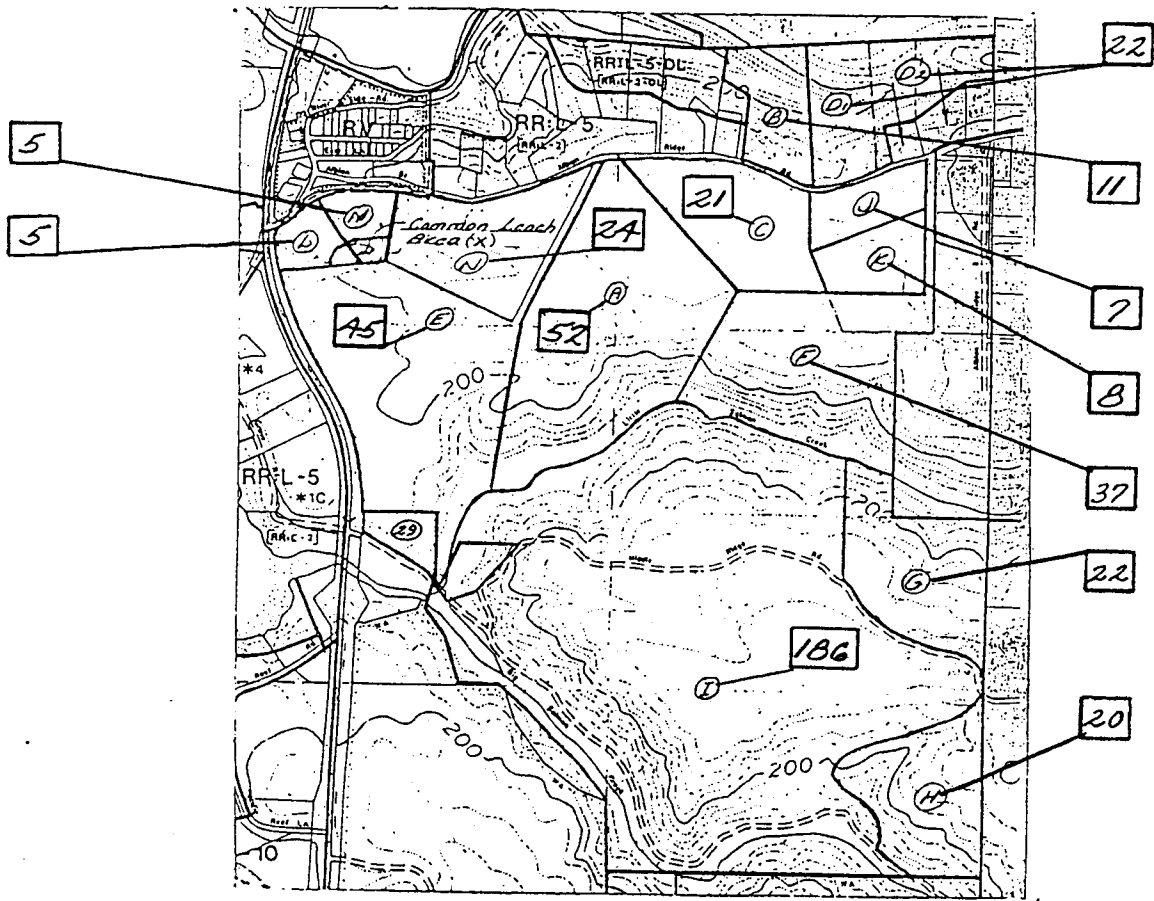
12 Town Lots (CC 13-24) Ave. Size 100'x100'



③ 6
Acres

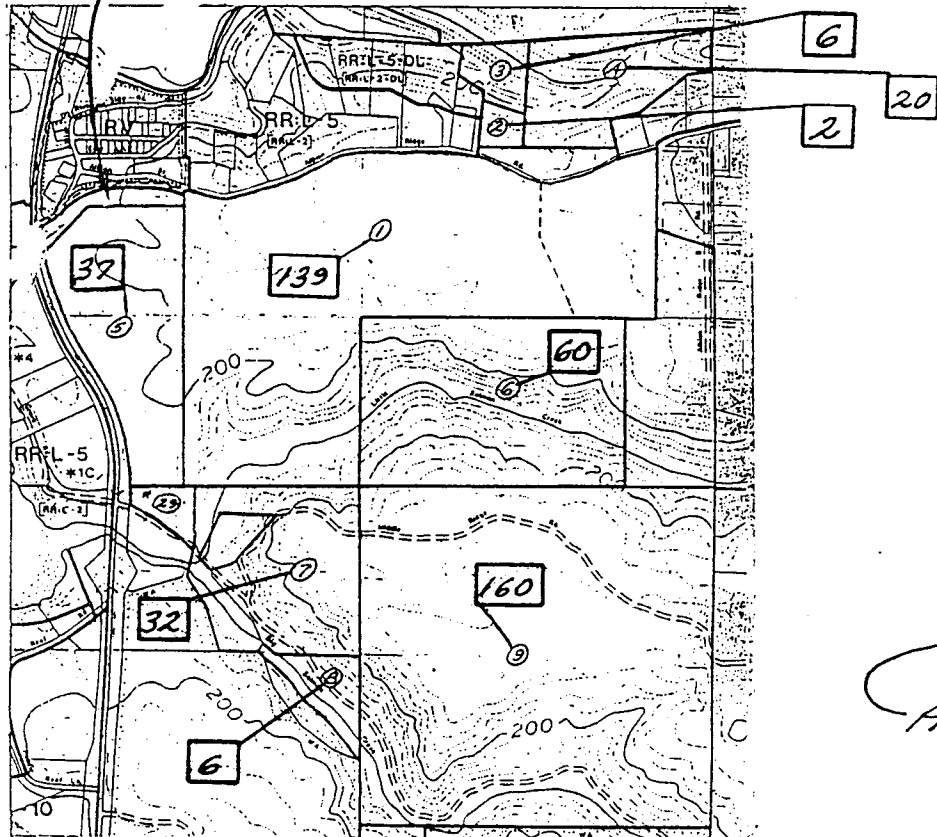
CC Plan

3428



BLA Plan

12 Town Lots (CC 13-24) Ave. Size 100'x100'



③ → ⑥
Acres

CC Plan

4 of 28

Project Overview

Much of this property has been in the family for over 80 years. The present owners inherited the property in 1973. The reasons we are asking for BLA parcels at this time are:

- A number of family members would like parcels they could buy. These are parcels B, D, J and K.
- The average age of the 11 family members is 71±. In 10 to 15 years this number of owners will probably increase to 30± or more. I'm available and able to carry out the BLA process at this time and with 30± owners it would be an impossible task for anyone to do. The property would then be sold in bulk to someone who would have much less concern for the community than we do.

Our major goals were to do the right thing by the land and for the community and not to maximize our return. We hired a planner (Bud Kamb) to have a knowledgeable person assisting the county toward this end. The basic controls to do this were:

- Have only two parcels North of Albion Ridge Road
- Minimize the number of parcels on the 20 acres zoned 5/2 acre minimum. This resulted in two parcels here.
- Other than the 12 town lots, the only CC's we obtained were by the way grandfather bought the land.
- Do not use the 12 town lots to "subdivide" all 465 acres. The results were having only two 5 acre parcels in the area.
- Have no home site on CC 5, as it would be in full view of Highway 1. The BLA provides a more logical location, basically out of view.
- Do not ask for BLA on CC 29 as this again would produce an undesirable visual issue.
- Make Little Salmon Creek a basic property line. There would then be no need to cross this ESHA.
- Allow no building sites along Big Salmon Creek. This is done by moving CC's 7 and 8 to our East boundary.
- Do not revive the town of Whitesboro. See "Traffic" for background on CC's available here.
- Have no buildings on the bluffs overlooking Big Salmon Creek. This is accomplished by moving CC's 7 and 8 to our East boundary.

Before the BLA process we had 21 legal parcels and only two met the zoning requirements. After completion of the process we will have only 14 parcels and five of them meet zoning requirements.

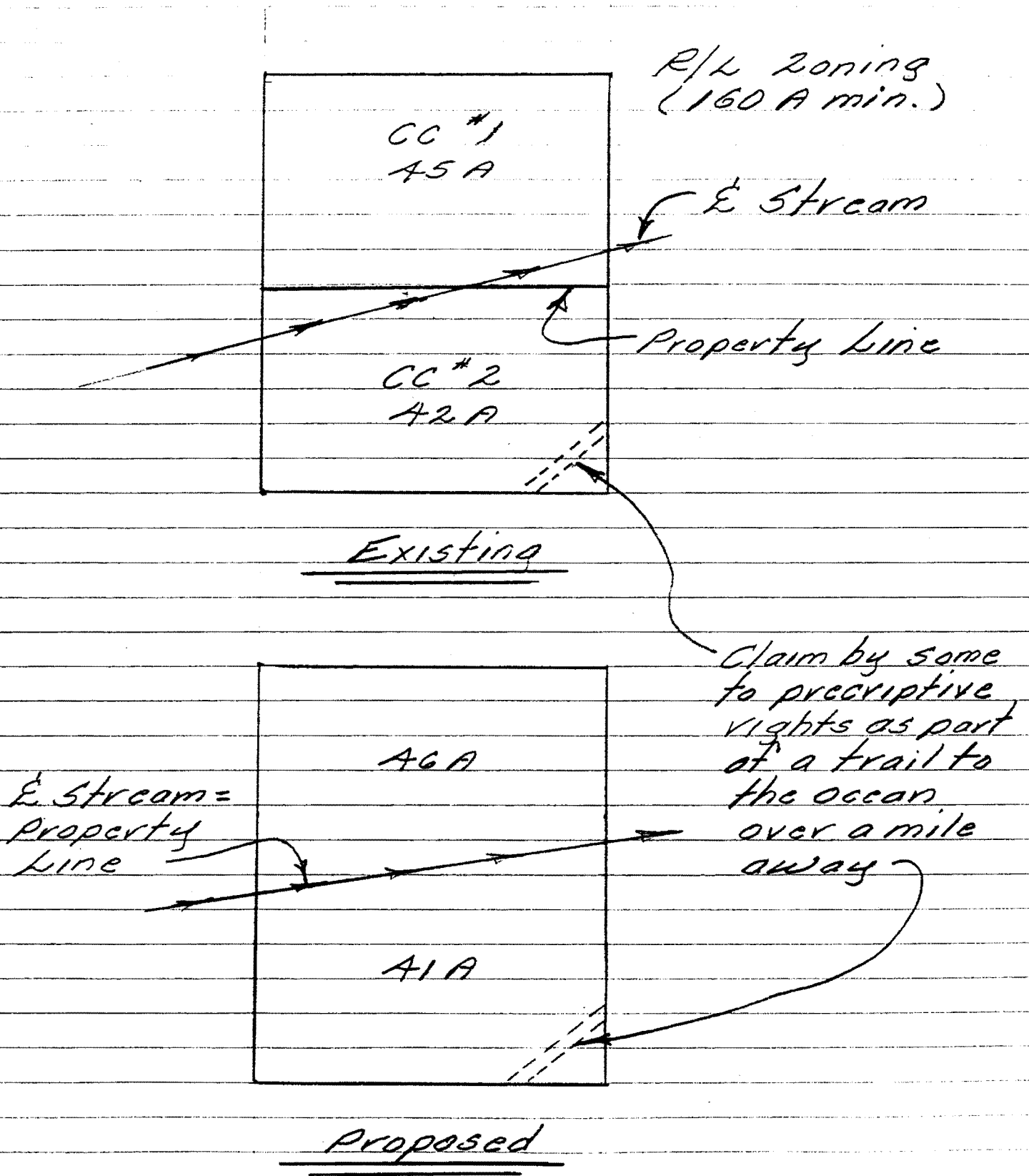
We knew various "locals" would have concerns over any land issues. Before our BLA submittal, we met twice with those we knew of to get their comments and acceptance. The only concerns they had were the two lots that are shown across from the post office (L & M). They would have liked nothing here and for us to give up all rights to our 12 CCs. We felt equally strong that the town needed room for future growth. We must have been successful as there were only two local letters in opposition sent to the County and no one in opposition spoke at either of the public hearings.

I will be discussing the seven points you reviewed concerning "substantial issue". Before doing this I would like to review a hypothetical simplified example BLA that has many of the problems that come up in your review of my BLA.

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4. Repl.

Hypothetical Example



If the same criteria were used here as on my BLA proposal the CC would require the following:

1. Visual Resource
 - Building envelopes shown and analyzed for each parcel
2. Adequate Water Supply
 - Wells drilled on each parcel and:
 - Tested for volume
 - Tested for quality
 - Affect on any neighboring wells analyzed
3. Adequate Sewer Capacity
 - Complete soil analysis
 - Percolation test
4. ESHA
 - Complete botanical study of both parcels including mapping of all wetlands
5. Traffic
 - Nothing!
6. Prime Agricultural Land
 - Submit master plan on both parcels
7. Public Access
 - Complete in depth study of use of the land going back 50 years or more
 - If "Research indicates the potential existence of prescriptive rights, and access easement shall be required as a condition of approval." (*Page 28 of CC staff report*)

Various documents have the language in them to attempt to do just what I show above. Comparison of this simplified example to my BLA proposal is scary. The county certainly would not do the above on this example and had the good judgment not to do so on my BLA submittal. The problems arise when a BLA proposal is considered "development". This then opens up a floodgate of perceived controls that were never intended for projects like ours.

1 - Visual Resources

I think your staff does not give enough credit to County staff's and the Coastal Administrator's knowledge and effort in analyzing the visual resources. Both visited the site and walked most of it. They are well aware of our CC's as well as the BLA layout.

Let me reflect on each parcel and discuss my thoughts on them.

- Parcel A 52 acres. All of the logical building sites remain from the original CC1. These sites are out of view of Albion, Albion Ridge Road and flash views only from Highway 1. Highway 1 is shielded by trees and natural terrain.
- Parcel B 11 acres. Most of the original outbuildings still remain from the ranch house that burned in 1972. The original house footprint is still the only reasonable site for a replacement.
- Parcel C 21 acres. This parcel contains the site of one of the earliest houses built on Albion Ridge Road before the turn of the century. Grandfather had it dismantled shortly after he bought CC 1 in 1920. Five very large barns and equipment storage buildings were originally on this parcel. Only two of the smaller barns remain. Siting a house on this parcel should be no problem.
- Parcel D 10 acres. This is the site of a house that we allowed the fire department to use as a training exercise in 1998. Houses had been on this exact site for at least 70 years.
- Parcel E 45 acres. This is the one parcel where we thought a building envelope was to everyone's benefit. We didn't want to retain CC 5 as it existed as any construction would be in full view of Highway 1. Adjusting the boundary allows for construction to be shielded behind a large stand of timber and natural terrain.
- Parcel F 37 acres. The only change from this parcel and CC 6 is that more building space is added to the North. This gives more flexibility to consider visual resources when any house is sited.
- Parcel G 22 acres. We consider this parcel a replacement for CC 7. CC 7 had construction sites only down by Salmon Creek or on the bluffs, both sites in full view by Highway 1 traffic. We felt very strongly that this was undesirable. Parcel G has no visual impact problems.
- Parcel H 20 Acres. We consider this a replacement for Parcel CC 8 which would have allowed building near Salmon Creek. Parcel H has no visual impact problems.
- Parcel I 186 acres. This parcel replaces Parcel 9, which was 160 acres. The rubble where the old house stood is still the most logical building site. There are many other reasonable sites - all shielded from view by Highway 1 traffic.

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Parcels J&K 7 & 8 acres. These two lots are considered as being moved from the town lots. In reality they are a substitute for subdividing the 20 acres zoned 5/2 acre minimums. Then we could have had 4 to 10 parcels here. This arrangement allows for only two parcels that can be sited where the trees shelter their view from Albion Ridge Road.

Parcel L&M Consider as two 5 acre parcels for this discussion. It is most unrealistic to apply the "out of view" policy here. County staff did this and was corrected in the second County hearing by the Coastal Administrator. He realized these lots were an extension of the town and controlled any development with size, location and features to be sure they were compatible with the character of the town. These controls were the same ones that would have applied to the 12 town lots that we did not opt to keep. (See "Traffic" and "Conclusions")

Parcel N 24 acres. This parcel has a large area that is out of view of the town, Albion Ridge Road and Highway 1.

I don't know where to cover this subject, but it is most important to discuss the present and future needs for expansion of the town of Albion. This would be provided for with our 12 original parcels or by parcels L and M. Many locations in the County General Plan discuss this need when new development is proposed. To suggest that BLA parcels L and M would create undesirable visual impact indicates you do not understand or appreciate these needs. Albion needs room for future expansion. Future rezoning of L and M could provide future development of:

- New Post Office
- Fire Station
- Committee Center
- Restaurant
- Antique Store
- Laundromat
- Museum
- Parking

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2 – Adequate Water Supply

The requirement of drilling wells at this time on all parcels in this BLA project is probably illegal and certainly illogical. It's true that there have been some difficulty in obtaining adequate water between Highway 1 and the ocean. The closest necessary well site on our parcels is some 1500 feet East of Highway 1. All other sites are much farther back. The North and East boundary of our total property is lined with many small parcels – none of which have serious water problems. The chance of having water problems on any of these parcels is very remote (1 in 1000?). Is there any reason to spend money in an untimely way, delay our project for years and have wells drilled away from possible areas of use?

The county acted as your agent in processing and approving our BLA. At no time did they even talk about the need for well drilling during this 18 month process. Two windows of opportunity for drilling and testing wells passed during this time. My planner, Bud Kamb, has talked to many other planners and developers and none experienced any such requirements on similar projects. This seems like harassment!

I would like to quickly run through each parcel and review them.

- | | |
|-----------------|---|
| Parcel A | 52 acres. Right across the road from many small lots that are experiencing no water problems. Within 200 feet of one of two wells that Albion Mutual Water Company uses to service 25 hook-ups. |
| Parcels B & D-1 | 11 and 10 acres. Each of these parcels includes building sites that had homes with full utilities on them for over 70 years. Wells on small adjacent lots both East and West have adequate wells. |
| Parcel C | 21 acres. Right across the road from much smaller parcels with no water problems. |
| Parcel E | 45 acres. This parcel was CC 5 that was 37 acres. It is within a few hundred feet of the two wells that service the town of Albion. |
| Parcel F | 37 acres. This parcel was formerly CC 6 and the BLA process more than doubled the area for possible drilling sites. To the East are many small parcels with no water problems. |
| Parcel G&H | 22 & 20 acres. To the East there is a series of 20 acre lots that have no problem with water. Both of these parcels front on live streams which could be used as a last resort. |
| Parcel I | 186 acres. This was CC 9 that was 160 acres. This was an old home site with utilities for over 70 years. |
| Parcels J&K | 7 & 8 acres. These are the only lots less than 20 acres without an offsite water sources or history of a former home with utilities. Small parcels North and East have no water problems. |

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Parcels L&M 5 acres each. These have water from the Albion Mutual Water Company.
(See letter of October 5, 2001 to you)

Parcel N 24 acres. This parcel includes both wells that service the 25 hook-ups in
the town of Albion.

As you can see there are no water problems on the parcels in our BLA. The county was aware of
all of this when they approved our project.

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3 - Adequate Sewer Capacity

The requirement of soil testing on all parcels at this time is probably illegal and certainly illogical. When we are talking about such large parcels, it's unreasonable to assume the soils would not accept sewer systems. It's true that restrictions have continued to be tighter on leach lines. It's also true that the technical advancements in the leach field area have kept pace with these restrictions. Pumping septic tank effluent long distances and elevated systems are common place. A number of these parcels are larger than their CC counterparts. These CCs could legally be sold in their current configuration. Now, they are made larger and you are requiring soil testing! This is especially true of the 12 town lots going from 1/4 acre to 5 acres.

The County acted as your agent in processing and approving our BLA. At no time did they even talk about the need for soil testing during the 18 month process. Two windows of opportunity for testing have passed during this time. My planner, Bud Kamb, has talked to many other planners and developers and none experienced any such requirements on similar projects. This seems like harassment!

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4 - Environmentally Sensitive Habitat Area

There is no need at this time to show specific building envelopes except on Parcel E. This was discussed in more detail under "Visual Resource". Our botanist, Gordon McBride, located all ESHA's on a map and recommended development stay 50 feet away from them. We are aware that the DF&G will have to approve this reduction below 100 feet but I see no urgency in having this done. With such large parcels it would be very easy to site future development away from these areas.

The scaling of the building envelope on Parcel E at less than 100 feet should be no problem. If 50 feet is not approved by the DF&G, then this same area of the building envelope would exclude development.

I see nothing in the code that would allow you to require us to breakdown the ESHA by types. Also, I see no logic behind it.

13428

5 - Traffic

A key issue in this area is whether the 12 town parcels are buildable. The attachment "Existing Town Lots" to my June 19, 2001 memo to Mary Lynn Hunt covers much of my feelings on this subject. However, I will take a little different approach in this package.

These lots are a part of South Albion subdivision of 1906 and they are contiguous with the town lots that are built on. They are a part of the town. These lots varied in depth, but in the 50's the County realigned Albion Ridge Road and reduced their depth to 100±. At that time Mr. Andersen (my Grandfather) asked the County to reconstruct the lots they were affecting. They said they would not do so and that all he had to do was file a revised map with the county.

You quote the County as saying... "staff is doubtful that they could be developed in their present configuration". Without qualifying this opinion, one could also say "there are significant reasons to believe that these parcels could be developed (see "Conclusion"). I hope you are not saying CC parcels have to be 100% sure-fire-certain that they can be developed before BLA is allowed. No small lots would have such a rigorous review to guarantee this certainty. Many physical features could preclude this:

- | | |
|--------------|--------------|
| ▪ Size | ▪ Geology |
| ▪ Water | ▪ Earthquake |
| ▪ Sewer | ▪ Slope |
| ▪ Foundation | ▪ Toxics |

Every one of these could be overcome with dollars and it could here. If the county has a hang up with the depth they should be more than willing to allow BLA to increase their depth. After all, it was the County that truncated them in the first place. To offset the lack of depth I combined two parcels into one in the CC process. The majority of other lots in the town are 50 x 100 feet in size. The advantage of these over the other town lots are:

- Much leveler
- Could have off site leach fields
- Twice as large
- The road realignment resulted in a better road to lot grade differences
- Also have the option of making these lots 200 x 100 ±

Now let's talk about the other buildable parcels we could create without the BLA process. In this BLA submittal we are proposing to move two of the town lots to create Parcels J&K. We are doing this as an expedient rather than subdividing the 20 acres in this area zoned 5/2 acre minimum. It's good for us as time is saved. It's good for the land as we could subdivide these 20 acres and create 4 to 10 parcels. Averaging these we could reasonably expect 7 parcels compared to the two proposed.

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In our 1993 CC process we only requested CCs in the way Grandfather purchased the land. At the confluence of Big and Little Salmon Creek, was the town of Whitesboro before the turn of the century. (See attached photograph). This was not a company town and there are many CCs that would be available – perhaps as many as ten. We could combine a few of these and very easily get two nice buildable parcels without any BLA work. Now adding the number of buildable parcels resulting by the above analysis.

Parcels 1-9	9
20 acres subdivision	7
Whitesboro	<u>2</u>
	18

This comes to 18 building sites without considering any of the town lots. This compares with the 14 BLA parcels proposed. The above analysis should provide evidence that there is no impact on either Albion Ridge Road or Highway 1 traffic above what we would be allowed to develop under other conditions – all this without considering the 12 town lots.

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Town of Whitesboro (c1890) 16 of 28₁₅

6 - Prime Agricultural Land

I feel well qualified to discuss this subject. I have spent most of my life on ranches or closely associated with ranching. I am a member of the Farm Bureau and the State Grange. I have taken Manager Federal / State / County agricultural extension courses and prepared a draft of a Ranch Management Plan for our ranch. See the "Public Access" section for historical information on our property. Our property has been used by our family for sheep and cattle grazing for over 80 years. For the last 35 years the entire property has been leased for sheep and cattle grazing (except since mid-1999).

We stopped leasing the property in mid-1999, because it is not even close to being feasible. The leasing fee was \$4,000/year and this did not even cover the cost of maintenance and fence replacement. Throw in other costs like insurance and county taxes (5,000/year) and you are in real trouble. A 5% return on \$6,000,000 property value would require an income of \$300,000 per year! And some wonder why ranchers are going out of business? The only way to assure some continued agricultural use of the property would be to sell it in 20-40 acre parcels (much like the CC parcels or the BLA parcels). Parcels of this size would be those that "Gentleman Farmers" would consider raising cattle, sheep or horses as "labor of love".

Actually I don't think we fall under LUP Policy 3.2.15 as the subject is land divisions and BLA's such as ours does not fall under this category, (see Mendocino County Code Section 17-17 (G)).

Other information you requested is:


- We are not under the Williamson Act
- Attached is a BLA map showing agricultural preserve status of adjacent property
- County Conditions of Approval #6 require a 50 feet development buffer from designated prime agricultural land.

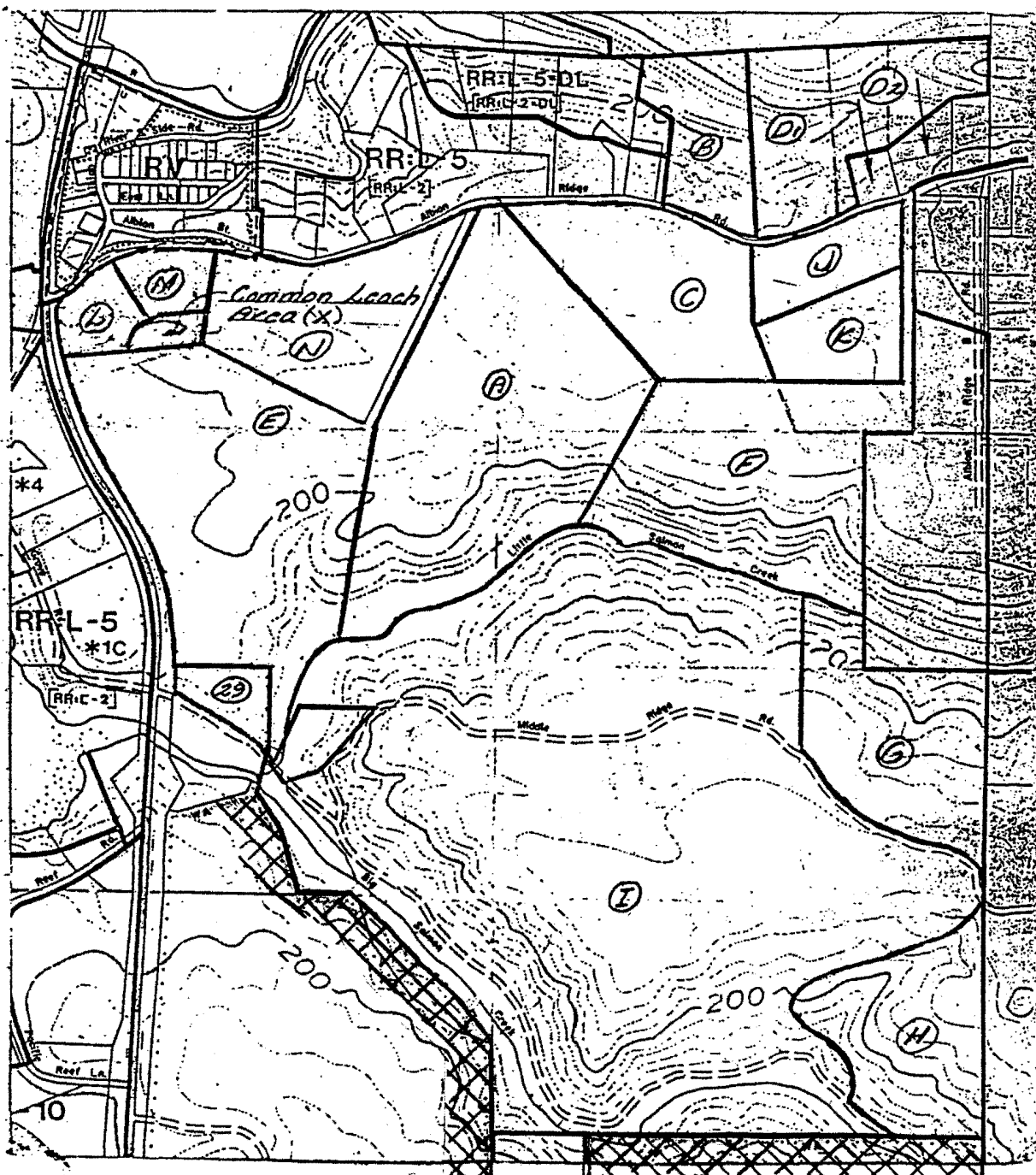
17928

Parcel	1	2	3	4	5	6	7	8	9	10-24	E
Acres	139	2	6	20	37	60	32	6	160	3	A65
						1223 CG's					

Parcel	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Acres	52	11	21	10.12	45	37	22	20	186	7	8	10	24	66	

BLA Requested

Note: Adjacent Williamson Act property is all Type II and noted 



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Adjacent Agricultural Preserve

7 - Public Access

A lot is resting on the interpretation of Coastal Act Section 30211. It states that "Development shall not interfere with the public right of access to the sea..." Whether there is any evidence that prescriptive rights might exist for "access to the sea" is covered later. The point I want to make here is that the development proposed under this BLA in no way "interferes" with any usage of the road discussed. The boundary line adjustment proposes only to make the total length of this road fall in one parcel rather than two. There is no interference by the development. The county / CC has no right to get involved in any prescriptive right evaluation – leave this issue to the courts where it belongs. Following is a review of Coast Action Sections and LUP sections tabulated in your staff report.

The staff report (starting as the bottom of page 24) makes reference to various Coastal Act Sections that apply to "projects located between the first public road and the sea..." The first public road is Highway One and could be stretched to mean the end of Spring Grove Road at the bottom of Salmon Creek grade. None of the land between either of these and the sea belongs to us. Thus none of these sections apply to us. However, I will discuss these sections anyway.

- Section 30210 General, and no meaning to our project.
- Section 30211 Our BLA project does not interfere with perceived rights (see "Comments" LUP 3.6-27). Also, our land does not provide "access to the sea".
- Section 30212 Again, our land is not between the nearest public roadway and the shoreline.
- Section 30114 Does not directly apply.

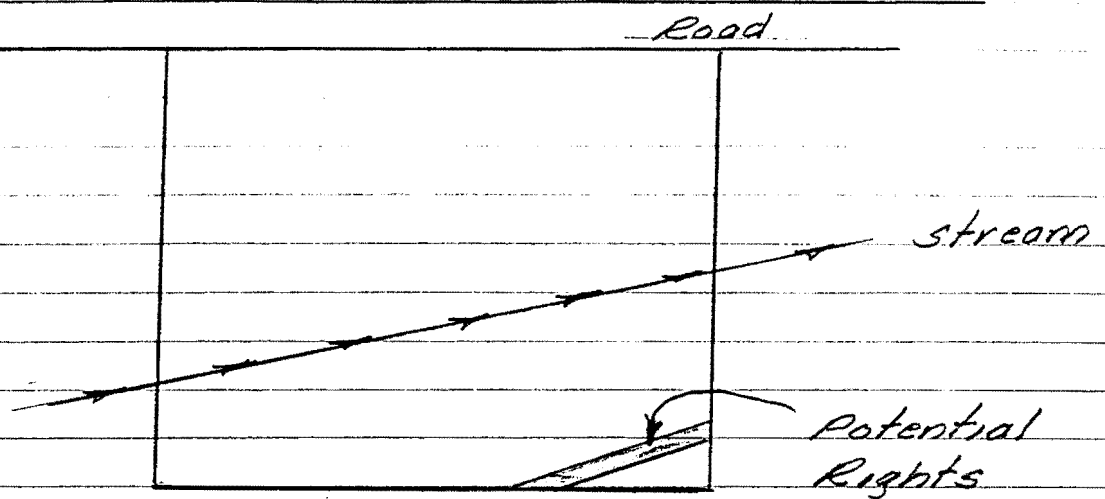
Review of portions of LUP

- LUP Policy 3.6-5 This applies to where easement "is delineated in the land use plan..." This does not apply to us.
- LUP Policy 4.9-9 We do not own this property.
- LUP Policy 4.9-10 Not involved.
- LUP Policy 3.6-27 Has to be interpreted to mean
 - No development will conflict with court decreed easements
 - County to study history and if "such research indicates the potential existence" of rights over a specific route, one of the following shall be done:
 1. No development will conflict with this perceived right.
 2. The route can be changed if an access easement is given that is equivalent to the perceived right and only if it meets one of the three noted conditions.

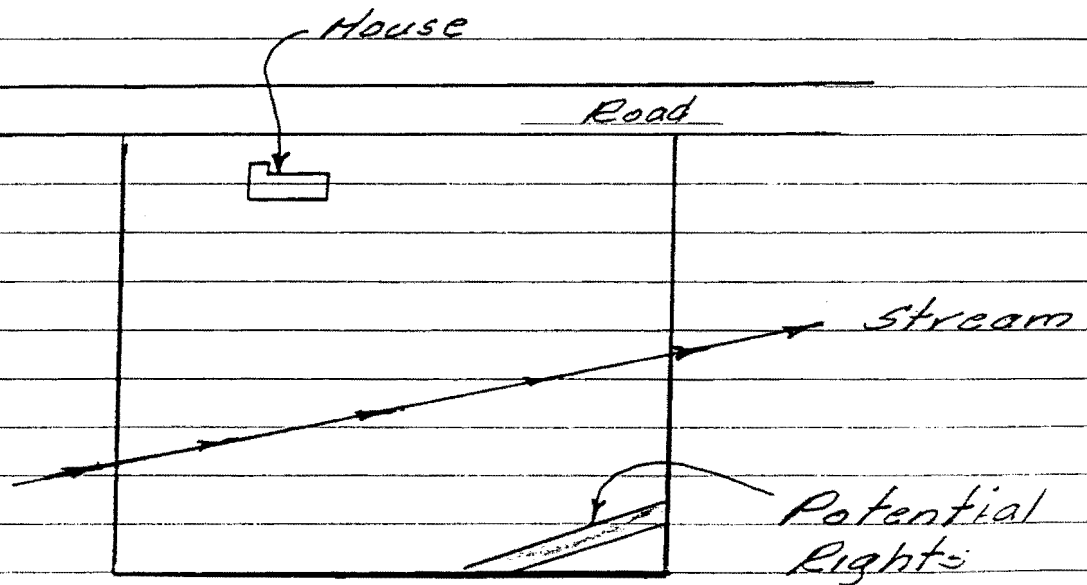
We fall under 1 above and thus no study is required. Attached is a hypothetical example and our before and after conditions. Notes on these make clear my position.

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Hypothetical Example



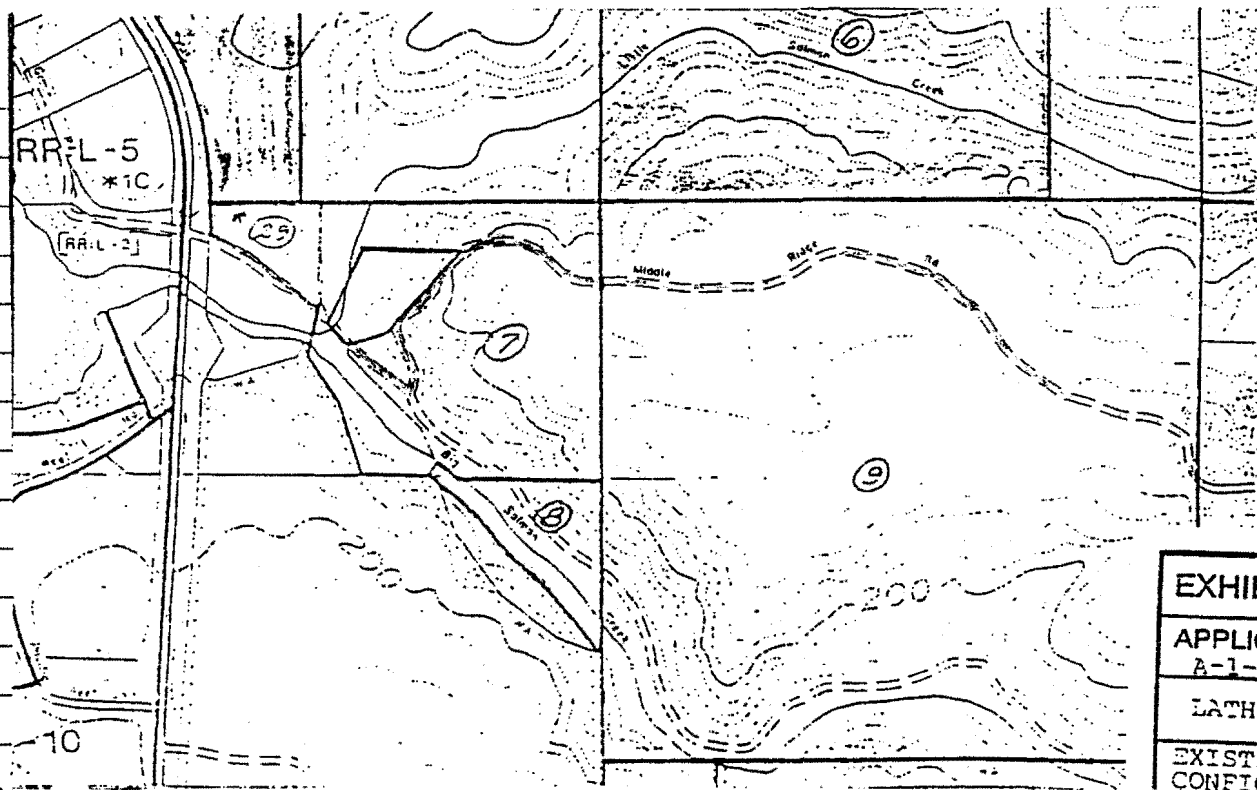
Before



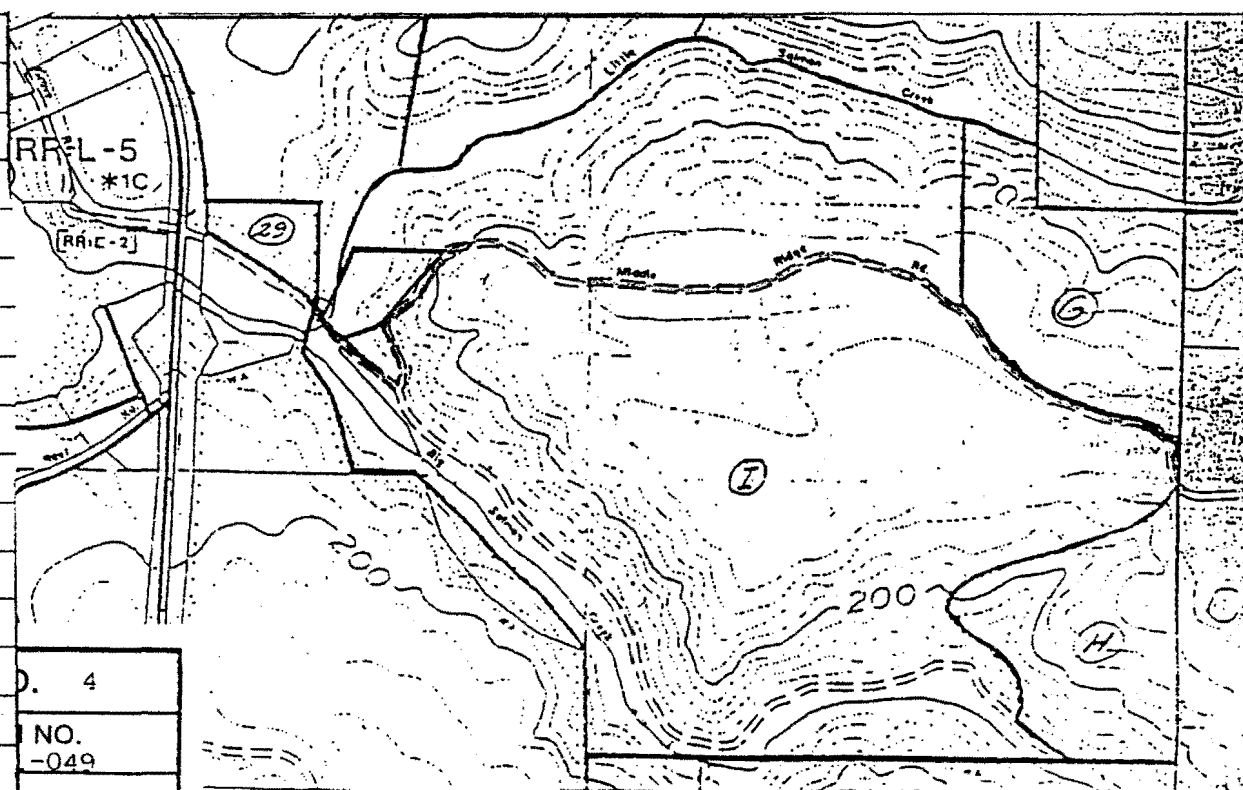
After

Note: Development does not conflict with potential rights - Thus no easement study required

20428



Before



After

Note: Development does not conflict with potential rights - Thus no easement study required.

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Yours and the County's staff report make it sound like our family decided all of a sudden in the mid-80's to convert our property from free public access to controlled access. Nothing could be farther from the truth. The only change was that I retired and returned "home" to Albion in 1986 and I decided to document all written permissions given to access our property. Let me give you more detail background on our property as well as my association with it.

First my background – I came to live with my grandfather as the end of my junior year in high school (1948). I worked on his ranch until I started college in Santa Rosa. Every weekend and every summer I returned from Santa Rosa to work on the ranch. After graduation from the University of Nevada in 1954, I started to work for Caltrans. I moved back to Albion in 1955 and spent two years working on local bridges. In 1956 I bought a second home on Albion Ridge and have maintained a second home here until I retired and moved back to Albion in 1986. I had returned to Albion on visits every 2-4 weeks to help grandfather and later to care for the family's inherited property as well as other property I had bought.

Now for the history of our property – Grandfather bought CC-1 in 1920. Other property was bought as follows:

CC-2 1937
 CC-3 1938
 CC-4 1943
 CC-5 1947 (including town lots)
 CC-6 1951
 CC-7 1964
 CC-8 1966
 CC-9 1966

Grandfather used ranching for a second income until the Albion Mill closed in 1928 and then it became a full time job. He started with a small dairy, some row crops and hay. As he added more property he began to tend sheep. He leased CC-7 in the late 40's until he bought it in 1964. I had never met the owner and we controlled this property as our own. All fences were in good repair with gates locked and posted since the late 40's. After purchase of CC-9 in 1966, the entire ranch was leased to Jim Sansi (937-3065) for sheep and cattle grazing. At that time all fences were in good order and the Easterly gate locked and properly posted. Jim Sansi says George Ray (previous owner) ran sheep on the property for many years with adequate signing. Sansi had sheep first, but after uncontrolled dogs began killing too many sheep he switched to ranch cattle with integrated bulls. He had little patience with dogs and made sure all access areas were well posted with no trespassing signs and "no dogs allowed". He carried a gun and shot dogs on site and has told me many times he ran off all trespassers. After we inherited the property in 1973, I discussed public access with Jim at length. He assured me he would give no one permission to access our property and would continue to chase off trespassers. At that time I told him I would be giving limited written permission to friends to access the property for specific days. He wanted assurance that they would carry any permission slip with them and not be allowed to carry guns or have dogs with them. My motives for allowing access with written permission was three fold:

1. Allow us to share our property with our neighbors
2. Written permission would prevent prescriptive rights being obtained
3. This would assist in trespassing control. They would inform others that trespassing is unacceptable and also give us feedback on any trespassing taking place.

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Now for an overview of how our land might have been used by others in spite of our major efforts to prevent it. In the late 40's there were only five occupied residences on Middle Ridge – the Hamm brothers (Bill and Emil), Dean Castle, Fred Shandell, Ruby Walt and Dad Farthing. A further example of lack of population is that in 1948 there were only six students attending grades 6-12 from the Albion area. None were from Middle Ridge. On into the 50's and early 60's there were very few people around. A few times a year grandfather would give permission for fisherman to fish on the Salmon Creeks and once a year Matt Koskala from the village would deer hunt in this same area – all accessing from the West side and all with permission. I would never see anyone else on our property during this time. See attached memos (Judy Brown dated October 23, 2001 and Jim McCummings dated October 11, 2001 for additional background on property use. Jim McCummings's comments are especially important as the house he lived in was within 50± feet of our East property line. The many windows had a wide panoramic view of our property.

Your discussion on our property being used by Middle Ridge residents to access Salmon Creek Beach is not true. Access under Salmon Creek Bridge was totally eliminated in 1971. The multiple owners of this property utilized a series of resident (on the property) caretakers. They totally stopped all access through their property. Jessie Bolin (937-1016) is the current resident caretaker and she took over from her former husband who started in 1974. Jim Sandberg and Judy Brown (937-5507) were caretakers from 1972-1974. The first caretakers were Keijji and Marion Nagahiro and now living in Scotland. Judy Brown contacted them last month and confirmed they started caretaking in 1971. I contacted one of the owners (Robert Lee, 462-2039) and he confirmed all of the above. He also said all access points were well fenced and posted since they bought the property in 1963. With six owners they had members staying at their cabin frequently and this was able to restrict trespassing. My son (Leonard Latham) tried to take a kayak down Salmon Creek in 1981 with the assumption it was a navigatable waterway. He was challenged by the son of one of the owners with a gun. A sheriff officer was called and the officer suggested that Leonard leave – which he did.

Access across our property in the early 60's to get to Salmon Creek Beach again makes no sense. At that time at least 95% of those going to the beach were to abalone. Can you imagine someone driving to the end of Middle Ridge Road, climbing two posted, locked gates, walking over a mile over steep terrain with abalone gear and then walking all the way back uphill with abalones, gear and wet clothes when they could just drive to the Westerly boundary of our property in the first place and start their trespassing from there?

In summary we have done everything reasonably possible to prevent unauthorized use of our land back as least to the late 40's:

- Serious access points adequately posted
- Maintained adequate fencing
- Gates were locked
- Owner and renter running off trespassers
- Gave only written permission since the early 70's to access property. This being used as a tool to let others know trespassing was unacceptable.

My letter to Mary Lynn Hunt with attachments dated July 2, 2001 is some of the information the County used in their access evaluation. Any trespass use of our property since the late 40's would have to be considered minimal and not even close to substantial. We have never filed a

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notice of permissive use of our property with the County as allowed by Civil Code Section 813 or Civil Code Section 1008. We have always relied on Section 1008 and utilized proper signage.

I obtained the correspondence file from Mary Lynn Hunt and there were only two letters relating to use of our property. In my opinion both were less than truthful concerning issues that can be verified elsewhere.

Nicole Milner – July 19, 2001

Issue: Used our property in the 60's, 70's and early 80's to access the ocean and other places.

Fact: Access to the Salmon Creek Beach was controlled going back to at least 1963 and totally stopped in 1971. West end of our property was signed since the late 40's and the East end at least since it was purchased in 1966. See my earlier discussion on this.

Issue: Used the property "before they were fenced off".

Fact: 100% certain the fences were in good repair before Sansi started leasing our property for grazing in 1966.

Dobie Dolphin – July 24, 2001

Issue: Used our property from the early 70's into the 80's to access the ocean and other places.

Fact: See my comments on Nicole Milners letter. Jim Sansi (renter) says he knows Dobie Dolphin by sight and has never seen her on the property.

Issue: Used property from the early 1970's until the posted signs went up sometime in the 80's.

Fact: For sure signs continually existed on the East end since at least 1966 and on the West end since the late 40's. See my earlier discussion.

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In 1972, I lived on the Pardiucci land at Salmon Creek, as caretaker. My job was to keep people from crossing the Pardiucci land to get to the beach, as this was private property with no legal beach access.

Generally, the few people who did try to walk through were local fishermen. They would park their car at the end of Spring Grove Road and climb over the Pardiucci gate. I was the caretaker for 2 years, until 1974.

In 1974, I bought property on Middle Ridge Road (32535 Middle Ridge Rd.) and moved there. This land is about $\frac{1}{2}$ mile east of the Latham property, where Middle Ridge dead ends. At this dead end there was and still is a large gate with a prominent "No Trespassing" sign. The Latham land was and is fully fenced to keep in the sheep and cattle. All the neighbors seemed fully aware that the Latham property was off-limits to hikers.

I have lived in this same location for 27 years. With an avid interest in landscape photography, I wanted access to the Latham property to further my vistas. The only way I could walk on

the land without being confronted by the lease-holder, Jim Jensi, was to get written permission from Earl Latham. I did regularly sign access permits with Mr. Latham. In the years of walking on Latham's property, I seldom saw anyone else. I was asked by the Lathams, if I did see anyone, to inform them of trespassing on private land. I did have opportunity to do this 2-3 times. But as I said, it was common knowledge that one needed written permission to be on the Latham property. It was extremely rare to see anyone walking out there and for several years I walked out there almost every day - always with written permission, of course.

If any questions regarding this matter please feel free to call me.
707 937-5507

Judith Brown
P.O. Box 543
Albion, Ca 95410

October 11, 2001

To Whom It May Concern

For a period of over a year in 1974 & 1975 I resided on property owned by my sister and located at the dead end of Middle Ridge Rd. adjoining and immediately east of the lands of the estate of Palle Andersen.

During the time I occupied my sister's land it was very unusual to see anyone walk or drive to the end of Middle Ridge Rd. It was clearly understood among the neighbors that no one was to trespass on the lands of Palle Andersen. Jim Sansi ran a herd of beef cattle and sheep on the land. If I had any reason to go onto the land, I requested permission from Jim Sansi.

During the time I lived at the end of the road I never witnessed anyone trespassing onto the land. The only people I can remember ever seeing on the property of Andersen were Mr Sansi, rarely accompanied by an employee and one couple who resided in an old cabin on the land.

The land in question was clearly posted with "No Trespassing" signs during the entire time I lived there and afterwards for many years when I had occasion to visit the property.

Respectfully,



Jim McCummings

Address: P.O. Box 151
Comptche, CA 95427

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Conclusion

Our family is doing a lot of thinking on how we should proceed with sorting our property so we do not leave major problems for our heirs. I think it is appropriate to share some of this with you.

As stated above our average age is 71± and a number of us are in ill health. A couple of months ago we thought our long complicated BLA process was drawing to a close. With BLA parcels in hand, family members could fill their long desired goal of being able to personally own a portion of the ranch. From there we could continue to negotiate with the Trust for Public Lands and perhaps our land could end up as a State Park. Failing this we or our heirs would be able to sell the BLA parcels without the conflicts that have consumed the family for 28 years. These dreams collapsed with the receipt of the appeal package. We struggled hard to do the right thing by the land. We must have accomplished this goal as the County had received only two letters of protest from the locals and no one in opposition attended either County public hearings.

I am shocked and saddened by the undertones of what I read in the staff report. It appears that there is no understanding between the County and the CC staff on what rules apply to our BLA. You are miles apart on all seven issues. We fully believed the County and did everything they asked of us. As noted above, we hired a planner at great expense to be sure everything went smoothly. Now you are telling us that everything the County did was wrong. I don't understand this, as in reality they are your agent. Am I now to believe that everything you tell me is fact? I believed this of the county and now you tell me we are back to ground zero.

I have power of attorney from the family to handle the BLA process, but morally I cannot proceed with vast expenditures of time and money without approval. This is exactly what you are asking us to do. The family will be meeting before long to review our options. You can see by my responses to your seven issues that I have totally lost confidence in anything you public agencies tell me.

We are seriously considering getting the additional CCs available at Whitesboro (see "Traffic") and then to proceed to sell all parcels in their present CC form, including the 12 town lots. This would negate all of the many good things we have incorporated into our BLA plan. If the County denies us the right to build on the 12 town lots, we would start a BLA process to deepen them. If this were denied we would sue the County, as it was the County that truncated them in the first place.

To satisfy the need for the family to buy specific parcels we would subdivide the 20 acre zoned 5/2 acre minimum as well as the land North of Albion Ridge Road that is zoned 10 acre minimum. We might receive slightly less money on all the property, but we were never motivated by getting maximum return on our land in the first place.

The benefits of this option would be:

- Sale of some parcels would give us immediate funds to allow greater flexibility in future actions.
- Isolate our problems into smaller units that are more manageable.
- Cut the emotional drain that is being put on all members of our family

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EXHIBIT NO. 12

APPLICATION NO.
A-1-MEN-01-049

GENERAL

CORRESPONDENCE
(1 of 23)

10/9/01
Calif Coastal Commission
North Coast Office
710 E St. Suite 200
Eureka, CA 95501
707-445-7877

RECEIVED
OCT 11 2001

CALIFORNIA
COASTAL COMMISSION

Dear Commissioners,
Concerning Project A-1-MEN-01-49/
Latham et al.!

Please support your staff
recommendation require a
complete EIR on this property.
There has not been adequate
planning to support 6 sites/homes
in this delicate coastal area.

Please support future public
buyout of this important coastal
open space.

Thank you,

Susan Hopberg

P.O. Box 513 Albin, CA 95410



Oct. 9, 2001

California Coastal Commission
PO Box 490, 8710 E Street
Eureka, CAL 95502

Re CDB 36-2000 / Latham et al.

Dear Staff,

Please enter the enclosed newspaper articles into the public record for the Latham Coastal Development permit.

Sincerely,

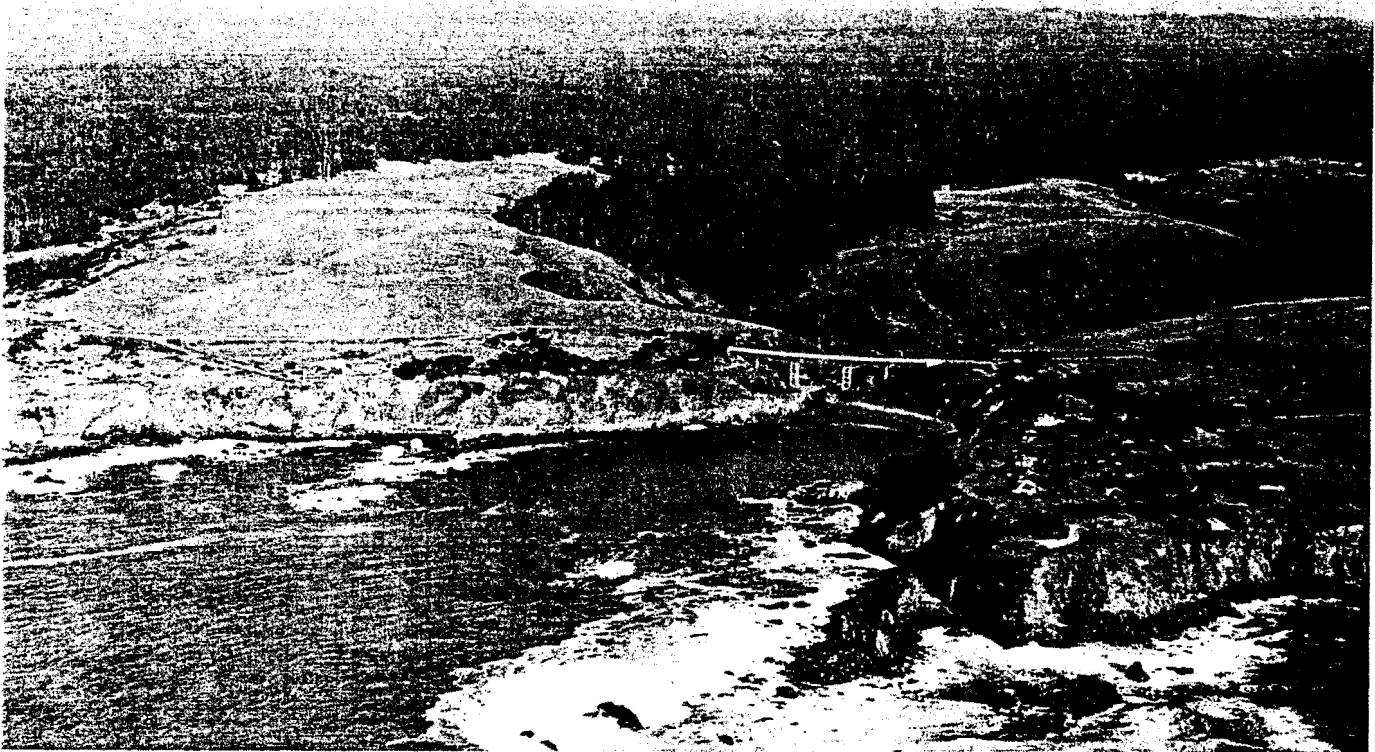
Ron Guenther, Chair

RECEIVED AT
COMMISSION MEETING
10/11/01

2 of 23

Latham property / Andersen Ranch

14/11/9



New monthly feature:
'Consider the Alternatives'

THE MENDOCINO BEACON

A COAST PAPER FOR COAST PEOPLE SINCE 1877

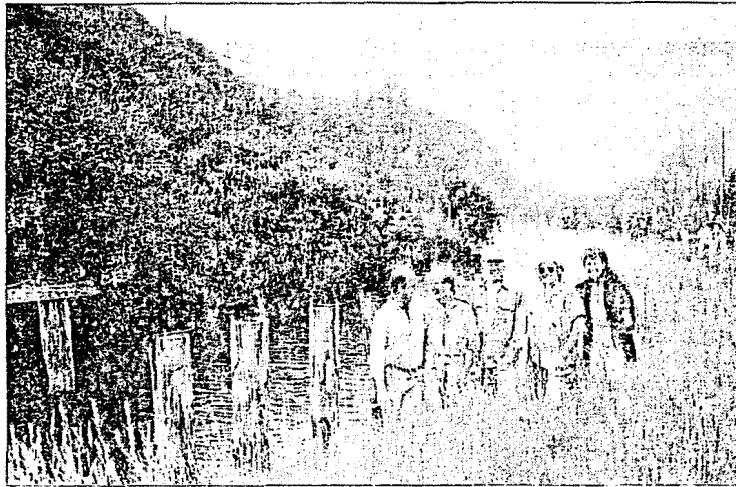
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The Inc.

Thursday, July 27, 2000

Mendocino, Mendocino County, California, 95460
43066 Ukiah Street - 931-3874

123rd Year, No. 52

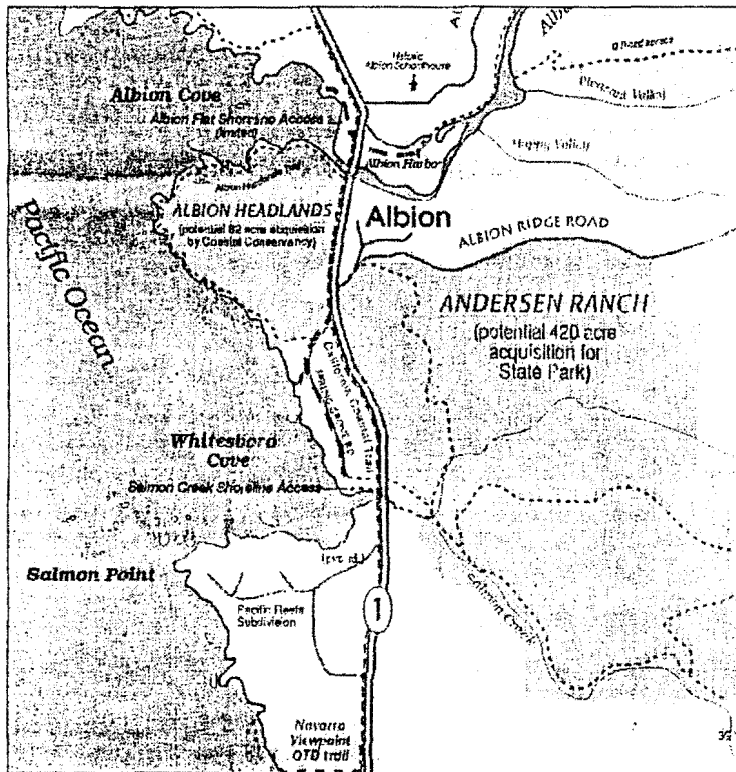
Welcome to (the future?) Albion State Park



Members of the Albion Park Enthusiasts gathered last Sunday beside the pilings of the old Coast Highway bridge which spans Salmon Creek. The area is part of a \$5.4 million, 420-acre ranch just south of Albion that the group wants added to the State Parks system. APE members include, from left, Tom Wodetzki, Diana Weidemann, Rod Lorimer, Rixanne Wehren and Melissa Hays. Staff photo.

Below, a map showing the potential 420 acre acquisition for the state park.

Cartographer: Rixanne Wehren, GeoGraphics Copyright 2000



By NEIL BOYLE
Of the Beacon

A group calling itself the Albion Park Enthusiasts is proposing 420 acres of ranchland with spectacular ocean views be added to the State Parks system.

The Anderson Ranch, located along Highway 1 immediately south of Albion, will go on the market soon for in the neighborhood of \$5.4 million. It includes roughly a mile and a half of accessible, year-round streams bearing endangered Coho salmon, and acres of streamside meadows. Two separate loop trails, totaling 3.5 miles on existing old roadbeds, help make the ranch a stand-alone, ready-to-go state park, say core backers of a public purchase.

According to Tom Wodetzki, who co-founded APE about nine months ago with Rixanne Wehren, the California Coastal Conservancy has initially indicated it will not back a purchase because the ranch does not directly abut the oceanfront. The group subsequently contacted State Parks Superintendent Gieg Ficard, who toured the property and wrote a favorable review, he said.

In a brief Tuesday phone interview, Superintendent Ficard confirmed the favorable review, adding that the proposed acquisition will be further reviewed and prioritized by a number of State Parks officials. "At the conclusion of the review ... the proposal will have to stand in line with all the other acquisition proposals throughout California," he said.

APE has received letters of support for the purchase addressed to State Parks Director Rusty Areias from Congressman Mike Thompson, Sen. Wes Chesbro and Assemblywoman Virginia Strom-Martin. The group has also created a slick, 12-page "pretty book" with maps, aerial and ground color photos, and historical information about the property. It's titled "Welcome to (the future?) Albion State Park, Gateway to the Mendocino Coast."

Owners supportive

The property owners are 11 heirs of rancher Falle Anderson, who made nine separate land purchases beginning in 1920 to create the ranch. They too support a public purchase.

"If the public wants to buy it, we'll certainly cooperate," says co-owner Earl Latham of Albion, a grandson to Falle Anderson. "We're very supportive of what [the Albion Park Enthusiasts] want to do, we'd even consider lowering the price."

Since 1973, when Falle Ander-

son died, the land had been leased for cattle grazing. Latham notes the lease was for \$4,000 per year, but taxes totaled more than \$5,000. The cattle were removed in mid-1999 when the cost of fence repair became too great, Latham said. The average age of the owners — 70 years old — is another factor motivating the sale of the ranch, he added.

The county would have allowed the nine original parcels and pre-zoned lots bordering Albion Village to be sold individually, Latham said. "The family members felt such sales made no sense for their purposes, as well as for the community that would want to minimize impacts to the land," he added. Hence, the family is processing boundary line adjustments that will minimize development impacts in the event that public money does not become available for the purchase.

In brief, the line adjustments will make Little Salmon Creek a boundary line to minimize stream crossings; allow no building sites overlooking Big Salmon Creek; and no homesites along Highway 1.

In addition, the owners are combining 12 existing small lots adjacent to Albion Village into four, larger commercial lots. At the eastern edge of the property, there is a 20-acre parcel that could be subdivided into 10 lots, but only two lots are proposed. The new boundary lines will also provide four parcels that could be purchased by individual family members, Latham said.

Historic town site

On Sunday, Latham met with members of the Albion Park Enthusiasts, the Coastal Land Trust and the Albion River Watershed Association/Friends of Salmon Creek beside the pilings of the old Coast Highway bridge which spans Big Salmon Creek.

Several among the group had been hiking the property earlier and were discussing the abundance of wildlife and recent bear sightings. Latham added that he'd recently discovered a deer killed by a mountain lion.

Nearby, half hidden in the brush, were concrete steps to a long-gone creamery. The historic town of Whitesboro, built in 1870, also once stood at the junction of the two creeks.

Whitesboro included a lumber mill, railroad and wharf until it was abandoned in 1900 when the big redwoods were logged out.

The town was later burned.

See ALBION on Page 18

Albion

From Page 1

Few traces of it can be found today, though Latham pointed out a fresh hole where a trespasser, likely armed with a metal detector, had been digging for artifacts. Historical photos of the area taken in the 1870s, including a few supplied by Latham, and a brief history of Whitesboro are included in the APE booklet.

Support urged

Members of the Albion Park Enthusiasts say the property would be a perfect "gateway park" for tourists to the Mendocino Coast, and that the idea is quickly gaining strong community support.

"If you look at Elk, Little River, Navarro and Mendocino, they all have parks — we don't," said APE's Rixanne Wehren, who supplied the aerial photos and maps for the so-called "pretty book" sent to State Parks officials. "This would



Looking west from the ridge above Big Salmon Creek to Highway 1 and the Salmon Creek Bridge, the ranch has two Coho salmon spawning streams, and diverse habitats including riparian, coastal prairie, vernal pools, and fir and redwood forestland. Leona Walden photo.

be a wonderful opportunity for a gateway park to the Mendocino Coast." Pointing to Big Salmon Creek, Wehren noted that fishing biologist Michael Maahs in 1995 had counted up to 20 adult Coho salmon spawners.

Diana Wiedemann, an Albion architect and member of APE, said it's critical for coastal residents to write letters of support to elected officials urging a bill to fund the purchase of the property. She also praised the owners of the ranch for

their willingness to seek public ownership.

Wodetzki, who noted that APE core members are among those preservationists who've resisted development of the Albion Headlands for about 15 years, gave high marks to Latham and the other owners for sensible planning.

"We acknowledge that they could have had twice as many lots and a terrible plan, but this plan is very ecological," Wodetzki said. "They've kept the [proposed] houses away from the creeks, and other such things ... They already have county Certificates of Compliance to subdivide the ranch into 12 ranchettes, but they could have qualified for 40."

Wodetzki emphasized that Albion is the only area coastal town without any public land. "Westport and Caspar just got their headlands, and Fort Bragg got Glass Beach, all in the last year ... We have two rivers and an ocean beach, and we have no access to them. It's all been fenced for the last 20 years."

THE MENDOCINO BEACON

A Coast Paper For Coast People Since 1877

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Editorial

*Editorials reflect the opinion of the Mendocino Beacon.
All other views are strictly those of the author.*

Time to write

The North Coast represents one of the last coastlines in California where the preservation of large, scenic tracts of land can be accomplished. Mendocino County has been extremely fortunate in the last year or so, receiving millions of Coastal Conservancy dollars to preserve key headland and ocean access properties from Westport to Elk. In 2000, public acquisition of prime coastal land has become a top priority for many citizens, and every successful endeavor raises the collective spirit.

Last week, this newspaper published a story, map and photos concerning a proposal to add a \$5.4 million, 420-acre ranch in Albion to the State Parks system. The new park proposal sprang from a coalition of preservation-minded individuals under the banner of the Albion Park Enthusiasts, and it has rather quickly received support from Congressman Mike Thompson, Sen. Wes Chesbro and Assemblywoman Virginia Strom-Martin, among others. That said, we concur with Melissa Hays (see Letters to the Editor) that an outpouring of written support will bolster our elected officials' resolve to aggressively lobby for funds to secure the Albion ranchland — which includes ridgetop coastal views, two Coho salmon-bearing streams and plenty of wildlife.

Recognizing that more and more people increasingly rely upon email rather than letter mailing, we will soon add email addresses to the Write Your Officials listing at the bottom of this page. In the meantime, it's worth the effort to use an envelope and stamp — or to even leave a phone message — to voice support for the proposed Albion State Park and other worthy land preservation proposals which are sure to follow.

6 4 23

THE MENDOCINO BEACON

A COAST PAPER FOR COAST PEOPLE SINCE 1877

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Thursday, April 26, 2001

Mendocino, Mendocino County, California

124th Year, No. 39



Over 150 Mendocino Coast residents rallied on Earth Day Sunday to support the creation of a new 500-acre Albion State Park, to be composed of the Albion Headlands, in the background, and the Andersen Ranch, on the east side of Highway 1. State legislators will decide whether to appropriate funds for the purchase of the Albion State Park in the next two weeks. Leona Walden photo.

Albion rally for state park

Submitted by
TOM WODETZKI

For 13 years Albion residents have worked to protect the Albion Headlands from development, and during the past two years efforts have been under way to create an Albion State Park, consisting of the 82-acre Albion Headlands and the 420-acre Andersen Ranch on the east side of Highway 1.

Acquiring these properties will preserve those qualities that attracted locals and millions of visitors from all over the world to this part of California: the majestic coastline, spectacular views, and beautiful coastal streams and meadows.

While the two present property

owners have filed plans to develop their sites, they are currently negotiating with the Trust for Public Lands to sell their properties to the State Parks Department. The only remaining step to making this dream come true is to get the state legislature to appropriate the funds to buy the land.

The Earth Day rally was called to show state representatives, who are right now drafting the state budget, that there is broad support for the new park. Rally organizers told the crowd, "If we want this 500-acre gateway to the Mendocino Coast preserved as open space, it is critical to call and write your state representatives now asking them to

secure funding for the Albion State Park."

Sen. Wes Chesbro can be reached at: State Capitol, Room 3070, Sacramento 95814; phone 916-445-3375; fax 916-323-6958; email senator.chesbro@sen.ca.gov. Assemblywoman Virginia Strom-Martin can be reached at: State Capitol, Room 3146, Sacramento 95814; phone 916-319-2001; fax 916-319-2101; email virginia.strom.martin@assembly.ca.gov.

For information and photos of the proposed Albion State Park, go to the Website: www.mendocino.to/albionstatepark or call Tom Wodetzki at 937-1113.

7923

MENDOCINO COUNTY | PROTECTING COASTLINE



MARK ARONOFF / The Press Democrat

Looking east toward Mendocino County, Highway 1 crosses the Big River as it empties into the Pacific Ocean just outside Mendocino. It is the largest undeveloped estuary between San Francisco and Oregon.

Coastal land buy

Big River estuary, Albion bluffs would become state parks

By MIKE GENIELLA

THE PRESS DEMOCRAT

Legislators have earmarked \$11.5 million in the proposed state budget toward two major Mendocino Coast land acquisitions at Albion and at Big River, one of the largest untouched estuary in Northern California.

In addition, the state Coastal Conservancy is awarding \$1.5 million to the city of Fort Bragg for purchase of an additional 15.5 acres of coastal bluffs on the southern edge of Noyo Harbor. In April, the conservancy granted the city \$550,000 for the purchase of 4 adjoining acres of bluffs.

8 of 23

MENDOCINO: Cooperative effort to protect coastline

Fort Bragg City Manager Connie Jackson said public acquisition is important not only to preserve ocean views, but to provide coastal access for local residents blocked from the Pacific by the sprawling Georgia-Pacific Corp. lumber manufacturing complex. "Virtually all of the coastal property in the immediate Fort Bragg area is in private ownership and use," Jackson said.

State Sen. Wesley Chesbro, D-Arcata, a member of the Coastal Conservancy board, said he pushed for the bluff acquisition because "The South Noyo Bluffs is the premier location in Fort Bragg to watch fishing boats enter and leave Noyo Harbor, catch a glimpse of migrating gray whales, or simply enjoy the view of the Pacific Ocean."

Chesbro also was instrumental in securing budget appropriations for the planned public acquisition of a 7,400-acre strip along the Big River, from the mouth of the river below the village of Mendocino and running upstream.

Springtime tidal waters intrude as far as 8.3 miles inland on the Big River estuary, the largest untouched estuary between San Francisco Bay and the Oregon border. Redwood and oth-

er coniferous forests flank the estuary, which has been the scene of environmental protests against private logging operations.

The state budget provides \$5 million toward an acquisition estimated to cost at least \$20 million. The 7,400 acres are currently owned by Oregon-based Hawthorne Timber Co. and are managed by Campbell Timber Management, which recently signed an agreement with the Mendocino Land Trust for the sale of the property. The deal requires completion of the public purchase by Dec. 31.

Besides the proposed state budget allocation of \$5 million, the trust and other supporters of the deal have secured \$1.5 million from the Coastal Conservancy and \$2 million from the Trust for Wildland Communities. The Marin Community Foundation and the National Fish and Wildlife Foundation have agreed to coordinate a private fund-raising campaign to raise the remaining \$12.5 million needed for the purchase.

The Mendocino trust became involved in the effort last fall after local residents turned to it for help in preserving the estuary.

"It's certainly the largest and most important project we've tackled in our 25-year history," said the trust's Roger Sternberg.

The state Department of Parks and Recreation has agreed to incorporate the Big River property into the state park system if the deal is completed.

Noting the popularity of the Big River estuary with canoeing enthusiasts and other coastal visitors, Chesbro said the public acquisition will "substantially contribute to the county's coastal economy, which is becoming increasingly geared to tourism."

An additional \$6.5 million is earmarked in the state budget for the public purchase of 502 acres of coastal land at Albion, about seven miles south of Mendocino.

Targeted are 82 acres of headlands at Albion, and an adjoining 420-acre coastal ranch that would be combined into a new Albion State Park. Chesbro said without protection, both properties could be subdivided and sold as high-end residential lots.

"Preserving the Albion headlands at the mouth of the Albion River will protect a full mile of coastline. This site is in the middle of a six-mile stretch of coastline, where no beach access currently exists," Chesbro said.

Albion resident Rixanne Wehren said acquisition of the adjoining Andersen Ranch "speaks to the heart of the Albion community."

"This view shed is our treasure of natural beauty, which we need to conserve and share with visitors and the coming generations," Wehren said.

You can reach Staff Writer Mike Gemella at 462-6470 or e-mail mgeniella@pressdemocrat.com.

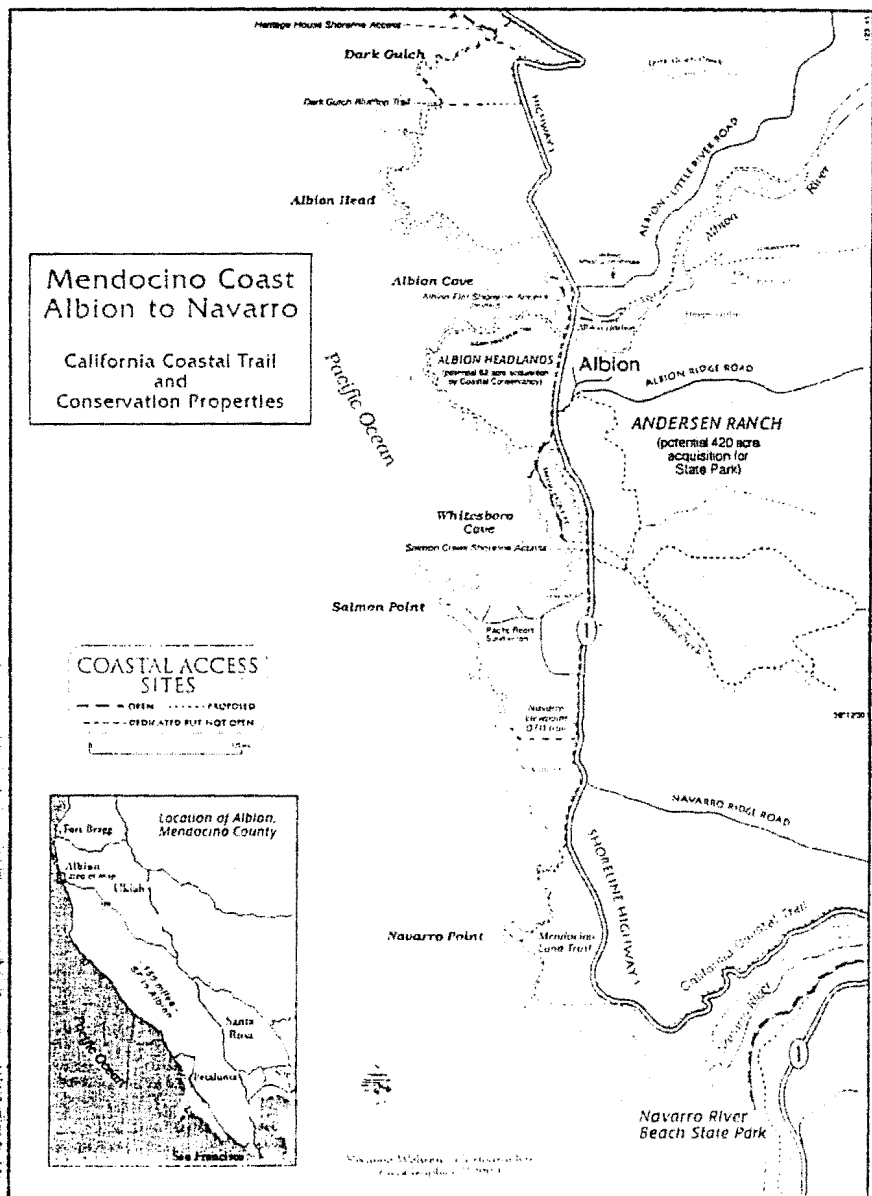
REAL ESTATE FREE

MENDOCINO COAST PROPERTY

Volume 15 • Number 2 • Issue 366 • Mendocino Coast's Own Real Estate Publication • July 20, 2001 to August 2, 2001

Albion State Park?:

*Paradise
Found
on the
Mendocino
Coast*



10423



Ocean view of the proposed park, and outline of the Andersen Ranch. Photo by Rixanne Wehren

Albion State Park?:

Paradise Found on the Mendocino Coast

By Lisa Norman

The Early Hawaiians had the wisdom to divide their lands into "ahupua'a," land parcels that stretched "mauka" to "makai," from the mountain to the sea. Few places still exist, either there, or in California or on continents beyond, which have managed to retain the pristine beauty of the Earth's land as it was before development and further division.

Albion, a village in Northern California, however, has a unique opportunity to behold a park near the size of a 500-acre ahupua'a. The proposed acquisition would extend from the Pacific Ocean at the Albion headlands, an 82-acre parcel, and cross

Highway 1, going eastward up the ridge, to the boundaries of the 420-acre Andersen Ranch parcel.

"Our dream is to preserve this beautiful property as open space available for public use. The painful alternative is for it to be sliced into twelve ranchettes and developed with trophy homes," said the Albion Park Enthusiasts, or APE. Albion Park Enthusiasts' leadership is provided by Shirley Freriks, Melissa Hays, Rod Lorimer, Rixanne Wehren, Diana Wiedemann and Tom Wodetzki.

Wodetzki, a 25-year resident of Albion who has long been involved in local environmental protection, is a consultant on socially responsible invest-

ing and co-chair of the local Alliance for Democracy chapter. He described the genesis of APE. "Earl Lathan is the representative of the 11 or so heirs of the Andersen Ranch, which is the 420 acres on the east side of Highway 1. Bruce Smith owns the 82 headland acres on the west side of Highway 1, behind the defunct gas station. Both filed plans with the county to divide their properties into more than 15 lots to be sold off for residential development (homes, vacation rentals, trophy homes), for a total of 30 lots. In alarm, we at APE then proposed to preserve it undeveloped instead and worked hard to get the state interested in buying it. We got the nation-

ON OUR COVER: Albion to Navarro map by Rixanne Wehren, Cartographer. View of Salsman Creek Bridge to the ocean, photo by Leona Wilden

wide preservation group Trust for Public Land (TPL) to join our effort and to become our negotiator with both owners, and to help promote the park idea in Sacramento and raise the needed money from many agencies. (3)

According to the Trust for Public Land's web site, land conservation is central to TPL's mission. It was founded in 1972, and is the only national nonprofit working exclusively to protect land for public use. They currently have 35 offices nationwide, and their nearly 2000 park and open space projects have protected more than 1.2 million acres in 45 states.

TPL's legal and real estate specialists work with landowners, government agencies, and community groups to create urban parks, gardens, greenways, and riverways; build livable communities by setting aside open space in the path of growth; conserve land for watershed protection, scenic beauty, and close-to-home recreation; and safeguard the character of communities by preserving historic landmarks and landscapes.

Because of TPL's unique ability to leverage funds, contributed funds conserve many times their value in parkland and open space.

TPL finds new ways to finance parks and open space; helps generate federal, state, and local conservation funding; and promotes the importance of public lands. TPL helps communities create a "greenprint for growth" by protecting important land that may be threatened by urban or suburban sprawl. TPL believes that connecting people to land deepens the public's appreciation of nature and the commitment to protect it.

With TPL, APE has been diligent in its campaign and worked mightily to get Senator Wes Chesbro, Assembly-member Virginia Strom-Martin, representatives from State Parks, and other state agency officials to tour the site.

APE put together a "pretty book," a pamphlet describing their proposal entitled, "Welcome to (the future?) Albion State Park: Gateway to the Mendocino Coast," and solicited letters of support from the Mendocino County Board of Supervisors, the Mendocino Coast Chamber of Commerce, the land

Continued on page 4

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Aerial view of the Albion headlands. Photo by Rixanne Wehren

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Albion State Park?:

Paradise Found on the Mendocino Coast

By Lisa Norman

Continued from page 3

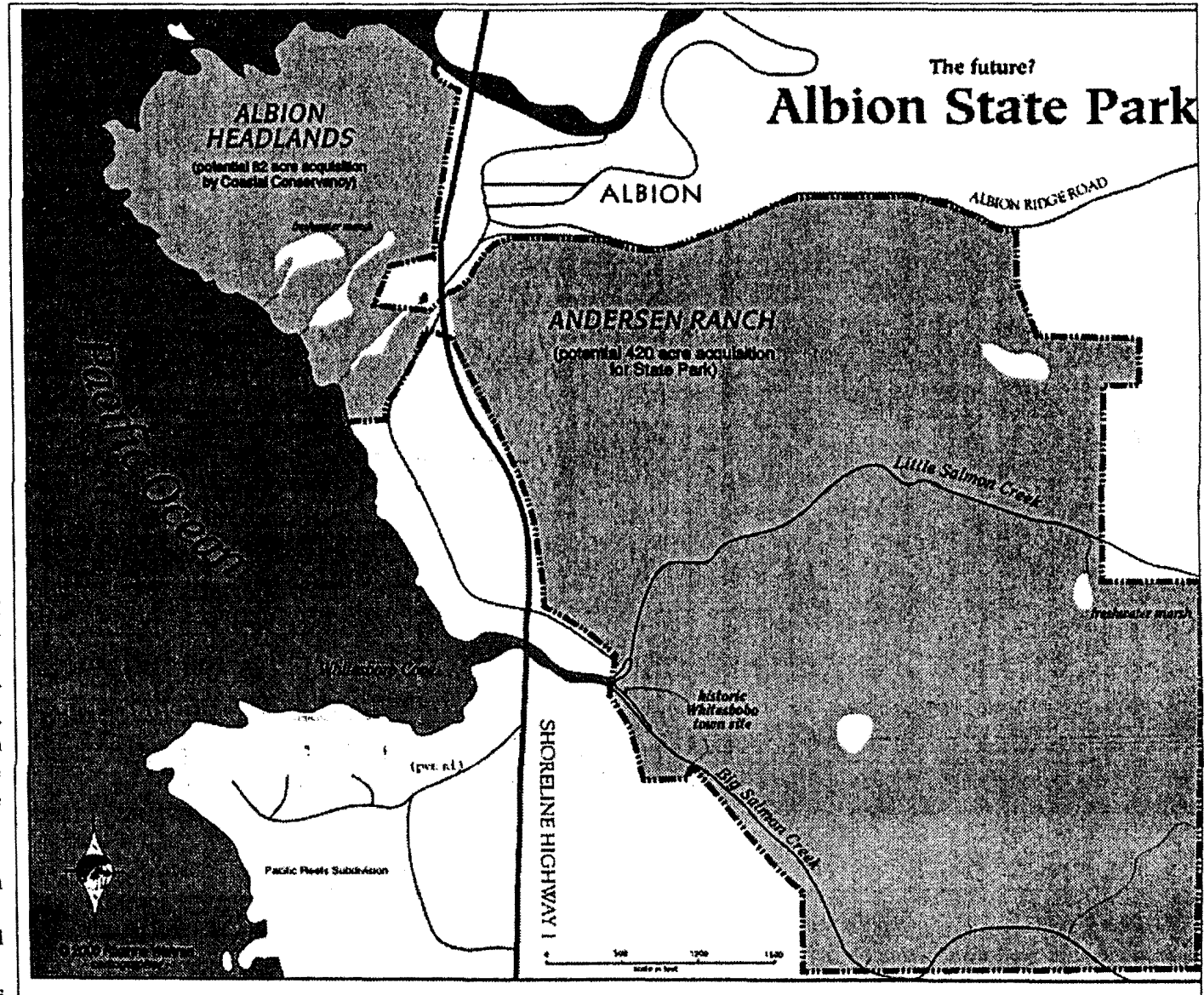
owners, the State Parks department, Strom-Martin, Chesbro, House Representative Mike Thompson and many more. Wodetzki said, "We also got citizens to send in hundreds of supportive letters and petitions with thousands of names. And we engaged a lobbyist in Sacramento to advance the \$6.5 million appropriation bill."

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APE also established a web site documenting the campaign and its progress. On those pages, APE describes the proposed new Albion State Park as, "500 acres of rugged headlands, ridge top prairies, vernal pools, redwood and fir trees, streamside woods and meadows. It has 1.6 miles of easily accessible, year-round streams bearing endangered coho salmon. Complete with beautiful walking trails, the proposed Albion State Park is considered by many to be the gateway to the Mendocino Coast. It is located along Coast Highway One just south of the village of Albion.

"Decades have passed since a major new state park has been established on the Mendocino Coast, whereas tourism has increased dramatically. Now is the time to add another jewel in the State Park's crown."

According to APE, the Andersen Ranch features are:

- 420 acres of coastal ridgetops and valleys
- two coho salmon-bearing streams (1.6 miles)



- ⑥
- acres of streamside meadows
 - two separate trail loops (3.5 miles) on existing old road beds
 - three separate access points
 - a stand-alone, ready-to-go park
 - a location adjacent to coastal-access Albion headlands (presently being negotiated for purchase by the Coastal Conservancy)
 - positioning along the California Coastal Trail
 - open space along Highway 1 in "highly scenic" area
 - historic town site (Whitesboro, 1876-1900, with lumber mill, railroad and wharf)
 - two historic ranch sites (Andersen and Hurley)
 - proximity to Albion Harbor, Albion and Whitesboro Coves, and Salmon Creek Beach
 - diverse habitats: riparian, coastal prairie, fir-redwood forest, and vernal pools

The APE notes that this would be a gateway park for most tourists to the Mendocino Coast, and that there is strong community support for park acquisition.

In 1920, Earl Latham's grandfather Palle Andersen made the first of nine separate purchases that would come to form the contiguous area or ranch. He died in 1973 and the land is now owned by

11 family members, Latham said.

Latham described the Andersen Ranch's history: "Since 1973 the land has been leased for cattle grazing. The lease was for \$4,000 per year and the taxes were over \$5,000 per year. Cattle were removed in mid-1999 when the cost of fence repair became too great.

"The County will allow the nine original purchases to be sold individually as well as the small town lots south of Albion. The family members felt such sales made no sense for their purposes [nor]... for the community that would want to minimize impact to the land. They are thus processing a submittal through the County to change boundary lines. These changes would also provide two [parcels] (revised from four in the original boundary line adjustment proposal) that could be purchased by individual family members."

Latham filed for the boundary line adjustment a year ago February and was told it would take four to five months. A hearing was held on June 29, at which time questions were raised concerning public access at Salmon Creek. On that subject, Latham said permission has always been granted. The continuation of the hearing is scheduled for July 27.

Latham added that some of the things being

done to minimize development impacts include making Little Salmon Creek a boundary line to minimize stream crossings; not allowing building sites overlooking Big Salmon Creek; not resurrecting the town at the site [where] the old town of Whitesboro existed (the junction of Big and Little Salmon Creeks); not allowing homesites on the existing parcel along Highway 1; proposing just two lots at the east edge of the property where there is a 20-acre parcel that could be subdivided into 10 lots; and combining the 12 small lots near Albion into two larger lots closer to the town center, eliminating the rest of the lots.

"The family members are well aware of the community's concern over any development of their land. They are most supportive of any purchases by the public. However, they feel the ...[proposed boundary line changes]... should go a long way toward minimizing development impacts in the event public money does not become available," Latham said.

With the boundary line adjustment, the Andersen Ranch heirs will receive a more legitimate appraisal, Latham said. The movement for the adjustment and sale now comes at a time when the

Continued on page 20

Albion State Park?: *Paradise Found on the Mendocino Coast*

By Lisa Norman

Continued from page 4

average age of the 11 family members is 70.

"In 10 to 15 years, this number of owners will probably increase to 30 or more. I'm available and able to carry out the BLA process at this time. With 30-plus owners it will be an impossible task for anyone to do. The property would then be sold in bulk to someone who would have much less concern for the community than we have," Latham said, adding, "We just wanted to start the process and get something done before we all kick the bucket and give the problem to our heirs."

The family agreed on certain controls with the boundary line adjustment proposal, Latham said. They include:

- having only two parcels north of Albion Ridge Road
- minimizing the number of parcels on the 20 acres zoned 2/5 acre minimum
- not using town lots to subdivide all 465 acres, and instead using fewer lots and only closer to town
- not allowing a homesite on the CC5 as it is currently defined (the "certificate of compliance" or saleable parcel near Highway 1 in the viewshed of "God and everyone," Latham said), but with the proposed BLA for CC5, providing a homesite out of view as much as



Aerial view of Andersen Ranch. Photo by Rixanne Wehren

- possible
- not asking for a boundary line adjustment for CC29, the parcel just south of CC5 and adjacent to Big Salmon Creek
- making Little Salmon Creek a basic property line
- not allowing buildings along either Salmon Creek, therefore not reviving the town of Whitesboro
- not allowing buildings on the bluffs overlooking Big Salmon Creek
- allowing the Hurley Ranch to stay at a 160-

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Albion State Park?:

Paradise Found on the Mendocino Coast

By Lisa Norman

acre minimum and not breaking this control with CCs on Big Salmon Creek.

Developing a reasonable boundary line adjustment would provide some flexibility for town growth, Latham said. The town may need to be expanded for a new post office, fire station, community center, and other commercial endeavors such as a restaurant, antique store, laundromat or possibly even a museum and more parking, he added. The other option would be to sell the existing lots without the BLA where the purchaser may not have the same respect for the land as the family does, Latham said.

17823 The family members have no interest in increasing density, Latham said. In their initial move to file for their "God given right" — the CCs or "certificates of compliance" that were due to them based on grandfather Palle's original purchases — the family opted for less than they could have obtained.

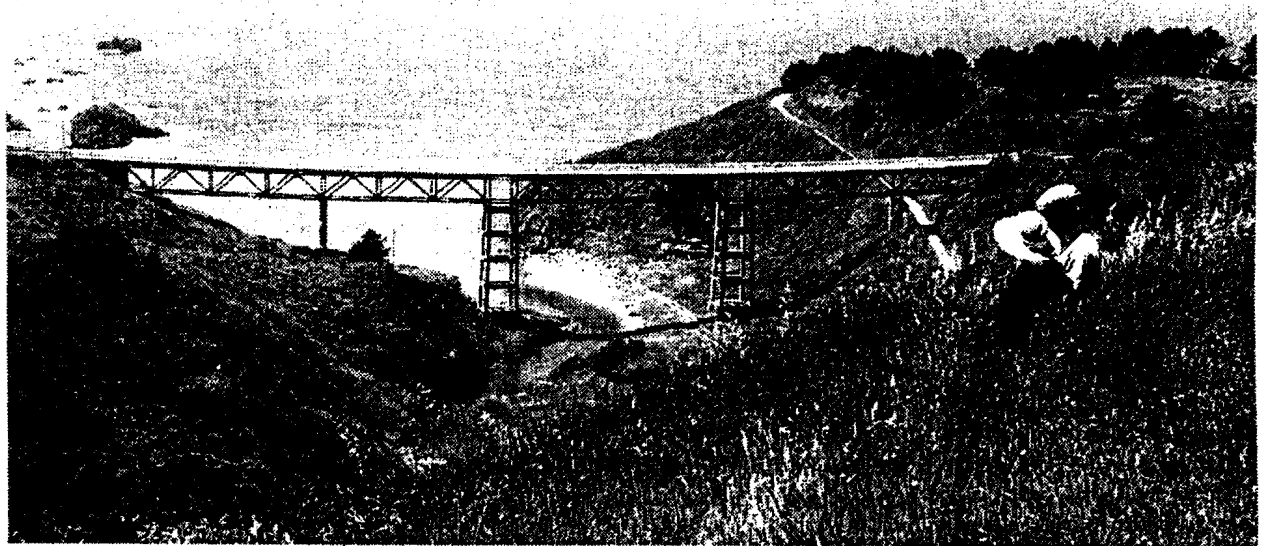
Latham cited an example: "The town's character was developed using mainly 50x100-foot lots on steep topography with on-site sewers. When I obtained CCs in 1993, I combined these lots so they are now 100x100 (I could have obtained over 24 CCs). The development of these parcels would now be on 100x100 lots on more gentle topography and with offsite sewer." Building on these lots would be an ideal opportunity to maintain the character of

the town in the way it was intended in 1906 and provide much needed affordable housing, Latham added.

As of June 7, Latham and the rest of the Andersen Ranch heirs are out of their option/purchase agreement contract with TPL. If the \$6.6 million appraisal had gone through, the family mem-

bers would have donated 10 percent, or rather taken about \$60,000 off the purchase price. This gesture, or "sign of good will," is the sort of thing that might help with the state's acceptance of the acquisition, Wodetzki said.

Continued on page 22



Looking west above Big Salmon Creek to Coast Highway One and Salmon Creek Bridge. Photo by Rixanne Wehren

Albion State Park?:

Paradise Found on the Mendocino Coast

By Lisa Norman

Continued from page 21

Bruce Smith just recently went into a six-month option agreement with TPL, Wodetzki said, in hopes that the agency may still garner the funds from the state to buy the land. He added that TPL will likely renegotiate with Latham to obtain another option/purchase agreement.

As the push for State Park acquisition continues, TPL's Public Relations Manager Mary Manees gave an update. "The \$6.5 million purchase is a line item in the state budget that got out of [was approved by] the Senate and Assembly and is awaiting the Governor's signature." Budget approval delays may extend beyond July 20, and until the budget is passed, TPL, APE and everyone will have to wait for a decision, Wodetzki said. In the meantime, he and other Enthusiasts are asking for additional letters of support.

As the verdict on the budget approval for the acquisition draws near, State Parks Superintendent Greg Picard offered insight into the proposal. "We are supportive of the concept. It's a good piece of property, though State Parks is not able to participate in a financial way toward the purchase," Picard said. He added that "headquarters" makes such decisions in setting priorities and "at this point in time, the bond money is nearly spent." Proposition 12 appropriated \$400 million to State Parks for land

acquisition.

Other funds from Proposition 12 are still available, but the \$1.5 million appropriated through the bond is for local facility-type improvements in Parks and Recreation, Picard said. Short of passing another bond, State Parks is unable to participate in the purchase, he added.

"Still, the area holds a number of resource values. The coho stream that runs into it, the plant and animal species that roam it, the viewshed, all those things are attractive," Picard said.

As far as establishing a budget for the proposed Albion park, Picard noted, "State Parks has not moved forward in that direction because of the lack of participation [budget approval], making the whole project seem kind of iffy, at least at this point in time." He did say, as a point of comparison, that it would probably be run like Jughandle, with one ranger.

"We'll see what happens over time," Picard said, noting the difficulty State Parks has of obtaining any funding from the state to add staff positions. "The whole legislative push is no growth in government," and he said he didn't anticipate funding any time soon.

As with all land acquisitions, down the line State Parks will need additional funding to develop the area for park use, adding facilities such as parking

and the like, Picard said. Eventually, as he believes with all parks, the quality of life in the area would be much improved.

And though it is next to impossible to revert or sell back park land to develop homes or facilities that might serve the needs of an even larger Albion community (Wodetzki's current estimate was 2,000-3,000 people), Picard wagered that when the challenge arises, opportunity would present itself. If necessary, who knows, maybe the Ledford lot could be sold to the community for its needs, he speculated.

Park enthusiasts and area residents might agree. As Wodetzki said, "It would pain me greatly to see this 500-acre "Gateway to the Mendocino Coast" chopped up and littered with 30, or even just 10, residences. In its wild, undeveloped state, it is such a beautiful treasure that it needs to be preserved for all people's use for all time."

To show your support, or for more information contact:

Tom Wodetzki
Albion Park Enthusiasts (APE)
31901 Middle Ridge Road
Albion, CA 95410
707 937-1113

APPLICANT EARL LATHAM

Wolfgang Funke & Brunhilde Funke
P.O. Box 337
Albion, California 95410

Re: Public Comment - Case#: CDB 36-2000
Department of Planning and Building Services
501 Low Gap Road, Room 1440
Ukiah, California 95482

RECEIVED
OCT 09 2001

CALIFORNIA
COASTAL COMMISSION
June 23, 2001

Ladies and Gentleman of the Subdivision Committee and Coastal Permit Administration:

On June 28, 2001 you will be considering a boundary line adjustment and coastal development permit to re-configure 21 legal parcels ("Subject Property") owned by Earl Latham *et al* ("Applicant"). We, the owners of the Funke Farm, submit this letter as a public comment and thereby preserve our right to appeal any and all issues raised in this letter.

The Funke Farm is the largest property lying adjacent to the Subject Property, and, as a result we believe that any development on the Subject Property has a greater likelihood of affecting us, than any other property owner. The Funke Farm lays due south of the Subject Property, and, our property borders the Subject Property for a distance of more than 1900 feet (Please see Attachment A for a visual representation of the border). The Williamson Act (a State Agricultural Preserve Act) adopted by Mendocino County Code (MCC) 22.08 protects our farm. Our Agricultural Preserve Contract was recorded February 24, 1971 and can be found in Volume 840 of Official Records, Page 205, Mendocino County Records. As an Agricultural Preserve, operating farm, Certified Organic Farmers, and neighbor, we are concerned over the impacts that development on the Subject Property may have on our farm.

The Mendocino County Code requires the decision making body to consider a multitude of impacts in regard to agricultural lands. First, MCC 20.532.100(B)(1)(g) lists Agricultural Impact Findings that must be applied when the Subject Property is Agricultural (as it is described on Page CPA-1 of the Staff Report):

- (1) *Development in Agricultural Zones. No development subject to a coastal development use permit shall be issued on agricultural land until the following findings are made:*
 - g. *The project ensures existing land use compatibility by maintaining productivity of on-site and adjacent agricultural lands.*

In addition, MCC 20.508.020(B)(1) & (C)(1) "Buffer Areas" states that development adjacent to agriculturally designated parcels is subject to the following:

- (B)(1) & (C)(1): *New parcels ... may be developed at a density specified by the base zone provided that no dwelling is closer than two hundred (200) feet from the property line of the Preserve or at the furthest feasible point from said property line.*

Lastly, the Staff Report lists as a Condition of Approval factor (9) that: *The proposed use is compatible with the long-term protection of resource lands* (see Staff Report Page CPA-5).

We believe that the above three (Italicized quotes) should apply as criteria to any action taken by the Subdivision Committee and Coastal Permit Administration. Agricultural Preserve status provides us with a low property tax bill, which has allowed our property to be an economically productive and operating farm for the last 24 years. Agricultural preserve also has the effect of preserving our 120 acres as unobstructed open space, which the residents and tourists of Mendocino County hold in such high regard. However, because we are bound by our Agricultural Preserve Contract in making any land-use decisions with our property the State of California affords us protection. We hope the decision making body seriously considers the above italicized quotes and especially recognizes that no development may occur closer than 200 feet from our property line.^{1,2}

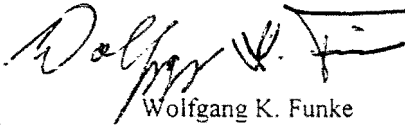
¹ For some it may seem unrealistic to allow us to control development within 200 feet of our borders. However, please remember that agricultural uses produce dust, noise and other factors that may be injurious to public health. The 200-foot buffer exists to protect the public health of any individual who may choose to reside near agricultural land, and as a result it helps safeguard both the farmer and the County from legal liability.

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A Second issue that we wish to have noted in the record is the existence of an on-going boundary line dispute with the Applicant. This dispute concerns a 55-foot strip of access to Salmon Creek, which is the northern most portion of our property and borders the Applicant's lot number 7 (See location of Applicant's lots on Staff Report Page CP-9 and Attachment B). The Applicant is not proposing a boundary line adjustment of lot 7, and therefore it is likely that this issue has no relevance to the current action. However, if the decision making body decides that an accurate survey of the entire property is required, we request that Mendocino County contact us so that we may document our proof of the 55-foot strip to an independent licensed surveyor.³

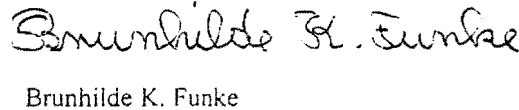
Lastly, we wish to voice our support for the proposed coastal development permit. We support the Applicant in exercising his property right to develop his land. However, we hope that the County considers our property rights and considers the responsibilities of the County under the Agricultural Preserve Contract in rendering their decision.

Sincerely,



Wolfgang K. Funke

&



Brunhilde K. Funke

Cc: Earl Latham Etal
Cc: Bud Kamb

² Though not related to this hearing, it is our understanding that the current owner of the 10-acre parcel due south of our property (the old Brazil property) is planning on developing a dwelling. Let it be known that under no circumstance will we allow any dwelling to built within 200 feet of our borders, and, if necessary we have no qualms to bringing this issue before the California Coastal Commission.

³ For the curious, the dispute regards access to Salmon Creek along the old County Road from Navarro Ridge to Albion. Our legal description grants us "All that portion of Lot 2 and the Southeast quarter of Southwest quarter of Section 28, Township 16 North, Range 17 West, Mount Diablo Meridian, lying Southerly of Salmon Creek and Westerly of Navarro Ridge Road [Meaning the Old County Road from Navarro to Albion] and Easterly of the Easterly line of Highway One." A second portion of our legal description then carves out a portion of the above. However, the piece that is carved out refers to the Westerly **edge** of the Old County Road and when referring to Highway One, the legal description also refers to the "Easterly line". Since the County has abandoned its easement right along the Old County Road we believe that "Westerly of" the Old County Road refers to west of the **center** of the old easement right, whereas "Westerly edge" (or "Easterly line") refers to the actual edge of the road, resulting in our property maintaining access to Salmon Creek in the width of half the easement right of the Old County Road. In addition, if one logically assesses how the property lines are drawn at this northern most portion of our property, the visual presentation indicates that access to Salmon Creek and accompanying riparian rights were to be preserved.

ALBION MUTUAL WATER CO. INC.
P.O. Box 485
ALBION, CA 95410

10-5-01

CALIFORNIA Coastal Commission
NORTH COAST DISTRICT OFFICE
P.O. Box 4908
EUREKA, CA 95502-4908

RECEIVED
OCT 09 2001

CALIFORNIA
COASTAL COMMISSION

SUBJECT: PERMIT No. A-1-MEN-01-049

I UNDERSTAND MY LETTER to the County
dated June 21, 2001 is being interpreted to
mean we will not provide water service to
Parcels L and M in Latham et al's application
for a boundary line adjustment.

In the agreement submitted with our
letter, the Latham family or their assigns have
the right to two residential and one commercial
hook-ups. None of the unimproved Latham et al
property is within our current service
boundary. However, Parcels L and M are contiguous
with the town and very close to our distribution
lines. Any request by the LATHAM et al family
to service these parcels has been approved by
by the Board of Directors on 10-5-01 and the
service boundary will be adjusted to accommodate
these parcels.

Therman Spruck
THERMAN SPRUCK, PRES.
ALBION MUTUAL WATER CO. INC.

CC: MENDOCINO County
EARL R. LATHAM

21423



Write an e-mail message

From: Mendomom2@webtv.net.
(Margaret Calby)

To: California Coastal Commission

FAX 707-445-7877

Subject: Latham/Bud Kamb (Albion) 465 Acre Boundary Change

Please follow your staff's recommendation to require an Environmental Impact Report on this project. It seems inconceivable to me that County could have "approved" this development proposal. (See copy of my letter to Planning).

You are very important to us here on the Coast, and I hope your wisdom will prevail in protecting our coastal headlands from certain destruction. Thank you for being there. Sincerely,

Margaret Calby, Mendocino Resident and Homeowner, P.O. Box 1520,
Mendocino, CA 95460 - (707) 937-0148

RECEIVED
OCT 09 2001
CALIFORNIA
COASTAL COMMISSION



Write an e-mail message

COPY to Coastal Commission

From: Mendomom2@webtv.net.
(Margaret Calby)

FAX 707-463-5709

To: Mendocino County Planning Department

Subject: Responsible Planning

It has come to my attention that you recently approved a boundary change on the Albion Headlands - Latham/Bud Kamb (Albion) 465 Acres. It appears that you did this request for subdivision purposes without any assurance of adequate water supply - this in an area known for its critical ground water shortage. You did not question whether safe sewage disposal was possible when it's well known that we have water quality and ocean pollution problems. Other planning issues such as traffic congestion, etc also were not addressed.

This item is on the Coastal Commission agenda this week. It sounds as if you approved this development potential plan. I hope they do not interpret it thus - and will deny it until the above and other issues are resolved. Margaret Calby, Mendocino Resident and Homeowner

22423

Fax (415)904-5400

Eureka

October 4, 2001

California Coastal Commission
45 Fremont St., suite 1970
San Francisco, CA 94105

RECEIVED
OCT 04 2001
CALIFORNIA
COASTAL COMMISSION

Dear Commissioners: RE: Appeal # A-1-01-49 (Latham et al)

I urge you to approve the staff recommendations and at the same time require
EIR in order for the project to be in accord with CEQA and the LCP.

This is important to our coast.

Thank you.

Sincerely yours,



Joan Curry

PO Box 497

Mendocino, CA 95460

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